

**AGAPITO FUELLAS, PETITIONER, VS. ELPIDIO CADANO, ET AL.,
RESPONDENTS.***G.R. No. L-14409. October 31, 1961*

Ponente: PAREDES, J.

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For serious physical injuries sustained by Pepito Cadano, son of plaintiff-appellee Elpidio Cadano, two separate actions were instituted, Civil Case No. 583, filed on October 1, 1954, for damages against Agapito Fuellas, father of the minor Rico Fuellas, who caused the injuries, and Criminal Case No. 1765, against Rico Fuellas, filed on November 11, 1954, for serious physical injuries. They were tried jointly. On May 18, 1956, a judgment of conviction in the criminal case was rendered, finding Rico Fuellas guilty of the offense charged. No pronouncement as to his civil liability was made, the trial judge having ruled that the same "shall be determined in Civil Case No. 583 of this Court." On May 25, 1956, the same court rendered judgment in the civil case making defendant therein, now appellant Agapito Fuellas, liable under Art. 2180 of the new Civil Code for the following damages—

For medicine, etc. P1,000.00

For moral damages 6,000.00

As exemplary damages 2,000.00

As attorney's fees 600.00

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Total P9,600.00

with 6 per cent annual interest thereon until paid. The Court of Appeals modified the judgment by reducing the moral damages to P3,000. An appeal was taken to this tribunal solely on questions of law.

Pepito Cadano and Rico Fuellas, son of defendant- appellant Agapito Fuellas, were both 13 years old, on September 16, 1954. They were classmates at St. Mary's High School, Dansalan City. In the afternoon of September 16, 1954, while Pepito was studying his lessons in the classroom, Rico took the pencil of one Ernesto Cabanok and surreptitiously placed it inside the pocket of Pepito. When Ernesto asked Rico to return the pencil, it was Pepito who returned the same, an act which angered Rico, who held the neck of Pepito and pushed him to the floor. Villamira, a teacher, separated Rico and Pepito and told them to go home. Rico went ahead, with Pepito

following. When Pepito had just gone down of the school- house, he was met by Rico, still in angry mood. Angelito Aba, a classmate, told the two to shake hands. Pepito extended his hand to Rico. Instead of accepting the proffer to shake hands, Rico held Pepito by the neck and with his leg, placed Pepito out of balance and pushed him to the ground. Pepito fell on his right side with his right arm under his body, whereupon, Rico rode on his left side. While Rico was in such position, Pepito suddenly cried out "My arm is broken." Rico then got up and went away. Pepito was helped by others to go home. That same evening Pepito was brought to the Lanao General Hospital for treatment Exh. 4). An X-Ray taken showed that there was a complete fracture of the radius and ulna of the right forearm which necessitated plaster casting (Exhs. A, B and D). On November 20, 1954, more than a month after Pepito's release from the hospital, the plaster cast was removed. And up to the last day of hearing of the case, the right forearm of Pepito was seen to be shorter than the left forearm, still in bandage and could not be fully used.

It is contended that in the decision of the Court of Appeals, the petitioner-appellant was ordered to pay damages for the deliberate injury caused by his son; that the said court held the petitioner liable pursuant to par. 2, of Art. 2180 of the Civil Code, in connection with Art. 2176 of the same Code; that according to the last article, the act of the minor must be one wherein "fault or negligence" is present; and that there being no fault or negligence on the part of petitioner-appellant's minor son, but deliberate intent, the above mentioned articles are not applicable, for the existence of deliberate intent in the commission of an act negatives the presence of fault or negligence in its commission. Appellant, therefore, submits that the appellate court erred in holding him liable for damages for the deliberate criminal act of his minor son.

The above-mentioned provisions of the Civil Code state:—

"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." (Article 2176).

"The obligations 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."

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

* * * * *

(Article 2180)

In the case of Araneta vs. Arreglado, 104 Phil., 529; 55 Off. Gaz., (9) 1561). Benjamin Araneta was talking with other students of the Ateneo de Manila, seated atop a low ruined wall. Dario Arreglado, a former student of the Ateneo, chanced to pass by. The boys twitted him on his leaving the Ateneo and enrolling in the De La Salle College. Arreglado, resenting the banter, pulled a Japanese luger pistol (licensed in the name of his father Juan Arreglado), fired the same at Araneta, hitting him in the lower jaw. Dario was indicted for frustrated homicide and pleaded guilty. But in view of his youth, he being only 14 years of age, the Court suspended the proceedings (Art. 80 of the Revised Penal Code). Thereafter, an action was instituted by Araneta and his father against Juan Arreglado, his wife and their son Dario to recover material, moral and exemplary damages. The Court of First Instance, sentenced the Arreglados to pay P3,943.00 as damages and attorney's fees. The Aranetas appealed in view of the meager amount of indemnity awarded. This tribunal affirmed the decision but increased the indemnity to P18,000.00. This decision was predicated upon the fact that Arreglado's father had acted negligently in allowing his son to have access to the pistol used to injure Benjamin. And this was the logical consequence of the case, considering the fact that the civil law liability under Article 2180 is not respondeat superior but the

relationship of pater familias which bases the liability of the father ultimately on his own negligence and not on that of his minor son (*Cuison vs. Norton & Harrison*, 55 Phil., 23), and that if an injury is caused by the fault or negligence of his minor son, the law presumes that there was negligence on the part of his father (*Bahia vs. Litonjua y Leynes*, 30 Phil., 625).

In an earlier case (*Exconde vs. Capuno, et al.*, 101 Phil., 843) holding the defendants jointly and severally liable with his minor son Dante for damages, arising from the criminal act committed by the latter, this tribunal gave the following reasons for the rule—

"The civil liability which the law imposes upon the father and, in case of his death or incapacity, the mother, for any damages that may be caused by the minor children who live with them, is obvious. This is a necessary consequence of the parental authority they exercise over them which imposes upon the parents the 'duty of supporting them, keeping them in their company, educating them in proportion to their means', while on the other hand, gives them the 'right to correct and punish them in moderation' (Arts. 134 and 135, Spanish Civil Code). The only way by which they can relieve themselves of this liability is if they prove that they exercised all the diligence of a good father of a family to prevent the damage (Art. 1903, last paragraph, Spanish Civil Code). This, defendants failed to prove".

And a noted Spanish commentator said—

"Since children and wards do not yet have the capacity to govern themselves, the law imposes upon the parents and guardians the duty of exercising special vigilance over the acts of their children and wards in order that damages to third persons due to the ignorance, lack of foresight or discernment of such children and wards may be avoided. If the parents and guardians fail to comply with this duty, they should suffer the consequences of their abandonment or negligence by repairing the damage caused" (12 Manresa, 649-650). (See also Arts. 311 and 316, Civil Code).

It is further argued that the only way by which a father can be made responsible for the criminal act of his son committed with deliberate intent and with discernment, is an action based on the provisions of the Revised Penal Code on subsidiary liability of the parents; that the minor-Fuellas having been convicted of serious physical injuries at the age of 13, the provisions of par. 3 of Art. 12, Revised Penal Code, could have been applied, but having acted with discernment, Art. 101 of the same Code can not include him. And as par. 2, of Art. 101, states that "the exemption from criminal liability established in subdivisions 1, 2, 3, 5 and 6 of Article 12 and in subdivision 4 of Art. 11 of this Code does not include exemption from civil liability, which shall be enforced subject to the following rules: First, in cases of subdivisions 1, 2 and 3 of Article 12, the civil liability for acts committed by an imbecile or insane person and by a person under nine years of age or by one over nine but under fifteen years of age, who has acted without discernment, shall devolve upon those having such person under their legal authority or control, unless it appears that there was no fault or negligence on their part", the appellant concluded that this provision covers only a situation where a minor under 15 but over 9 years old commits a criminal act "without discernment."

In the recent case of *Salen and Salbanera vs. Jose Bake*, 107 Phil., 748; 57 Off. Gaz., (37) 6603, the defendant Balce was the father of a minor Gumersindo Balce, below 18 years of age who was living with him. Gumersindo was found guilty of homicide for having killed Carlos Salen, minor son of plaintiffs. The trial court rendered judgment dismissing the case, stating that the civil liability of the minor son of defendant arising from his criminal liability must be determined under the provisions of the Revised Penal Code and not under Art. 2180 of the new Civil Code. In reversing the decision, this tribunal held—

"It is true that under Art. 101 of the Revised Penal Code, a father is made civilly liable for the acts committed by his son only if the latter is an imbecile, an insane, under 9 years of age, or over 9 but under 15 years of age,

who acts without discernment, unless it appears that there is no fault or negligence on his part. This is because a son who commits the act under any of those conditions is by law exempt from criminal liability (Article 12, subdivisions 1, 2 and 3, Revised Penal Code). The idea is not to leave the act entirely unpunished' but to attach certain civil liability to the person who has the delinquent minor under his legal authority or control. But a minor over 15 who acts with discernment is not exempt from criminal liability, for which reason the Code is silent as to the subsidiary liability of his parents should he stand convicted. In that case, resort should be had to the general law which is our Civil Code.

The particular law that governs this case is Article 2180, the pertinent portion of which provides: 'The father and, in case of his death or incapacity, the mother, are responsible for damages caused by the minor children who lived in their company.' To hold that this provision does not apply to the instant case because it only covers obligations which arise from quasi-delicts and not obligations which arise from criminal offenses, would result in the absurdity that while for an act where mere negligence intervenes the father or mother may stand subsidiarily liable for the damage caused by his or her son, no liability would attach if the damage is caused with criminal intent. Verily, the void apparently exists in the Revised Penal Code is subserved by this particular provision of our Civil Code, as may be gleaned from some recent decisions of this Court which cover equal or identical cases."

Moreover, the case at bar was decided by the Court of Appeals on the basis of the evidence submitted therein by both parties, independently of the criminal case. And as responsibility for fault or negligence under Article 2176 upon which the action in the present case was instituted, is entirely separate and distinct from the civil liability, arising from fault or negligence under the Penal Code (Art. 2177), and having in mind the reasons behind the law as heretofore stated, any discussion as to the minor's criminal responsibility is of no moment.

In view hereof, the petition is dismissed, the decision appealed from is affirmed, with costs against the petitioner.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Dizon, and De Leon, JJ., concur.

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