

**MARIA TERESA Y. CUADRA, MINOR REPRESENTED BY HER FATHER
ULISES P. CUADRA, ET AL., PLAINTIFFS-APPELLEES, VS. ALFONSO
MONFORT, DEFENDANT-APPELLANT.**

G.R. No. L-24101. September 30, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an action for damages based on quasi-delict, decided by the Court of First Instance of Negros Occidental favorably to the plaintiffs and appealed by the defendant to the Court of Appeals, which certified the same to us since the facts are not in issue.

Maria Teresa Cuadra, 12, and Maria Teresa Monfort, 13, were classmates in Grade Six at the Mabini Elementary School in Bacolod City. On July 9, 1962 their teacher assigned them, together with three other classmates, to weed the grass in the school premises. While thus engaged Maria Teresa Monfort found a plastic headband, an ornamental object commonly worn by young girls over their hair. Jokingly she said aloud that she had found an earthworm and, evidently to frighten the Cuadra girl, tossed the object at her. At that precise moment the latter turned around to face her friend, and the object hit her right eye. Smarting from the pain, she rubbed the injured part and treated it with some powder. The next day, July 10, the eye became swollen and it was then that the girl related the incident to her parents, who thereupon took her to a doctor for treatment. She underwent surgical operation twice, first on July 20 and again on August 4, 1962, and stayed in the hospital for a total of twenty-three days, for all of which the parents spent the sum of P1,703.75. Despite the medical efforts, however, Maria Teresa Cuadra completely lost the sight of her right eye.

In the civil suit subsequently instituted by the parents in behalf of their minor daughter against Alfonso Monfort, Maria Teresa Monfort's father, the defendant was ordered to pay P1,703.00 as actual damages; P20,000.00 as moral damages; and P2,000.00 as attorney's fees, plus the costs of the suit.

The legal issue posed in this appeal is the liability of a parent for an act of his minor child which causes damage to another under the specific facts related above and the applicable provisions of the Civil Code, particularly Articles 2176 and 2180 thereof, which read:

"ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

"ART. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

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The responsibility treated of in this Article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."

The underlying basis of the liability imposed by Article 2176 is the fault or negligence accompanying the act or the omission, there being no willfulness or intent to cause damage thereby. When the act or omission is that of one person for whom another is responsible, the latter then becomes himself liable under Article 2180, in the different cases enumerated therein, such as that of the father or the mother under the circumstances above quoted. The basis of this vicarious, although primary, liability is, as in Article 2176, fault or negligence, which is presumed from that which accompanied the causative act or omission. The presumption is merely *prima facie* and may therefore be rebutted. This is the clear and logical inference that may be drawn from the last paragraph of Article 2180, which states "that the responsibility treated of in this Article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."

Since the fact thus required to be proven is a matter of defense, the burden of proof necessarily rests on the defendant. But what is the exact degree of diligence contemplated, and how does a parent prove it in connection with a particular act or omission of a minor child, especially when it takes place in his absence or outside his immediate company? Obviously there can be no meticulously calibrated measure applicable; and when the law simply refers to "all the diligence of a good father of the family to prevent damage," it implies a consideration of the attendant circumstances in every individual case, to determine whether or not by the exercise of such diligence the damage could have been prevented.

In the present case there is nothing from which it may be inferred that the defendant could have prevented the damage by the observance of due care, or that he was in any way remiss in the exercise of his parental authority in failing to foresee such damage, or the act which caused it. On the contrary, his child was at school, where it was his duty to send her and where she was, as he had the right to expect her to be, under the care and supervision of the teacher. And as far as the act which caused the injury was concerned, it was an innocent prank not unusual among children at play and which no parent, however careful, would have any special reason to anticipate, much less guard against. Nor did it reveal any mischievous propensity, or indeed any trait in the child's character which would reflect unfavorably on her upbringing and for which the blame could be attributed to her parents.

The victim, no doubt, deserves no little commiseration and sympathy for the tragedy that befell her. But if the defendant is at all obligated to compensate her suffering, the obligation has no legal sanction enforceable in court, but only the moral compulsion of good conscience.

The decision appealed from is reversed, and the complaint is dismissed, without pronouncement as to costs.

Reyes, J.B.L., Acting C.J., Dizon, Zaldivar, Ruiz Castro, Teehankee, Villamor and Makasiar, JJ., concur.

Barredo, J., dissents in a separate opinion.

Fernando, J., took no part.

Concepcion, C.J., is on leave.

DISSENTING

BARREDO, J.,

I am afraid I cannot go along with my esteemed colleagues in holding that the act of appellant's daughter does not constitute fault within the contemplation of our law on torts. She was 13 years and should have known that by jokingly saying "aloud that she had found an earthworm and, evidently to frighten the Cuadra girl, tossed the object at her," it was likely that something would happen to her friend, as in fact, she was hurt.

As to the liability of appellant as father, I prefer to hold that there being no evidence that he had properly advised his daughter

to behave properly and not to play dangerous jokes on her classmates and playmates, he can be liable under Article 2180 of the Civil Code. There is nothing in the record to show that he had done anything at all to even try to minimize the damage caused upon plaintiff child.

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