

NEMESIO AZUCENA, PLAINTIFF AND APPELLANT, VS. SEVERINO POTENCIANO AND LAGUNA TRANSPORTATION CO., DEFENDANTS AND APPELLEES.

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

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Before us on appeal is the order of the Court of First Instance of Laguna, San Pablo branch, dated January 10, 1950, dismissing the complaint on motion of defendants-appellees. The action is for recovery of damages allegedly sustained as a result of a collision between plaintiff-appellant's scooter and a bus of appellee Laguna, Transportation Company, then driven by its co-appellee Severino Potenciano. Negligence is imputed to the driver, and to the company itself with respect to the choice and supervision of its employees. The allegations tend to make out a case of quasi-delict, or culpa aquiliana, under Articles 2176 and 2180 of the Civil Code.

The complaint was filed September 3, 1957. Defendants answered September 9, with a counterclaim also for damages. On December 10 they filed a supplemental pleading with a prayer for dismissal of the complaint on the ground that in the criminal action against Severino Potenciano for serious physical injuries with damage to property through reckless imprudence, involving the same accident which gave rise to the civil action, the accused was acquitted in the decision rendered the previous November 6 by the Court of First Instance of Laguna, Bi Normal 0 false false false EN-US X-NONE X-NONE MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-qformat:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-fareast-font-family:"Times New Roman"; mso-fareast-theme-font:minor-fareast; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;} ñan branch. The San Pablo court then issued the order now under review, holding that since the acquittal of the accused was based on a finding that he did not act recklessly or negligently the judgment in the criminal case is a bar to the civil action. Reliance is placed squarely on Rule 107, which provides, inter alia, that when a criminal action is instituted the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with it, and that the extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.

The issue here presented is not a novel one in this jurisdiction. *Bachrach Motor Co. Inc. vs. Santiago D. Gamboa*, G. R. No. L-10296, May 21, 1957; *Leoncio Dyogi et al. vs. Nicasio Yatco et al.*, G. R. No. L-9623, Jan. 22, 1957; *Maria C. Roa vs. Segunda de la Cruz*, [107 Phil., 8, 60 Off. Gaz. (31) 6443, Feb. 13, 1960.] *Standard-Vacuum Oil Co. vs. Anita Tan et al.*, 107 Phil. 109; *Quirino Pacheco vs. Agripina Tumanpay et al.* [108 Off. Gaz., 238, May 25, 1960] *Hermenegildo Calo et al., vs. Luis Peggy*, G. R. No. L-10756, March 29, 1958. It involves a

determination of which law should govern; Rule 107, which states a general rule, or the more specific provisions of Articles 31, 33 and 2177 of the Civil Code, which read as follows:

"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 for 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.

"ART. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff can not recover damages twice for the same act or omission of the defendant."

This Court in *Dyogi vs. Yatco*, supra, stated that Article 33 constitutes a partial amendment of Rule 107. In *Calo vs. Peggy*, supra, substantially the same situation as the one now before 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 reservation of the right to file a separate civil action for damages the judgment of acquittal operated to extinguish 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 de la 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. *Bachraeh 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, with costs against defendants-appellees.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and Regala, JJ., concur.

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