

PORFIRIO P. CINCO, PETITIONER-APPELLANT, VS. HON. MATEO CANONoy, PRESIDING JUDGE OF THE THIRD BRANCH OF THE COURT OF FIRST INSTANCE OF CEBU, HON. LORENZO B. BARRIA, CITY JUDGE O...

G.R. No. L-33171. May 31, 1979

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Review on Certiorari of the Decision of the Court of First Instance of Cebu rendered on November 5, 1970.

The background facts to the controversy may be set forth as follows:

Petitioner herein filed, on February 25, 1970, a Complaint in the City Court of Mandaue City, Cebu, Branch II, for the recovery of damages on account of a vehicular accident involving his automobile and a jeepney driven by Romeo Hilot and operated by Valeriana Pepito and Carlos Pepito, the last three being the private respondents in this suit. Subsequent thereto, a criminal case was filed against the driver, Romeo Hilot, arising from the same accident. At the pre-trial in the civil case, counsel for private respondents moved to suspend the civil action pending the final determination of the criminal suit, invoking Rule 111, section 3 (b) of the Rules of Court, which provides:

"(b) After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted, and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered;"

The City Court of Mandaue City in an Order dated August 11, 1970, ordered the suspension of the civil case. Petitioner's Motion for Reconsideration thereof, having been denied on August 25, 1970,[1] petitioner elevated the matter on Certiorari to the Court of First Instance of Cebu, respondent Judge presiding, on September 11, 1970, alleging that the City Judge had acted with grave abuse of discretion in suspending the civil action for being contrary to law and jurisprudence.[2]

On November 5, 1970, respondent Judge dismissed the Petition for Certiorari on the ground that there was no grave abuse of discretion on the part of the City Court in suspending the civil action inasmuch as damage to property is not one of the instances when an independent civil action is proper; that petitioner has another plain, speedy, and adequate remedy under the law, which is to submit his claim for damages in the criminal case; that the resolution of the City Court is interlocutory and, therefore, Certiorari is improper; and that the Petition is defective inasmuch as what petitioner actually desires is a Writ of Mandamus (Annex "R"). Petitioner's Motion for Recon-sideration was denied by respondent Judge in an Order dated November 14, 1970 (Annex "S" and Annex "U").

Hence, this Petition for Review before this Tribunal, to which we gave due course on February 25, 1971.[3]

Petitioner makes these:

"ASSIGNMENTS OF ERROR

"1. THE TRIAL COURT, RESPONDENT JUDGE MATEO CANONoy, ERRED IN HOLDING THAT THE TRIAL OF THE CIVIL CASE NO. 189 FILED IN THE CITY COURT OF MANDAUE SHOULD BE SUSPENDED UNTIL AFTER A FINAL JUDGMENT IS RENDERED IN THE CRIMINAL CASE.

"2. THAT THE COURT ERRED IN HOLDING THAT IN ORDER TO AVOID DELAY THE OFFENDED PARTY MAY SUBMIT HIS CLAIM FOR DAMAGES IN THE CRIMINAL CASE.

"3. THAT THE COURT ERRED IN HOLDING THAT THE PETITION FOR CERTIORARI IS NOT PROPER, BECAUSE THE RESOLUTION IN QUESTION IS INTERLOCUTORY.

"4. THAT THE COURT ERRED IN HOLDING THAT THE PETITION IS DEFECTIVE."[4]

all of which can be synthesized into one decisive issue: whether or not there can be an independent civil action for damage to property during the pendency of the criminal action.

From the Complaint filed by petitioner before the City Court of Mandaue City, Cebu, it is evident that the nature and character of his action was quasi-delictual, predicated principally on articles 2176 and 2180 of the Civil Code, which provide:

"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. (1902a)".

"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.

" xxx xxx xxx

"Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

" xxx xxx xxx

"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. (1903a)"

Thus, plaintiff made the essential averments that it was the fault or negligence of the driver, Romeo Hilot, in the operation of the jeepney owned by the Pepitos which caused the collision between his automobile and said jeepney; that damages were sustained by petitioner because of the collision; that there was a direct causal connection between the damages he suffered and the fault and negligence of private respondents.

Similarly, in the Answer, private respondents contended, among others, that defendant, Valeriana Pepito, observed due diligence in the selection and supervision of her employees, particularly of her co-defendant Romeo Hilot, a defense peculiar to actions based on quasi-delict.[5]

Liability being predicated on quasi-delict, the civil case may proceed as a separate and independent civil action, as specifically provided for in Article 2177 of the Civil Code.

"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 cannot recover damages twice for the same act or omission of the defendant. (n)"

The crucial distinction between criminal negligence and quasi-delict, which is readily discernible from the foregoing codal provision, has been expounded in *Barredo vs. Garcia, et al.*, 73 Phil. 607, 620-621,[6] thus:

"Firstly, the Revised Penal Code in article 365 punishes not only reckless but also simple imprudence. If we were to hold that articles 1902 to 1910 of the Civil Code refer only to fault or negligence not punished by law, according to the literal import of article 1093 of the Civil Code, the legal institution of culpa aquiliana would have very little scope and application in actual life. Death or injury to persons and damage to property through any degree of negligence - even the slightest would have to be indemnified only through the principle of civil liability arising from crime. In such a state of affairs, what sphere would remain for quasi-delito or culpa aquiliana? We are loath to impute to the lawmaker any intention to bring about a situation so absurd and anomalous. Nor are we, in the interpretation of the laws, disposed to uphold the letter that killeth rather than the spirit that giveth life. We will not use the literal meaning of the law to smother and render almost lifeless a principle of such ancient origin and such full-grown development as culpa aquiliana or quasi-delito, which is conserved and made enduring in articles 1902 to 1910 of the Spanish Civil Code.

"Secondly, to find the accused guilty in a criminal case, proof of guilt beyond reasonable doubt is required, while in a civil case, preponderance of evidence is sufficient to make the defendant pay in damages. There are numerous cases of criminal negligence which cannot be shown beyond reasonable doubt, but can be proved by a preponderance of evidence. In such cases, the defendant can and should be made responsible in a civil action under articles 1902 to 1910 of the Civil Code, otherwise, there would be many instances of unvindicated civil wrongs. *Ubi jus ibi remedium*.

"Thirdly, to hold that there is only one way to make defendants liability effective, and that is, to sue the driver and exhaust his (the latter's) property first, would be tantamount to compelling the plaintiff to follow a devious and cumbersome method of obtaining a relief. True, there is such a remedy under our laws, but there is also a more expeditious way, which is based on the primary and direct responsibility of the defendant under article 1903 of the Civil Code. Our view of the law is more likely to facilitate remedy for civil wrongs because the procedure indicated by the defendant is wasteful and productive of delay, it being a matter of common knowledge that professional drivers of taxis and similar public conveyances usually do not have sufficient means with which to pay damages. Why, then, should the plaintiff be required in all cases to go through this roundabout, unnecessary, and probably useless procedure? In construing the laws, courts have endeavored to shorten and facilitate the pathways of right and justice.

"At this juncture, it should be said that the primary and direct responsibility of employers and their presumed negligence are principles calculated to protect society. Workmen and employees should be carefully chosen and supervised in order to avoid injury to the public. It is the masters or employers who principally reap the profits resulting from the services of these servants and employees. It is but right that they should guarantee the latter's careful conduct for the personnel and patrimonial safety of others. As Theilhard has said, 'they should reproach themselves, at least, some for their weakness, others for their poor selection and all for their negligence.' And according to Manresa, 'It is much more equitable and just that such responsibility should fall upon the principal or director who could have chosen a careful and prudent employee, and not upon the such employee because of his confidence in the principal or director'. (Vol. 12, p. 622, 2nd Ed.) Many jurists also base this primary responsibility of the employer on the principle of representation of the principal by the agent. Thus, Oyuelos says in the work already cited (Vol. 7, p. 747) that before third persons the employer and employee 'vienen a ser como una sola personalidad, por refundicion de la del dependiente en la de quien la emplea y utiliza' (become as one personality by the merging of the person of the employee in that of him who employs and utilizes him.) All these observations acquire a peculiar force and significance when it comes to motor accidents, and there is need of stressing and accentuating the responsibility of owners of motor vehicles.

"Fourthly, because of the broad sweep of the provisions of both the Penal Code and the Civil Code on this subject, which has given rise to overlapping or concurrence of spheres already discussed, and for lack of understanding of the character and efficacy of the action for culpa-aquiliana, there has grown up a common

practice to seek damages only by virtue of the Civil responsibility arising from crime, forgetting that there is another remedy, which is by invoking articles 1902-1910 of the Civil Code. Although this habitual method is allowed by our laws, it has nevertheless rendered practically useless and nugatory the more expeditious and effective remedy based on culpa aquiliana or culpa extra-contractual. In the present case, we are asked to help perpetuate this usual course. But we believe it is high time we pointed out to the harm done by such practice and to restore the principle of responsibility for fault or negligence under articles 1902 et seq. of the Civil Code to its full rigor. It is high time we cause the stream of quasi-delict or culpa aquiliana to flow on its own natural channel, so that its waters may no longer be diverted into that of a crime under the Penal Code. This will, it is believed, make for the better safeguarding of private rights because it reestablishes an ancient and additional remedy, and for the further reason that an independent civil action, not depending on the issues, limitations and results of a criminal prosecution, and entirely directed by the party wronged or his counsel, is more likely to secure adequate and efficacious redress." (Garcia vs. Florido, 52 SCRA 420, 424-425, Aug. 31, 1973). (Emphasis supplied)

The separate and independent civil action for a quasi-delict is also clearly recognized in section 2, Rule 111 of the Rules of Court, reading:

"Sec. 2. Independent civil action. - In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

Significant to note is the fact that the foregoing section categorically lists cases provided for in Article 2177 of the Civil Code, supra, as allowing of an "independent civil action".

Tested by the hereinabove-quoted legal tenets, it has to be held that the City Court, in suspending the civil action, erred in placing reliance on section 3 (b) of Rule 111 of the Rules of Court, supra, which refers to "other civil actions arising from cases not included in the section just cited" (i.e., Section 2, Rule 111 above quoted), in which case "once the criminal action has being commenced, no civil action arising from the same offense can be prosecuted and the same shall be suspended in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered". Stated otherwise, the civil action referred to in Secs. 3(a) and 3(b) of Rule 111 of the Rules of Court, which should be suspended after the criminal action has been instituted is that arising from the criminal offense and not the civil action based on quasi-delict.

Article 31 of the Civil Code then clearly assumes relevance when it provides:

"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."

For obviously, the jural concept of a quasi-delict is that of an independent source of obligation "not arising from the act or omission complained of as a felony". Article 1157 of the Civil Code bolsters this conclusion when it specifically recognizes that:

"Art. 1157. Obligations arise from:

- (1) Law;
- (2) Contracts;
- (3) Quasi-contracts;

- (4) Acts or omissions punished by law; and
- (5) Quasi-delicts. (1089a)" (Underscoring supplied)

It bears emphasizing that petitioner's cause of action is based on quasi-delict. The concept of quasi-delict, as enunciated in Article 2176 of the Civil Code (supra), is so broad that it includes not only injuries to persons but also damage to property.[7] It makes no distinction between "damage to persons" on the one hand and "damage to property" on the other. Indeed, the word "damage" is used in two concepts: the "harm" done and "reparation" for the harm done. And with respect to "harm" it is plain that it includes both injuries to person and property since "harm" is not limited to personal but also to property injuries. In fact, examples of quasi-delict in the law itself include damage to property. An instance is Article 2191(2) of the Civil Code which holds proprietors responsible for damages caused by excessive smoke which may be harmful "to persons or property".

In the light of the foregoing disquisition, we are constrained to hold that respondent Judge gravely abused his discretion in upholding the Decision of the City Court of Mandaue City, Cebu, suspending the civil action based on quasi-delict until after the criminal case is finally terminated. Having arrived at this conclusion, a discussion of the other errors assigned becomes unnecessary.

WHEREFORE, granting the Writ of Certiorari prayed for, the Decision of the Court of First Instance of Cebu sought to be reviewed is hereby set aside, and the City Court of Mandaue City, Cebu, Branch II, is hereby ordered to proceed with the hearing of Civil Case No. 189 of that Court.

Without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] Annexes "N" and "O", Petition.

[2] Annex "P", Petition.

[3] p. 84, Rollo.

[4] p. 17, *ibid*.

[5] Article 2180, Civil Code.

[6] Cited in *Garcia vs. Florido* 52 SCRA 420, 424-425 (1973).

[7] See *Barredo vs. Garcia* 73 Phil. 607, at 620, *supra*.

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