

ASELA P. TACTAQUIN, PLAINTIFF AND APPELLANT, VS. JOSE B. PALILEO, DEFENDANT AND APPELLEE.

G.R. No. L-20865. March 13, 1968

Ponente: DIZON, J.

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DIZON, J.:

Our resolution of December 29, 1967 set aside our original decision and directed that this case be remanded below for further proceedings.

Before Us now is a motion for reconsideration filed by appellee wherein it is alleged for the first time that in connection with the P4,000.00 indemnity awarded to appellant in the decision rendered in Criminal Case No. 4736 of the Court of First Instance of Bulacan, appellee has already served the corresponding subsidiary penalty of imprisonment. Upon this ground he claims that, to entertain the separate action for damages we ordered remanded to the lower court, would allow appellant to collect damages twice for one and the same act.

We find no merit in appellee's contention, for the reason that the fact that he has already served subsidiary imprisonment in relation to the indemnity awarded to appellant in the criminal case mentioned above - which award We declared void in our resolution of December 29, 1967 - may be pleaded by him in a supplemental answer, for the trial to determine whether or not, out of equitable considerations, it should be taken into account to reduce the damages that may be awarded to the herein appellant.

WHEREFORE, appellee's motion for reconsideration is denied.

Reyes, Acting C.J., Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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