

**LINDAY PALEYAN, FOR HER OWN AND BEHALF OF HER MINOR CHILDREN, NAMELY: TERESA, FORTUNATO, VENANCIO AND JOSE, ALL SURNAMED PALEYAN, PLAINTIFF-APPELLANTS, VS. CARLOS BANGKILI AND ...**

*G.R. No. L-22253. July 30, 1971*

Ponente: MAKALINTAL, J.

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**MAKALINTAL, J.:**

Plaintiffs are the widow and children of Balos Paleyan, who was killed by defendant Carlos Bangkili. At the time of the commission of the offense Carlos Bangkili, a minor of 19 years, was living with his mother, defendant Victoria Bangkili. As a result of the death of Balos Paleyan and of the wounding of another victim, Carlos Bangkili was accused of the crime of homicide with less serious physical injuries in Criminal Case No. 898 of the Court of First Instance of Mountain Province. On November 21, 1960, upon his plea of guilty, he was sentenced accordingly, but the decision made no pronouncement as to the civil indemnity which should be paid to the heirs of the deceased. On April 3, 1961 the plaintiffs filed the present action for damages against Carlos Bangkili and his mother, Victoria Bangkili.

After trial the court a quo rendered its decision, the dispositive portion of which reads:

"PREMISES CONSIDERED, the Court hereby orders the dismissal of the complaint against the defendant Victoria Bangkili and renders judgment in favor of the plaintiffs and against the defendant Carlos Bangkili and ordering said defendant, to:

- (1) Pay the plaintiffs the sum of P6,000.00 as indemnity for the death of Balos Paleyan;
- (2) Pay the plaintiffs the sum of P1,000.00 as moral damages;
- (3) Pay the plaintiffs the sum of P500.00 for the amount of expenses incurred;
- (4) Pay the plaintiffs the sum of P500.00 as attorney's fees; and
- (5) Pay the costs."

In dismissing the complaint against Victoria Bangkili the trial court held that under Article 101 of the Revised Penal Code Victoria Bangkili could not be held civilly liable for the criminal act of her minor son, who was already 19 years of age at the time he committed the offense; and that Article 2180 of the New Civil Code was not applicable for it covers only obligations arising from quasi-delicts and not to those arising from crimes. The plaintiffs moved to reconsider the dismissal of the complaint as against defendant Victoria Bangkili, and upon denial of the motion instituted the instant appeal.

The judgment as against Carlos Bangkili is not now questioned. Neither of the parties has appealed therefrom. The liability of the said defendant is therefore a closed matter. The only issue upon which both the appellants and the appellee have submitted this case is whether or not the latter, as the mother of Carlos who had him in her

custody at the time he committed the offense, should be adjudged liable with him for the amount which he was sentenced to pay, considering that he was then a minor of 19 years.

The issue is not of first impression. It has been resolved in the cases of *Exconde vs. Capuno*, 101 Phil. 843; *Araneta vs. Arreglado*, 104 Phil. 524; *Fuellas vs. Cadano*, No. L-14409, Oct. 31, 1961; and *Salen et al. vs. Balce*, 107 Phil. 748. In this last-mentioned case the defendant Balce, father of Gumersindo Balce, a minor of less than 18 years who was living with him, was sued on his subsidiary liability for the civil indemnity adjudged in the criminal case for homicide wherein Gumersindo had been found guilty. The trial court dismissed the case, stating that the subsidiary civil liability of the defendant must be determined under the provisions of the Revised Penal Code, and not under Article 2180 of the New Civil Code. In reversing the decision this Court, thru Mr. Justice Bautista Angelo, held:

"It is true that under Article 101 of the Revised Penal Code, a father is made civilly liable for the acts committed by his son only if the latter is an imbecile, an insane, under 9 years of age, or over 9 but under 15 years of age, who acts without discernment, unless it appears that there is no fault or negligence on his part. This is because a son who commits the act under any of those conditions is by law exempt from criminal liability (Article 12, subdivisions 1, 2 and 3, Revised Penal Code). The idea is not to leave the act entirely unpunished but to attach certain civil liability to the person who has the delinquent minor under his legal authority or control. But a minor over 15 who acts with discernment is not exempt from criminal liability, for which reason the Code is silent as to the subsidiary liability of his parents should he stand convicted. In that case, resort should be had to the general law which is our Civil Code.

The particular law that governs this case is Article 2180, the pertinent portion of which provides: 'The father and, in case of his death or incapacity, the mother, are responsible for damages caused by the minor children who live in their company.' To hold that this provision does not apply to the instant case because it only covers obligations which arise from quasi-delicts and not obligations which arise from criminal offenses, would result in the absurdity that while for an act where mere negligence intervenes the father or mother may stand subsidiarily liable for the damage caused by his or her son, no liability would attach if the damage is caused with criminal intent. Verily, the void that apparently exists in the Revised Penal Code is subserved by this particular provision of our Civil Code, as may be gleaned from some recent decisions of this Court which cover equal or identical cases."

While the decision just cited referred to the subsidiary liability of the father whose son had been sentenced to pay civil indemnity in the criminal case, the reasons given by this Court in applying Article 2180 of the Civil Code hold true with greater cogency in this case, where the allegations in the complaint show that herein appellee was sued directly under the said provision, in that she "failed and neglected to exercise the proper care and vigilance over her ward and minor child and as a consequence of such failure and neglect, the said Carlos Bangkili committed the wrongful act herein complained of." Even more to the point is the case of *Araneta vs. Arreglado*, supra. There the minor Dario Arreglado entered a plea of guilty on a charge of frustrated homicide, but the court suspended proceedings pursuant to Article 80 of the Revised Penal Code in view of the fact that he was only 14 years of age. A civil suit was thereafter filed by the offended party against the said accused and his parents for the recovery of damages. The ruling of the lower court holding the said parents liable was affirmed, although with some modification as to the amount awarded.

The appellee here agrees that Article 2180 is applicable in this case, but submits that its application should be relaxed, considering that her son, although living with her, was already 19 years of age and hence mature enough to have a mind of his own. This fact is not a legal defense, however, and does not exempt the appellant from her responsibility as parent and natural guardian. Article 2180 does not provide for any exemption except proof that the defendant parent "observed all the diligence of a good father of a family to prevent damage." There is no such

proof in this case.

Wherefore, the judgment appealed from is reversed with respect to defendant-appellee Victoria Bangkili, and she is hereby adjudged liable solidarily with her co-defendant for the amounts awarded in said judgment, with costs.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Dizon, J., took no part.

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