

HERMINIA MANIO, DOMINGA GUEVARRA, MATILDE GUEVARRA, JOSE GUEVARRA, ABELARDO GUEVARRA, GLORIA GUEVARRA, AND ZENAIDA GUEVARRA, PLAINTIFFS-APPELLANTS, VS. THE HON. CEFERINO GADDI, ...

G.R. No. L-30860. March 29, 1972

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by certiorari from a decision of the Court of First Instance of Pampanga, dismissing Civil Case No. A-10 of said court, entitled "Herminia S. Manio vs. Luis Balanza, et al."

The record shows that on or about December 27, 1968, the acting city fiscal of Angeles City filed with the city court thereof an information, which was docketed as Criminal Case No. C-6258 of said court, charging Luis Balanza, one of the respondents herein, who is 16 years of age, with homicide through reckless negligence. It is alleged in said information "(t)hat on or about the 10th day of December, 1968, at Angeles City, Philippines," said accused, being the person in "charge of a rig with plate No. C-569, without taking the necessary care and precautions to avoid injuries to persons, did then and there wilfully, unlawfully and feloniously drive the said vehicle along Rizal Street," of said city, "in a careless, reckless and imprudent manner and in utter disregard of traffic laws, rules and regulations and by reason of such carelessness, recklessness and imprudence, a pedestrian," whose identity was then unknown — but, who, later on, turned out to be Melquiades Guevarra — "was sideswept by the rig, as a result of which the latter sustained physical injuries which caused his death."

Upon arraignment, Luis Balanza entered a plea of guilty, whereupon City Judge Nicias O. Mendoza, who presided over said court, issued, on January 4, 1969, an order suspending the promulgation of the sentence, by reason of the defendant's minority; and placing him under the custody of a city councilor until he (the accused) shall have reached the age of 18 years, when said accused shall be brought back to the court for its final action on the criminal aspect of the case. The court further ordered the accused "to pay the sum of P6,000.00 to the heirs of the deceased."

Soon thereafter, or on January 20, 1969, petitioners herein, namely, Herminia Manio, widow of the deceased Melquiades Guevarra, and their children, Dominga, Matilde, Jose, Abelardo, Gloria and Zenaida Guevarra, as heirs of the deceased, filed, with the Court of First Instance of Pampanga and Angeles City, presided over by respondent Judge, Hon. Ceferino Gaddi, a complaint, docketed as Civil Case No. A-10 of said court, against said Luis Balanza, his parents Francisco and Rustica Balanza, and his alleged employers and owners of said rig, the spouses Alberto and Dorotea David, to recover damages in consequence of said death of Melquiades Guevarra due to the aforementioned reckless negligence of Luis Balanza. After the filing of the requisite answers, in which the defendants in said Civil Case No. A-10 — private respondents herein — denied the liability imputed to them, the case was set for pre-trial, but neither the defendants nor their counsel appeared at said proceeding, in view of which said defendants — private respondents herein — were declared in default and the plaintiffs — petitioners

herein — introduced their evidence before the clerk of court, who had been commissioned therefor. From said evidence, it appeared, interalia — in the language of respondent Judge Ceferino Gaddi —

"* * * that defendant Luis Balanza was charged in Criminal Case No. C-6258, of the City Court of Angeles City (Branch II) entitled People vs. Luis Balanza y Bautista for Homicide Thru Reckless Imprudence for the death of the deceased Melquiades Guevarra as a result of the very negligent act of defendant Luis Balanza which is the basis of the cause of action in the above entitled complaint, and that in that criminal case defendant Luis Balanza pleaded guilty and was adjudged to pay the sum of P6,000.00 (Exhibit G). Evidently, the civil action was not reserved by the plaintiffs in that case."

Relying upon *Tactaquin vs. Palileo*,^[1] respondent Judge Gaddi thereafter rendered the appealed decision dismissing the case, upon the theory that the decision of the City Court of Angeles City, in Criminal Case No. C-6258 thereof, awarding P6,000 to the heirs of the deceased as damages, barred the institution of said civil case, and that —

"* * * plaintiffs' remedy is to enforce the indemnity adjudged in the decision in criminal case No. C-6258 of the City Court of Angeles City (Branch II) entitled People vs. Luis Balanza y Bautista and in case of non-payment of the defendant Luis Balanza, to pursue their remedy under Articles 102 and 103 of the Revised Penal Code."

Hence, the present petition, of the plaintiffs in the court of first instance, for review on certiorari, against Judge Gaddi and the defendants in the aforementioned Civil Case No. A-10, which petition was given due course.

It is conceded that no express reservation had been made in Criminal Case No. C-6258 of the right of petitioners herein to file a separate civil action for damages, in view of which the City Court of Angeles City and respondent Judge considered that said civil action had been impliedly instituted with the criminal action, as provided in section 1 of Rule 111 of the Rules of Court, reading:

"When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately."

Petitioners herein maintain that this provision is inapplicable to the present case and that the *Tactaquin* case invoked by Judge Gaddi is not controlling in the one at bar, because, unlike said petitioners, the offended party in the *Tactaquin* case had intervened actively through a private prosecutor in the criminal case, and the defendant in the civil case had not only not been declared in default, but, also, moved to dismiss said civil case. Indeed, the original decision of the Supreme Court in the *Tactaquin* case was set aside in a subsequent resolution granting a reconsideration of said decision and remanding the case to the lower court for further proceedings in the civil action, upon the ground that the offended party had seasonably reserved, in the criminal case, her right to file a separate civil action for damages.^[2]

Upon the other hand, herein respondents Francisco and Rustica Balanza and Alberto and Dorotea David were not parties in the criminal case, so that, as to them, the plea of *res adjudicata* is manifestly untenable. Moreover, these respondents and Luis Balanza were declared in default in the lower court. Accordingly, even if they wanted to, they could not invoke the principle of *res adjudicata*, which is deemed waived unless pleaded specifically —

"* * * for the principle of bar by prior judgment or *res judicata* to operate, there must be identity of parties and of issues. Appellant *Bachrach Motor Co.* was not a party nor a co-accused in the criminal case. Not having been a party therein, it can not invoke the judgment rendered in said case as *res judicata* in the present case. (*Tan vs. Standard Vacuum Oil Co., et al.*, L-4160, July 29, 1952; also *Quetulio vs. Ver*, L-6831, June 29, 1956; *Bancairen, et al. vs. Diones*, L-8013, Dec. 20, 1955; *Valdez vs. Mendoza*, L-2847, May 28, 1951). Such a

defense could have been availed of only by defendants Angeles and De Guzman, the accused in the former criminal case, but as they were declared in default in this civil action, they are deemed to have waived such defense." [3]

Again, the information in the criminal case was filed without the intervention of petitioners herein, the widow and children of the deceased. What is more, since the information was filed on December 27, 1968, and, evidently, the plea of guilty was entered by Luis Balanza a week later, or on January 4, 1969, before the identity of the deceased had been ascertained, petitioners herein were not included in the list of witnesses at the foot of the information. None of them (petitioners), therefore, was notified of the proceedings in the criminal case. For the same reason, the order of the city court, dated January 4, 1969, setting forth the measures taken in respect of the criminal aspect of the case, and awarding P6,000 as damages to the "heirs of the deceased," did not state the latter's name. Not having participated, in any manner whatsoever, in the criminal case, and having had no knowledge thereof, at the time the proceedings therein took place, petitioners can not be deemed to have impliedly instituted with said case the civil action for the recovery of damages, as provided in the above quoted section 1 of Rule 111.

Under the foregoing circumstances, and considering that the aforementioned order of January 4, 1969, in the criminal case, had become immediately final and executory, Luis Balanza having forthwith proceeded to comply with it, except as to the damages therein awarded, it would manifestly be iniquitous to hold that Civil Case No. A-10 is barred by said order.

In *Meneses vs. Luat*, [4] We held that —

"* * * The mere appearance of private counsel in representation of the offended party (in the criminal case) did not constitute such active intervention as could only import an intention to press a claim for damages in the same action. It is as reasonable to indulge the possibility that the private prosecutors appeared precisely to be able to make a seasonable reservation of the right to file a separate civil action which, even if unnecessary at the time would nevertheless have been the prudent and practical thing to do for the purpose of better protecting the interest of their clients. But as matters turned out, the accused pleaded guilty upon arraignment and was immediately sentenced. Thereafter there was no chance to enter such a reservation in the record.

"We do not believe that plaintiffs' substantive right to claim damages should necessarily be foreclosed by the fact — at best equivocal as to its purpose — that private prosecutors entered their appearance at the very inception of the proceeding, which was then cut short at that stage. It cannot be said with any reasonable certainty that plaintiffs had thereby committed themselves to the submission of their action for damages in that action. The rule laid down in *Roa vs. De la Cruz*, *supra*, does not govern this case. The ends of justice will be better served if plaintiffs are given their day in court."

The foregoing view applies with greater force to the case at bar, for petitioners herein were not represented by a private prosecutor in the criminal case. In this respect, their predicament is more like that of the offended party in *San Jose vs. Del Mundo, et al.*, [5] in which this Court, speaking through Mr. Justice Guillermo Pablo, said:

"* * * Si el demandante hubiera lido el que presento la denuncia ante el Juzgado de Paz, sin decir nada en cuanto a la reclamacion civil, podriamos deducir que el renuncio porque no se reservo su derecho de ejercitar civilmente una accion aparte; pero el que actuo fue el jefe de policia, oficiosamente. Por tanto, ni el demandante ni la ofendida Carmelita, de 13 años de edad, podian haber renunciado expresamente a su derecho a incoar la accion civil, ni podian reservarlo porque no habian tenido participacion en la actuacion criminal.

"La accion precipitada del jefe de policia y del fiscal provincial interino, sin dar oportunidad a la parte agraviada de ser oida por el Juzgado, no es plausible. Es injusta. Es contraria a la practica seguida en el foro. La ofendida, por el inexplicable deseo de la acusacion de dar fin al asunto criminal, no debe ser privada del derecho a reclamar la indemnizacion que le concede el articulo 100 delCodigo Penal Revisado que dispone

que 'Toda persona responsable criminalmente de un delito lo es tambien civilmente,' y el articulo 103 que hace responsable subsidiariamente a las empresas de transportacion cuyo dependiente comete delito en el desempeño de su obligacion."

At any rate, the allegations in petitioners' complaint are such as to indicate clearly the intention to base their action upon a quasi-delict and the provisions of Articles 33 and 2180 of our Civil Code, and —

"* * * (I)t has been consistently held, not only that 'the responsibility arising from fault or negligence in quasi-delict is entirely separate and distinct from the civil liability arising from negligence under the Penal Code,' but, also, that at least, in cases instituted before January 1, 1964 — the failure to make, in the criminal action, the reservation required in said Rule will not bar a separate civil action for quasi-delict, provided that the injured party has not intervened 'actually' or actively, in the prosecution of said criminal action. Hence, in *Parker vs. Panlilio*, we said:

"* * *. The failure, therefore, on the part of the petitioner to reserve her right to institute the civil action in the criminal case cannot in any way be deemed as a waiver, on her part to institute a separate civil action against the respondent company based on its contractual liability, or on culpa aquiliana under articles 1902 to 1910 of the Civil Code.

'It should be here emphasized that these two actions are separate and distinct and should not be confused one with the other. In the supposition that the one accused in the criminal case is a driver, employee, or dependent of the respondent company, the failure to reserve the right to institute a separate civil action in the criminal case would not necessarily constitute a bar to the institution of the civil action against said respondent, for the cause of action in one is different from that in the other. These are two independent actions based on distinct causes of action. This distinction is aptly stated in the *Barredo* case (*Barredo vs. Garcia and Almario*, 73 Phil. 607). This Court said: 'There are two liabilities of *Barredo*: first, the subsidiary one because of the civil liability of the taxi driver arising from the latter's criminal negligence; and, second, *Barredo*'s primary liability as an employer under Article 1903. The plaintiffs were free to choose which course to take, and they preferred the second remedy. In so doing they were acting within their rights' (pp. 614-615, id.)

'A distinction exists between the civil liability arising from a crime and responsibility for cuasi-delitos or culpa extra-contractual. The same negligent act causing damages may produce a civil liability arising from a crime under article 100 of the Revised Penal Code, or create an action for cuasi-delito or culpa extra-contractual under articles 1902-1910 of the Civil Code. Plaintiffs were free to choose which remedy to enforce (*Barredo vs. Garcia and Almario*, 73 Phil. 607).'

"In *Azucena vs. Potenciano*, the language used was:

'This Court in *Dyogi vs. Yatco*, G.R. No. L-9623, Jan. 22, 1957, stated that Article 33 constitutes a partial amendment of Rule 107. In *Calo vs. Peggy*, G.R. No. L-10756, March 29, 1958, 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." [6]

In their second amended complaint, petitioners sought to recover the following as damages:

a) For the death of Melquiades Guevarra.

(Note: This is in accord with the judgment Annex "A" hereof).

P 6,000.00

b) Actual Damages

300.00

c) Moral, corrective and

exemplary damages.

2,000.00

d) Attorney's fees.

1,000.00

e) Nominal, Temperate, and

Liquidated Damages

2,000.00

Total

P 11,000.00

In other words, they claimed P300 as actual damages, P1,000 as attorney's fees, and the aggregate sum of P10,000 for the death of Melquiades Guevarra, including moral, corrective, exemplary, nominal, temperate and liquidated damages. Upon the other hand, petitioners introduced oral evidence to the effect that they had spent the total sum of P2,600 in connection with the interment of the deceased; but, since the private respondents have been declared in default, the award for actual damages can not exceed the sum of P300 alleged in the complaint.[7] Petitioners, likewise, proved that the deceased used to earn P12 daily in construction work. Considering, however, that Melquiades Guevarra was already 65 years old, at the time of the occurrence, and that "a judgment entered against a party in default shall not exceed the amount * * * prayed for,"[8] We believe that the interest of justice and equity would be served by awarding to the petitioners an aggregate indemnity of P10,000, including moral

damages, but, aside from P300 as actual damages and P1,000, as and for attorney's fees. Springing, as it does, from a tort or quasi-delict, private respondents' liability therefor is "solidary." [9]

WHEREFORE, the decision appealed from is hereby reversed, and another one shall be entered, sentencing private respondents herein — namely, Luis, Francisco and Rustica Balanza, and Alberto and Dorotea David — to jointly and solidarily pay to petitioners herein the total sum of P11,300, with interest thereon at the legal rate, from the date when this decision shall have become final, aside from the costs.

Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., took no part.

[1] G.R. No. L-20865, September 29, 1967.

[2] See resolution of December 29, 1967.

[3] Bachrach Motor Co., Inc. vs. Gamboa, L-10296, May 21, 1957.

[4] L-18116, November 28, 1964.

[5] 91 Phil. 170, 175.

[6] Formento vs. Court of Appeals, et. al., L-26442, August 29, 1969.

[7] Section 5, Rule 18, Rules of Court.

[8] Section 5, *supra*.

[9] Article 2194 of our Civil Code.

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