

AURORA REYES, ASSISTED BY HER GUARDIAN AD LITEM, GABRIEL REYES, PLAINTIFF AND APPELLANT, VS. BETTY SANTOS DE LA ROSA AND JAIME DE LA ROSA, DEFENDANTS AND APPELLEES.

G.R. No. L-9398. September 28, 1956

Ponente: DIZON, J.

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DIZON, J.:

On 26 January, 1955, the plaintiff, a minor assisted by her father Gabriel Reyes for whose appointment as guardian ad litem she prayed, filed a complaint dated 7 December 1954 against the defendant spouses to recover moral and exemplary damages for physical injuries inflicted upon her, and slander or defamation uttered against her honor, by the defendant Betty Santos de la Rosa, all committed in a public place and in the presence of many people. The total amount sought to be recovered is P45,000. She also prays that the defendants be made to pay attorney's fees and costs.

The defendants moved for the dismissal of the complaint on the ground (1) that the complaint does not state a cause of action; and (2) that the complaint is barred by a prior judgment. They contend that in criminal case No. 4473-1, *People vs. Betty Santos de la Rosa*, for slight physical injuries, the Municipal Court of Pasay City found that the physical injuries suffered by the complainant might have been inflicted upon her by Delfin B. Zaleta; that the complainant did not reserve in said criminal case No. 4473-1 her right to institute a separate civil action; and that in the judgment rendered by the municipal court no amount of damages was awarded for failure of the complainant to prove any.

On 26 February 1955, the complaint was dismissed by the Court of First Instance of Quezon City. A motion to set aside the order of dismissal and to set the case for hearing on the merits was denied. Hence this appeal. Article '33 of the new Civil Code provides 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. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

Under these provisions, independently of the criminal action for defamation and physical injuries, a civil suit for recovery of damages arising therefrom may be brought. The fact that the complainant did not reserve her right to institute a separate civil action for damages does not preclude her from bringing such action. As the jurisdiction of the municipal court is limited to P2,000,[1] failure of the plaintiff to prove the amount of damages she had suffered in the criminal action brought in the municipal court, which she now seeks to recover in this civil action, cannot be deemed a Waiver nor can it operate to bar such recovery.

In her complaint the plaintiff alleges that early in the morning of 15 of June 1954 she was assaulted, slandered and libeled by the defendant Betty Santos de la Rosa in the presence of many people at the Riviera nightclub, as a result of which she suffered moral and exemplary damages.

The Municipal Court of Pasay City found the defendant Betty Santos de la Rosa guilty of having hit the plaintiff with a handbag and sentenced her to pay a fine of P50 (case No. 4473-1). The act of hitting the plaintiff alleged under the first cause of action of the complaint, whether it constitutes physical injuries or slander by deed, is a sufficient cause of action for the recovery of damages under the new Civil Code. The libel or slander uttered by the defendant Betty Santos de la Rosa pleaded under the second cause of action of the complaint was not involved in the criminal case. The trial court should not have dismissed the complaint without affording the plaintiff the opportunity to introduce evidence in support of her claim for damages.

There is nothing alleged in the complaint which constitute a cause of action against Jaime de la Rosa. The fact that he is the husband of the defendant Betty Santos de la Rosa and was present on the occasion the physical injuries or slander by deed was inflicted upon, and the libel or slander was uttered against, the plaintiff by his wife, does not make him liable for the wrongful acts of his wife. Under the former law his joining as party defendant was necessary because the conjugal property or income might have to answer for the payment of damages should the court find the defendant wife liable to pay for them. Under article 113 of the new Civil Code, however, in an action against the wife upon civil liability arising from a criminal offense the husband need not be joined.

The orders appealed from, in so far as the defendant Betty Santos de la Rosa is concerned, are set aside and the case remanded to the court from whence it came for further proceedings in accordance with law.

Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1] Section 88, Republic Act No. 296, as amended by Republic Act No. 644, in connection with section 44(c), Republic Act No. 296.

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