

**VICTORIA G. CAPUNO AND JOSEPHINE G. CAPUNO,
PLAINTIFFS-APPELLANTS, VS. PEPSI-COLA BOTTLING COMPANY OF
THE PHILIPPINES AND JON ELORDI, DEFENDANTS-APPELLEES.**

G.R. No. L-19331. April 30, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal (in forma pauperis), certified here by the Court of Appeals, is from the order of the Court of First Instance of Tarlac dismissing appellants' complaint in Civil Case No. 3315 for recovery of damages for the death of Cipriano Capuno.

The case arose from a vehicular collision which occurred on January 3, 1953 in Apalit, Pampanga. Involved were a Pepsi-Cola delivery truck driven by Jon Elordi and a private car driven by Capuno. The collision proved fatal to the latter as well as to his passengers, the spouses Florencio Buan and Rizalina Paras.

On January 5, 1953 Elordi was charged with triple homicide through reckless imprudence in the Court of First Instance of Pampanga (Criminal Case No. 1591). The information was subsequently amended to include claims for damages by the heirs of the three victims.

On October 1, 1953, while the criminal case was pending, the Intestate Estate of the Buan spouses and their heirs filed a civil action, also for damages, in the Court of First Instance of Tarlac against the Pepsi-Cola Bottling Company of the Philippines and Jon Elordi (Civil Case No. 838). Included in the complaint was a claim for indemnity in the sum of P2,623.00 allegedly paid by the Estate to the heirs of Capuno under the Workmen's Compensation Act.

In the criminal case both the heirs of Capuno and the Estate of Buan—the former being appellants herein— were represented by their respective counsel as private prosecutors: Attorney Ricardo Y. Navarro and Attorneys Jose W. Diokno and Augusto M. Ilagan. In view of the filing of the civil action, the accused Jon Elordi moved to strike out the appearances of these private prosecutors in the criminal case. Grounds for the motion were (1) that as far as the Capuno heirs were concerned they no longer had any interest to protect in the criminal case since they had already claimed and received compensation for the death of their decedent; and (2) that on the part of the Estate of Buan its right to intervene in said case had been abated by the civil action.

The appearance and intervention of Attorneys Diokno and Ilagan was disallowed by the Court in an order dated September 23, 1953, and that of Attorney Navarro was disallowed in an amending order dated October 23, 1954. No appeal was taken from either of the two orders.

On June 11, 1958 the parties in Civil Case No. 838 entered into a "Compromise and Settlement." For P290,000.00 the Buan Estate gave up its claims for damages, including the claim for reimbursement of the sum of P2,623.00 previously paid to the heirs of Capuno "under the Workmen's Compensation Act." The Court approved the compromise and accordingly dismissed the case on the following June 17.

At that time the criminal case was still pending; judgment was rendered only on April 15, 1959, wherein the accused Elordi was acquitted of the charges against him. Prior thereto, or on September 26, 1958, however, herein appellants commenced a civil action for damages against the Pepsi-Cola Bottling Company of the Philippines and Jon Elordi. This is the action which, upon appellees' motion, was dismissed by the Court a quo in its order of February 29, 1960, from which order the present appeal has been taken.

The grounds upon which appellees based their motion for dismissal and which the Court found to be "well-taken" were: (1) that the action had already prescribed; and (2) that appellees had been released from appellants' claim for damages by virtue of the payment to the latter of the sum of P2,623.00 by the Buan Estate under the Workmen's Compensation Act, which sum, in turn, was sought to be recovered by the said Estate from appellees in Civil Case No. 838 but finally settled by them in their compromise.

The ruling of the court below on both points is now assailed by appellants as erroneous. In our opinion the question of prescription is decisive. There can be no doubt that the present action is one for recovery of damages based on a quasi-delict, which action must be instituted within four (4) years (Article 1146, Civil Code). Appellants originally sought to enforce their claim ex-delicto, that is, under the provisions of the Penal Code, when they intervened in the criminal case against Jon Elordi. The information therein, it may be recalled, was amended precisely to include an allegation concerning damages suffered by the heirs of the victims of the accident for which Elordi was being prosecuted. But appellants' intervention was subsequently disallowed and they did not appeal from the Court's order to that effect. And when they commenced the civil action on 'September 26, 1958 the criminal case was still pending, showing that appellants then chose to pursue the remedy afforded by the Civil Code, for otherwise that action would have been premature and in any event would have been concluded by the subsequent judgment of acquittal in the criminal case.

In filing the civil action as they did appellants correctly considered it as entirely independent of the criminal action, pursuant to Articles 31 and 33 of the Civil Code, which read:

"Art. 31. When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter."

"Art. 33. In cases of defamation, fraud, and physical injuries, a civil action of damages, entirely separate and distinct from the criminal action may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

The term "physical injuries" in Article 33 includes bodily injuries causing death (*Dyogi vs. Yatco*, G.R. No. L-9623, Jan. 22, 1957, Vol. 22, L.J. p. 175). In other words the civil action for damages could have been commenced by appellants immediately upon the death of their decedent, Cipriano Capuno, on January 3, 1953 or thereabouts, and the same would not have been stayed by the filing of the criminal action for homicide through reckless imprudence. But the complaint here was filed only on September 26, 1958, or after the lapse of more than five years.

In the case of *Diocesa Paulan, et al. vs. Zacarias Sarabia, et al*, G. R. No. L-10542, promulgated July 31, 1968, this Court held that an action based on a quasi-delict is governed by Article 1150 of the Civil Code as to the question of when the prescriptive period of four years shall begin to run, that is, "from the day (the action) maybe brought," which means from the day the quasi-delict occurred or was committed.

The foregoing considerations dispose of appellants' contention that the four-year period of prescription in this case was interrupted by the filing of the criminal action against Jon Elordi inasmuch as they had neither waived the civil action nor reserved the right to institute it separately. Such reservation was not then necessary; without

having made it they could file—as in fact they did—a separate civil action even during the pendency of the criminal case (*Pachoco vs. Tumangday*, 108 Phil., 238; *Azucena vs. Potenciano*, L-14028, June 30, 1962); and consequently, as held in *Paulan vs. Sarabia*, supra, "the institution of a criminal action cannot have the effect of interrupting the institution of a civil action based on a quasi-delict."

As to whether or not Rule III, Section 2, of the Rules of Court, which requires the reservation of the right to institute a separate and independent civil action in the cases provided for in Articles 31, 32, 33, 34, and 2177 of the Civil Code, affects the question of prescription, we do not now decide. The said rule does not apply in the present case.

Having found the action of appellants barred by the statute of limitations, we do not consider it necessary to pass upon the other issues raised in their brief.

The order appealed from is affirmed, without costs.

Bengzon, C.J., Batistista Angelo, Conception, Reyes, J.B.L., Barrera, Paredes, Dizon, Bengzon, J.P. and Zaldivar JJ., concur.

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