

**MANUELA S. FORMENTO AND RODOLFO L. FORMENTO,
PETITIONERS, VS. HON. COURT OF APPEALS, ANTONIO HERAS,
DOING BUSINESS IN THE NAME AND STYLE JD TRANSIT, GRACIANO
GUARIÑO AND THE FIE...**

G.R. No. L-26442. August 29, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Plaintiffs Manuela S. Formento and Rodolfo L. Formento seek the review of a decision of the Court of Appeals reversing that of the Court of First Instance of Manila and absolving the defendants from plaintiffs' complaint.

Late in 1962, defendant Graciano Guariño was accused, in Criminal Case No. 67117 of the Court of First Instance of Manila, of damage to property and less serious physical injuries through reckless negligence, in that, being the driver of JD passenger bus bearing plate No. PUB-154 Mla. '62, which was owned and operated by Antonio Heras, on September 5, 1962, Guariño drove said bus so recklessly and imprudently that the vehicle hit and bumped a motor-cycle driven by plaintiff, Rodolfo L. Formento, with his co-plaintiff and wife, Manuela S. Formento, as a backseat rider, in consequence of which both sustained less serious physical injuries and the motor-cycle was damaged in the total sum of P163. Having pleaded guilty to the charge, upon arraignment, on January 28, 1963, Guariño was forthwith sentenced to one (1) month and one (1) day of arresto mayor and to indemnify the offended parties in the sum of P163 - represent-ing the amount of the damage caused to the motorcycle - with subsidiary imprisonment in case of insolvency, and to pay the costs.

On March 29, 1963, plaintiffs commenced the present civil action, against Heras and Guariño, for damages allegedly sustained by the former by reason of said negligence of Guariño.[1] Defendants moved to dismiss the complaint, upon the ground that plaintiffs' cause of action is barred by the decision in the criminal case. The court deferred action on the motion to dismiss and directed the defendants to answer the complaint, whereas the defendants filed a third party complaint, against Fieldmen's Insurance Co., on a common carrier's accident insurance policy covering the bus in-volved in the accident. Defendants, likewise, filed their answer, admitting that the JD transit belongs to Heras and that Guariño was driving the bus aforementioned, but denied the other averments of the complaint, and pleaded *res adjudicata*, based upon the judg-ment in the criminal action. Upon the other hand, in its answer to the third party complaint, the insurance company admitted its third party liability under said insurance policy and adopted, by reference, the defenses set up by the defendants against plaintiffs' complaint.

In due course thereafter, the Court of First Instance of Manila rendered judgment for the plaintiffs, sentencing Heras and Guarino, jointly and severally, to pay to the plaintiffs the sums of P464, as compensatory damages - for medical treatment, transpor-tation in the course thereof and medicine - P1, 000, as moral dam-ages, P500, as attorney's fees, all with interest at the rate of six per centum (6%) per annum, from March 29, 1963, until fully paid, and the costs of the suit. It likewise sentenced the insurance com-pany to reimburse Heras the amounts he

had been sentenced to pay to the plaintiffs. On appeal, taken by the three (3) defendants, the Court of Appeals reversed the decision of the lower court and absolved said defendants from the complaint, with costs against the plaintiffs. Hence, this appeal.

The main issue before us is whether the present action is barred by the decision in the criminal case, considering that plaintiffs had not reserved therein the right to recover damages in a separate proceeding. Defendants maintain the affirmative view for the reason that their civil liability for said damages is deemed settled by the decision in the criminal case, under the principle of *res adjudicata*. Upon the other hand, plaintiffs urge a negative answer, upon the ground that their complaint in the present case seeks to enforce a liability arising, not from a crime, but from a quasi-delict.

The latter theory is supported by our decision in *De Leon Brokerage Co. vs. Court of Appeals*,² in which, speaking for this Court, then Associate Justice (later Chief Justice) Cesar Bengzon expressed himself as follows:

"The court of origin and the appellate court correctly considered respondent's complaint to be based on a quasi-delict. She alleged that she suffered injuries because of the carelessness and imprudence of petitioner's chauffeur, who was driving the cargo truck TH-776 belonging to petitioner, which truck collided with the passenger jeepney wherein she was riding. Since averment had been made of the employer-employee relationship and of the damages caused by the employee on occasion of his function, there is a clear statement of a right of action under Article 2180 of the Civil Code. x x x."³

The parity between that case and the one at bar becomes more apparent when we consider that, in the former, we held that "what-ever doubts remain as to the nature" of the action filed by the injured party "are resolved by the prayer" that the employer and the employee "be held solidarily liable" - which is, likewise, made in the complaint of plaintiffs herein - because the employer's liability under the Revised Penal Code⁴ is merely subsidiary in nature, whereas that arising from a quasi-delict is solidary in character;⁵ that in both cases the criminal conviction of the employee was alleged in the civil complaint, and this fact was considered insufficient, in the *De Leon Brokerage* case, to detract from the nature of the cause of action set up in said pleading, as one based upon a quasi-delict; and that, in both, the employer clearly understood that such was the foundation of the liability exacted by the injured party, in as much as the former alleged that it had exercised due diligence in the selection of, and exercise of supervision over, his employee, a defense available under the Civil Code,⁶ but not under the Penal Code.⁷

The plea of *res adjudicata* set up by the defendants is anchored upon Sections 1 and 2 of Rule 111 of the Rules of Court, reading:

"Section 1. - Institution of criminal and civil actions. - When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately.

"Section 2. - Independent civil action. - In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence. "

These provisions are, however, inapplicable to the case at bar, inasmuch as the former form part of the revised Rules of Court, which became effective on January 1, 1964, and the present civil action was commenced over nine (9) months prior thereto, or on March 29, 1963. Accordingly, in *Reyes v. Dela Rosa*,⁸ it was held that, in view of Article 33 of the New Civil Code, which provides that:

"In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely se-parate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prose-cution, and shall require only a preponderance of evidence."⁹

a civil complaint, filed in 1955, for the recovery of damages arising from physical injuries inflicted and slander or defamation committed by the defendants, was not barred by the judgment in the criminal action against the latter for said acts, despite plaintiff's failure to reserve, in said criminal action, the "right to institute a separate civil action for damages." This view was reiterated in *Ortaliz v. Echarri*¹⁰ involving another case of physical injuries through neg-ligence committed by the driver of a motor vehicle.

Besides, owing to the policy set forth in the above-quoted Art. 33 of the Civil Code, it has been consistently held, not only that "the responsibility arising from fault or negligence in quasi-delicts is entirely separate and distinct from the civil liability arising from negligence under the Penal Code"¹¹, but, also, that - at least, in cases instituted before January 1, 1964 - the failure to make, in the criminal action, the reservation required in said Rule, will not bar a separate civil action for quasi delict, provided that the injured party has not intervened "actually" or actively in the prosecution of said criminal action. Hence, in *Parker v. Pan-lilio*,¹² we said:

" x x x The failure, therefore, on the part of the petitioner to reserve her right to institute the civil action in the criminal case cannot in any way be deemed as a waiver on her part to institute a se-parate civil action against the respondent company based on its contractual liability, or on culpa aqui-liana under articles 1902 to 1910 of the Civil Code.

"It should be here emphasized that these two actions are separate and distinct and should not be confused one with the other. In the supposition that the one accused in the criminal case is a driver, employee, or dependent of the respondent company, the failure to reserve the right to institute a separate civil action in the criminal case would not necessarily constitute a bar to the institution of the civil action against said respondent, for the cause of action in one is different from that in the other. These are two independent actions based on distinct causes of action. This distinction is aptly stated in the *Barredo* case (*Barredo* vs. *Garcia and Almario*, 73 Phil. 607). This Court said: 'There are two liabilities of *Barredo*; first, the subsidiary one because of the civil liability of the taxi driver arising from the latter's cri-minal negligence; and, second, *Barredo*'s pri-mary liability as an employer under Article 1903. The plaintiffs were free to choose which course to take, and they preferred the second remedy. In so doing they were acting within their rights' (pp. 614-615, id).

'A distinction exists between the civil liability arising from a crime and responsibility for cuasi-delitos or culpa extra-contractual. The same neg-ligent act causing damages may produce a civil liability arising from a crime under article 100 of the Revised Penal Code, or create an action for cuasi--delito or culpa extra-contractual under articles 1902-1910 of the Civil Code. Plaintiffs were free to choose which remedy to enforce' (*Barredo* vs. *Garcia and Almario*, 73 Phil. 607). "¹³

In *Azucena v. Potenciano*,¹⁴ the language used was:

"This Court in *Dyogi vs. Yatco*, G.R. No. L-9623, Jan. 22, 1957, stated that Article 33 constitutes a partial amendment of Rule 107. In *Calo vs. Peggy*, G.R. No. L-10756, March 29, 1958, substantially the same situation as the one now be-fore us was passed upon by this Court. A minor son of the defendant there, while driving a jeep belonging to the father, bumped and injured plaintiff *Romeo Calo*. A criminal action for serious physical injuries through reckless imprudence was instituted. While it was pending a civil action to recover damages on the theory of quasi-delict was filed against the father of the accused. After a judgment of acquittal was rendered, where it was intimated that the victim of the accident was the one at fault, the defendant in the civil action moved for its dismissal, alleging that since in the criminal case there was no reser-vation of the right to file a separate civil action for damages the judgment of acquittal operated to ex-tinguish the civil liability of the defendant based on the same incident. The trial court granted the motion to dismiss, but on

appeal this Court reversed the ruling on the ground that the civil action was entirely independent of the criminal case according to Articles 33 and 2177 of the Civil Code. There can indeed be no other logical conclusion than this, for to subordinate the civil action contemplated in the said articles to the result of the criminal prosecution -whether it be conviction or acquittal - would render meaningless the independent character of the civil action and the clear injunction in Article 31 that this action 'may proceed independently of the criminal proceedings and regardless of the result of the latter. To be sure, an exception to this principle of separation and independence of the two classes of actions from each other has been recognized, namely, when the offended party not only fails to reserve the right to file a separate civil action but intervenes actually in the criminal suit by appearing through a private prosecutor for the purpose of recovering indemnity for damages therein, in which case a judgment of acquittal bars a subsequent civil action. *Maria Roa vs. Segunda dela Cruz, et al.*, supra. The case at bar, however, does not fall under the exception, for the plaintiff here did not so intervene in the criminal action against defendant Potenciano.

"Appellees contend that the civil action referred to in Article 33 of the Civil Code is that which arises ex-delicto, or from the commission of the offense involving defamation, fraud or physical injuries, and consequently, pursuant to Rule 107, Section 1(a), the right to file it must be expressly reserved in the criminal action if it is to prosper at all. The contention is erroneous *Bachrach Motor Co., Inc. vs. Gamboa*. It presupposes that there must first be a conviction for the crime, for without conviction there can be no offense to speak of from which civil liability could arise. Article 33 contemplates a civil action for the recovery of damages that is entirely unrelated to the purely criminal aspect of the case. This is the reason why only a preponderance of evidence and not proof beyond reasonable doubt is deemed sufficient.

"Wherefore, the order appealed from is set aside and the case is remanded to the Court of origin for further proceedings, x x x ."15

We quote from *Meneses v. Luat*:16

"It appears that a criminal case for damage to property with serious physical injuries through reckless imprudence was filed against Estanislao Luat in the Court of First Instance of Pampanga. Herein plaintiffs, as the offended parties in that case, were represented by counsel, who entered their appearance as private prosecutors. Upon arraignment the accused entered a plea of guilty and was accordingly sentenced to suffer a term of imprisonment and to pay a fine. x x x. The decision became final, the accused having started to serve his sentence immediately.

"The civil action was filed thereafter against both the driver and owner of the truck, obviously on the theory of quasi-delict and specifically on the basis of Article 33 of the Civil Code, which states that in cases of defamation, fraud and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action may be brought by the injured party, and the same shall proceed independently of the criminal prosecution and shall require only a preponderance of evidence.

"Defendant's motion to dismiss was predicated and upheld on the ground that the action was barred by the judgment in the criminal case, on the authority of our decision in *Maria C. Roa vs. Segunda dela Cruz, et al.*, G. R. No. L-13134, promulgated February 13, 1960. In that case we said:

'In the instant case it is not disputed that plaintiff Maria C. Roa - upon whose initiative the criminal action for defamation against the defendant Segunda dela Cruz was filed - did not reserve her right to institute an independent civil action. Instead, she chose to intervene in the criminal proceedings as private prosecutor through counsel employed by her. Such intervention, as observed by the court below, could only be for the purpose of claiming damages or indemnity, and not to secure the conviction and punishment of the accused therein as plaintiff now pretends. This must be so because an offended party in a criminal case may intervene personally or by attorney, in the prosecution of the offense, only if he has not waived the civil action or expressly reserved his right to institute it, subject, always, to the direction and control of the prosecuting fiscal. (Section 15

in connection with Section 4 of Rule 106, Rules of Court; *Lim Tek Goan vs. Yatco*, G.R. No. L-6386, December 29, 1953). The reason of the law in not permitting the offended party to intervene in the prosecution of the offense if he had waived or reserved his right to institute the civil action is that by such action her interest in the criminal case has disappeared. Its prosecution becomes the sole function of the public prosecutor. (*Gorospe et al., vs. Gatmaitan, et al.*, G. R. No. L-9609, March 9, 1956.) The rule, therefore, is that the right of intervention reserved to the offended party is for the sole purpose of enforcing the civil liability born of the criminal act and not of demanding punishment of the accused. (*People vs. Orais*, 65 Phil. 744; *People vs. Veles*, 77 Phil. 1026; *People vs. Flores et al.*, G. R. No. L-7528, December, 1957; see also *U.S. vs. Malabon*, 1 Phil. 731; *U. S. vs. Heery*, 25 Phil. 600.)

"In a number of cases decided prior to *Roa vs. Dela Cruz*, it had been held that upon the institution of a criminal action for physical injuries the offended party need not reserve his right to file a separate civil action arising on the same injuries, for the reason that the law itself (Art. 33 of the Civil Code already makes the reservation and the failure of the offended party to do so does not bar him from bringing such action. (See *Estrada v. Briones*, 56 O.G. No. 12 p. 2041, Aug. 28, 1959, and cases cited.) In these instances, of course, the offended parties did not intervene actively in the criminal prosecution through private counsel.

"The issue now before us is whether or not the rule laid down in the *Roa* case should govern this one. We are of the opinion that there is a demonstrable material difference between the circumstances of the two cases. In the first not only was the offended party represented by a private prosecutor in the criminal action but the action went through trial on the merits. In fact it was the private prosecutor who actually handled the case. He therefore had sufficient opportunity to claim and prove damages, for which purpose alone, according to the decision of this Court, his active intervention was allowed. For if that had not been the purpose, or if the offended party had reserved the right to file a separate civil action, such intervention would not have been justified.

"In the instant case the criminal action against defendant *Luat* did not proceed to trial, as he pleaded guilty upon arraignment. The mere appearance of private counsel in representation of the offended party did not constitute such active intervention as could only import an intention to press a claim for damages in the same action. It is as reasonable to indulge the possibility that the private prosecutors appeared precisely to be able to make a seasonable reservation of the right to file a separate civil action which, even if unnecessary at the time (1), would nevertheless have been the prudent and practical thing to do for the purpose of better protecting the interests of their clients. But as matters turned out, the accused pleaded guilty upon arraignment and was immediately sentenced. Thereafter there was no chance to enter a reservation in the record.

"We do not believe that plaintiff's substantive right to claim damages should necessarily be fore-closed by the fact - at best equivocal as to its purpose - that private prosecutors entered their appearance at the very inception of the proceeding, which was then cut short at that stage. It cannot be said with any reasonable certainty that plaintiffs had thereby committed themselves to the submission of their action for damages in that action. x x x.

"The order appealed from is set aside and the case remanded for further proceedings, with costs."¹⁷

It should be noted that counsel for the injured party was present at the arraignment of the accused in the criminal case, although, in view of the plea of guilty entered by the latter, there was neither a trial, nor a reservation of the right to file a separate civil action. Yet, the injured party was not deemed barred from instituting the same. In short, the plaintiffs herein, who were not even notified of the arraignment, have a stronger case than *Meneses*.

WHEREFORE, the appealed decision of the Court of Appeals should be, as it is hereby, reversed and another one shall be entered affirming that of the Court of First Instance of Manila, with costs against the defendant-appellees.

Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.

[1] P5,000 as actual or compensatory damages, P10, 000 as moral damages and P5,000 as attorney's fees, in addition to the costs of the suit.

2 G.R. No. L-15247, February 28, 1962

3 Underscoring supplied.

4 Arts. 102 and 103.

5 Art. 2194, Civil Code of the Philippines.

6 Art. 2180, last paragraph.

7 Arambulo v. Manila Electric Co., 55 Phil. 75.

8 99 Phil. 1013, 1015.

9 Underscoring supplied.

10 101 Phil. 947, 951.

11 Dionisio v. Alvendia, 102 Phil. 443, 447.

12 91 Phil. 1, 4-5.

13 Underscoring supplied.

14 G. R. No. L-14028, June 30, 1962.

15 Underscoring supplied.

16 G.R. No. L-18116, November 28, 1964.

17 Underscoring ours.

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