

EUSEBIO MENDOZA, PLAINTIFF-APPELLANT, VS. LA MALLORCA BUS COMPANY, DEFENDANT-APPELLEE.

G.R. No. L-26407. March 31, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal from the Decision of the Court of First Instance of Nueva Ecija in Civil Case No. 2626 entitled "Eusebio Mendoza, Plaintiff, v. La Mallorca Bus Company, Defendant," raised to the Court of Appeals but certified to Us by said court^[1] in its Resolution dated July 26, 1966 as only questions of law were raised therein.

The facts are stated in the Resolution of the appellate court:

"On April 3, 1950, at Plaridel, Bulacan, a collision occurred involving a freight truck of the plaintiff and a bus of the defendant. A criminal case for damage to property thru reckless imprudence was brought against defendant's driver, Claudio Arceo, (Crim. Case No. 1230, CFI-Bulacan), resulting in the conviction of said driver, which conviction was affirmed by this Court in CA-G.R. No. 11602-R. In the said criminal case, the plaintiff made express reservation for the filing of a separate civil action. In affirming the judgment of conviction imposed upon the accused by the lower court, this Court modified the fine imposed, with the observation that the freight truck of the plaintiff therein involved and damaged was worth only P5,000.00 and not P7,000.00 as found by the trial court.

On May 8, 1956, plaintiff filed a separate civil action for damages against the herein defendant, based on quasi-delict under the Civil Code, which separate civil action (Case No. 2137) was ordered dismissed by the trial court upon a finding that plaintiff's action, instituted exactly six years, one month and five days from the date of the accident (which occurred on April 3, 1950) had already prescribed, which order became final without plaintiff having appealed therefrom.

Subsequently, or on August 26, 1957, the plaintiff instituted the present action, based on the alleged subsidiary liability of the defendant company under the Revised Penal Code. A motion for preliminary hearing under Rule 8, Sec. 5 of the Rules of Court was filed in the lower Court in consequence of which the lower court, by order dated Dec. 3, 1958, ordered the dismissal of the case. The order of Jan. 20, 1959 denied the motion for reconsideration.

From the order of the lower court dated December 3, 1958 dismissing the instant action on the ground that the dismissal of Civil Case No. 2137 was a bar to the present action, the plaintiff has appealed, alleging that the following errors were committed by the lower court:

- In holding that the dismissal of Civil Case No. 2137 operated as a bar to the filing of the present action; and
- In dismissing the complaint."

We agree with the plaintiff-appellant. The lower court committed a reversible error in declaring that the dismissal of Civil Case No. 2137 operated as a bar to the filing of the present action.

It is well-settled in our jurisprudence that the essential requisites for the existence of *res judicata* are: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction on the merits; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions: (a) identity of parties; (b) identity of subject matter; and (c) identity of cause of action.[2]

A careful study of the case at bar presents a dispute as to only one of the above elements: Whether or not, as between Civil Case No. 2137 and the present action, there is identity of causes of action.

We hold that, the two actions, namely, the civil action based on quasi-delict (Civil Case No. 2137) and the civil action based on criminal liability (Civil Case No. 2626), are two separate and independent actions based on distinct causes of action.[3]

The test of identity of causes of action is stated in this wise: It lies not in the form of an action but on whether the same evidence would support and establish the former and present causes of action.[4]

Civil Case No. 2137 was an action for damages based on *culpa aquiliana* under Articles 2176 to 2194 of the New Civil Code for which the defendant-appellee, as employer, was to be made primarily and directly liable for reason of his own negligence, either in the selection or supervision of his driver;[5] the present action stems from the conviction by final judgment of defendant-appellee's driver in the previous criminal case filed against said driver for damage to property through reckless imprudence (Crim. Case No. 1230), damages for which defendant-appellee, as employer, is made subsidiarily liable under Art. 103 of the Revised Penal Code.

Applying the above-stated test, it is evident that *res judicata* cannot be a defense against the filing of the present action by petitioner. Defendant-appellee could thwart an adverse decision in Civil Case No. 2137 by proving his due diligence in the selection of its employees, but this same evidence will fail in the present action for his liability is inseparable from that of his driver once the latter is finally convicted.[6]

In the case of *M.D. Transit & Taxi Co., Inc. v. Court of Appeals* (22 SCRA 559), this Court declared the same principle in simpler terms:

"The importance of this issue is due to the fact that appellant's alleged diligence in the selection of its employees and in exercising supervision over them would be a good defense should the action be based upon a quasi-delict, but not if predicated upon a liability springing from a crime."

The question presented before Us has already been resolved in the case of *Jocson v. Glorioso*,[7] where the issue under consideration is "whether the previous dismissal of an action based on *culpa aquiliana* precludes the application of the plain and explicit command of Art. 103 of the Revised Penal Code." There, this Court ruled in the negative having adopted this Court's decision in a previous case, *Diana v. Batangas Trans. Co.*[8] where it was held:

"Considering the distinguishing characteristics of the two cases, which involve two different remedies, it can hardly be said that there is identity of reliefs in both actions as to make the present case fall under the operation

of Rule 8, Section 1(d) of the Rules of Court. In other words, it is a mistake to say that the present action should be dismissed because of the pendency of another action between the same parties involving the same cause. Evidently, both cases involve different causes of action. In fact, when the Court of Appeals dismissed the action based on culpa aquiliana (Civil Case No. 8022), this distinction was stressed. It was there said that the negligent act committed by defendant's employee is not a quasi crime, for such negligence is punished by law. What plaintiffs should have done was to institute an action under Art. 103 of the Revised Penal Code (CA-G.R. No. 3632-R). And this is what plaintiffs have done. To deprive them now of this remedy, after the conviction of defendant's employee, would be to deprive them altogether of the indemnity to which they are entitled by law and by a court decision, which injustice it is our duty to prevent."

This Court then concluded:

"On the same principle then, the previous dismissal of the action based on culpa aquiliana could not be a bar to the enforcement of the subsidiary liability required by Art. 103 of the Revised Penal Code.

"What clearly emerges then is the controlling force of the principle that once there is a conviction for a felony, final in character, the employer, according to the plain and explicit command of Article 103 of the Revised Penal Code, is subsidiarily liable, if it be shown that the commission thereof was in the discharge of the duties of such employee."[9]

WHEREFORE, judgment is hereby entered setting aside the orders of the lower court dated December 3, 1958 and January 20, 1959 respectively dismissing the present action and denying plaintiff-appellant's motion for reconsideration. Let the case be remanded below for further proceedings.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.

[1] Capistrano, J., ponente; Cañizares, J. and Yatco, J., concurring.

[2] Ipekjdjian Merchandising Co., Inc. v. Court of Tax Appeals, 9 SCRA 72; Philippine Farming Corporation, Ltd. v. Llanos, 14 SCRA 949; Abes v. Rodil, 17 SCRA 822; Cruz v. Mossesgeld, 24 SCRA 1006.

[3] Barredo v. Garcia & Almario, 73 Phil. 607 (1942); Parker v. Panlilio, 91 Phil. 1 (1952); Tan v. Standard Vacuum Oil Co., 91 Phil. 672 (1952).

[4] Garcia v. Court of Appeals, 14 SCRA 721.

[5] Standard Vacuum Oil Co. v. Tan, 107 Phil. 109 (1960).

[6] Martinez v. Barredo, 81 Phil. 1 (1948); Miranda v. Malate Garage & Taxicab, Inc., 99 Phil. 670 (1956); Bantoto v. Bobis, 18 SCRA 691.

[7] 22 SCRA 316.

[8] 93 Phil. 391 (1953).

[9] Jocson v. Glorioso, *supra*, at pp. 322-323.

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