

PATRICIA ROGGENKAMP, PLAINTIFF-APPELLANT, VS. ALASTAIR JOHN KANE, DEFENDANT-APPELLEE.

Ponente: CRUZ, R.A., J.

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CRUZ, R.A., J.:

THE CASE

This is an ordinary appeal under Rule 41 of the Rules of Court assailing the Order dated June 8, 2010[1] issued by the Regional Trial Court (“RTC”) of Mandaluyong City, Branch 214 in Civil Case No. MC08-3871 for Damages which dismissed the case on the ground of res judicata and lack of jurisdiction and the Order dated November 19, 2010[2] denying reconsideration thereof.

THE ANTECEDENTS

Plaintiff Patricia Roggenkamp and Defendant Alastair John Kane are Australian citizens. They are involved in a relationship and decided to do business in the Philippines. They reside in a condominium unit located at 1202 Bayview International Tower 3, Roxas Blvd., Paranaque City.

On December 1, 2004, at around 1:00 a.m. after they arrived at their residence from a party hosted by Ashley Richard Cayzer (Plaintiff's son), plaintiff confronted defendant about his behavior during the party. She accused him of maliciously looking at the underwear of female guests during the party. Defendant proceeded to lie down on the bed while plaintiff sat on a chair nearby. According to the plaintiff, the defendant approached her, lifted her off from the chair and dropped her because he got angry from her remarks. Plaintiff alleged that defendant also punched her in the head, pulled her hair and pushed her head against the pillow. Defendant claimed that he lifted her off from the chair to transfer her to the bed. However, he accidentally dropped her because the bed (which had wheels) moved. When plaintiff had the opportunity, she ran to the bathroom and locked herself up.

The next day, Ashley Richard Cayzer visited his mother. He saw that she was in bed lying in pain. Defendant told him that his mother accidentally fell on the floor while he was carrying her. Ashley Richard Cayzer brought his mother at San Juan De Dios Hospital where she was prescribed painkillers for twelve (12) days to ease her body pain. After the incident, things were peaceful again at their residence. They even went for a vacation from December 26, 2004 to January 1, 2005.

On January 6, 2005, defendant verbally abused her again. The next day, defendant left their residence with her car and the keys to her condominium units at Pasig City and Roxas Blvd. He stayed at the condominium unit at Pasig City. Plaintiff asked her driver to accompany her to her condominium unit at Pasig City and she was able to recover possession of her car.

On February 4, 2005, plaintiff reported the December 1, 2004 incident to the police. She explained that there were already incidents of abuse even prior to December 1, 2004. Defendant continued to harass plaintiff and her son, hence she decided to move to a friend's condominium unit at Mandaluyong City.

An Information for violation of Republic Act No. 9262 or Anti-Violence against Women and their Children Act (“VAWC”) was filed on March 30, 2006 before the Regional Trial Court of Paranaque City, Branch 260 docketed as Criminal Case No. 06-0413. On November 17, 2008, the RTC acquitted defendant of the crime charged based on reasonable doubt.[3]

Thereafter, plaintiff filed a case for Damages before the RTC of Mandaluyong City, Branch 214 docketed as Civil Case No. MC-08-3871. Plaintiff seeks to hold defendant civilly liable for his acts of physical injuries under Article 33 of the Civil Code. She argues that despite the acquittal of the defendant for violation of VAWC, she may still file a civil action for damages which is entirely separate and distinct from the criminal action. After all, independent civil actions under Articles 32, 33, 34 and 2176 of the Civil Code are not deemed instituted with the criminal action and may be filed separately by the offended party even without reservation. A civil action for damages is also one of the remedies of an offended party under the Rules on VAWC. She stresses that the defendant was acquitted based on reasonable doubt. Hence, a civil action for damages for the same act or omission may still be instituted. She prayed for actual, moral and exemplary damages and attorney's fees.

Defendant filed a Motion to Dismiss on the ground of res judicata and improper venue.[4] In an Order dated April 20, 2009[5], the RTC denied the motion to dismiss ruling thus: (1) Civil liability is not extinguished because the acquittal of the defendant was based on reasonable doubt; (2) An independent civil liabilities under Articles 32, 33, 34 and 2176 of the Civil Code may be enforced against an offender separately or simultaneously with his civil liability ex delicto under Article 100 of the Revised Penal Code; (3) Venue was properly laid because at the time of the filing of the complaint, plaintiff was already residing in Mandaluyong City.

After the Answer[6] and Reply[7] were filed, pre-trial conference was conducted on October 23, 2009[8].

On June 8, 2010, the RTC dismissed the case on its own initiative on the ground of res judicata and lack of jurisdiction.[9] The RTC ruled that proceeding to the initial trial will just be a waste of time. The decision in Criminal Case No. 06-0413 revealed that the injuries suffered by the plaintiff was the result of an accident and was not intentional on the part of the defendant. The RTC totally discarded the version offered by plaintiff and gave credence to the version of the defendant. This means that the act from which the civil liability might arise did not exist. The filing of the case constitutes forum-shopping because it involves the same cause of action, relief, and parties as in Criminal Case No. 06-0413. The decision in Criminal Case No. 06-0413 has already attained finality. Therefore, the RTC has no jurisdiction over the case for damages.

On June 28, 2010, plaintiff filed a Motion for Reconsideration[10] which was subsequently denied in an Order dated August 23, 2010[11].

Dissatisfied, plaintiff is now before Us through her Notice of Appeal[12], raising as errors the following:

THE ASSIGNED ERRORS

In assailing the Decision rendered against her, Plaintiff Patricia Roggenkamp, as appellant before us, poses the queries,

I.

WHETHER OR NOT THE RTC ERRED IN RULING THAT THE COMPLAINT IS BARRED BY PRIOR JUDGMENT;

II.

WHETHER OR NOT THE VENUE OF THE ACTION IS IMPROPERLY LAID;

Plaintiff-appellant emphasizes that the issues have already been settled in the April 20, 2009 Order denying defendant-appellee's motion to dismiss. She claims that there is nothing in the Rules of Court which authorizes the judge to *motu proprio* initiate a motion to dismiss if no such motion was filed by the parties. In addition, a pre-trial conference had already been conducted and the parties have agreed, defined and confined the issues to be resolved as: (1) whether or not defendant-appellee is civilly liable to plaintiff-appellant for the physical injuries inflicted upon her; (2) who among the parties are entitled to damages and counterclaims. The action of the RTC should have been limited to these issues. Plaintiff-appellant avers that the RTC ignored the April 20, 2009 Order, Article 33 of the Civil Code and Republic Act No. 9262, all of which form the basis for the complaint. An action for independent civil liabilities under Articles 32, 33, 34 and 2176 of the Civil Code may be enforced against an offender separately or simultaneously with his civil liability *ex delicto* under Article 100 of the Revised Penal Code. Here, defendant-appellee caused physical injuries to the plaintiff-appellant which warrants the filing of a civil action for damages. It is entirely separate and distinct from the criminal action and may be brought pursuant to Article 33 of the Civil Code. The failure to make a reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on Articles 32, 33, 34, and 2176 of the Civil Code.

The act of the defendant-appellee resulting to injuries to the plaintiff-appellant constitute a violation of Section 5(a) of Republic Act No. 9262. It also falls within the ambit of physical injuries under Article 33 of the Civil Code. Furthermore, among the other remedies which may be resorted by the offended party in a case for violation of Republic Act No. 9262 is the filing of a civil action for damages. The fact that defendant-appellee was acquitted in the criminal case is not a bar to the institution of an independent civil action for damages. Such action requires only preponderance of evidence.

Plaintiff-appellant notes that the acquittal of the defendant-appellee in the criminal case was based on reasonable doubt. There was absolutely no declaration in the judgment of acquittal that the fact from which the civil liability may arise did not exist. Therefore, the judgment of acquittal of the defendant-appellee did not extinguish his liability for damages. Article 29 of the Civil Code also authorizes plaintiff-appellant to file this case.

In his Brief[13], defendant-appellee contends that the RTC has the inherent power to amend and control its processes and orders. Hence, the court may amend, reverse and set aside its April 20, 2009 Order either *motu proprio* or upon motion of the defendant-appellee. Defendant-appellee counters that the November 18, 2008 Decision in Criminal Case No. 06-0413 constitutes *res judicata* to the instant case because all the elements are present: (1) The November 18, 2008 Decision in Criminal Case No. 06-0413 is a decision on the merits and is final and executory; (2) It has been rendered by a court having jurisdiction over the subject matter and parties of the case; (3) There is identity of parties, subject matter and cause of action between the Criminal Case No. 06-0413 and Civil Case No. MC-08-3871. Furthermore, the filing of this case constitutes deliberate forum shopping.

OUR RULING

The appeal is meritorious.

An act or omission causing damage to another may give rise to two separate civil liabilities on the part of the offender, i.e., (1) civil liability *ex delicto*, under Article 100 of the Revised Penal Code; and (2) independent civil

liabilities, such as those (a) not arising from an act or omission complained of as a felony, e.g., culpa contractual or obligations arising from law under Article 31 of the Civil Code, intentional torts under Articles 32 and 34, and culpa aquiliana under Article 2176 of the Civil Code; or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action under Article 33 of the Civil Code.[14] Either of these liabilities may be enforced against the offender subject to the caveat under Article 2177 of the Civil Code that the offended party cannot recover damages twice for the same act or omission or under both causes.[15]

As differentiated in *Lily Lim vs. Kuo Co Ping a.k.a. Charlie Co*[16],

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“The civil liability arising from the offense or ex delicto is based on the acts or omissions that constitute the criminal offense; hence, its trial is inherently intertwined with the criminal action. For this reason, the civil liability ex delicto is impliedly instituted with the criminal offense. If the action for the civil liability ex delicto is instituted prior to or subsequent to the filing of the criminal action, its proceedings are suspended until the final outcome of the criminal action. The civil liability based on delict is extinguished when the court hearing the criminal action declares that “the act or omission from which the civil liability may arise did not exist.”

On the other hand, the independent civil liabilities are separate from the criminal action and may be pursued independently” (Emphasis supplied)

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The modes of enforcement of the foregoing civil liabilities are provided for in Sections 1[17] and 3[18], Rule 111 the Revised Rules of Criminal Procedure.

Here, a reading of the complaint filed by the plaintiff-appellant shows that her cause of action is based on Article 33[19] of the Civil Code, an independent civil action. The pertinent portion of the complaint reads:

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“35. The Defendant caused physical injuries to the Plaintiff which warrants the filing of a civil action for damages entirely separate and distinct the criminal action which may be brought by the injured party.

36. In *Philippine Rabbit Bus Lines vs. People*, the Supreme Court has held that the independent civil actions in Articles 32, 33, 34 and 2176 of the Civil Code are not deemed instituted with the criminal action but may be filed separately by the offended party even without reservation therefore. The failure to make reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on these articles of the Civil Code.

37. The acts of Defendant which resulted in the injuries of the Plaintiff constitute a violation of Section 4 (a) of Republic Act 9262, by causing physical harm to a woman.

38. The same criminal act complained of also falls within the ambit of “physical injuries” under Article 33 of

the Civil Code.”

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She is invoking her right to recover damages against the defendant-appellee for the physical injuries inflicted upon her by defendant-appellee. The civil action filed by the plaintiff-appellant was not derived from the criminal liability of defendant in the criminal case but one based on Article 33 of the Civil Code which is separate and distinct from the civil liability arising from a crime.

It matters not that defendant-appellee claims her cause of action to be one based on delict. The nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action. The purpose of an action or suit and the law to govern it is to be determined not by the claim of the opposing party, but rather by the complaint itself, its allegations and prayer for relief.

Neither does it matter that the independent civil action was not reserved in the criminal action. To reiterate, independent civil actions may be filed separately and prosecuted independently even without any reservation in the criminal action. The failure to make a reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on Articles 31, 32, 33, 34 and 2176 of the Civil Code. As such, the cause of action herein is distinct and independent from the criminal case filed against the the defendant-appellee. Even if we assume that the civil action *ex delicto* is deemed instituted with the criminal action, the independent civil action herein is separate and distinct and may proceed regardless of the result of the proceedings in the criminal case.

While the judgment in the criminal case acquitting defendant-appellee is already final and executory, such judgment has no relevance or importance to this case. It would have been entirely different if plaintiff-appellant's cause of action was for damages arising from a delict.

One of the elements of *res judicata* is identity of causes of action. In the present case, it must be stressed that the action filed by the plaintiff-appellant is an independent civil action, which remains separate and distinct from any criminal prosecution based on the same act. Not being deemed instituted in the criminal action based on *culpa criminal*, a ruling on the culpability of the offender will have no bearing on the independent civil action based on an entirely different cause of action, i.e., Article 33 of the Civil Code.

In the same vein, the filing of this case after the acquittal of the defendant in the criminal case did not amount to forum-shopping. The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, to secure a favorable judgment. Forum-shopping is present when in the two or more cases pending, there is identity of parties, rights of action and reliefs sought. Although the two cases filed by the plaintiff-appellant arose from the same act or omission of the defendant-appellee, they are, however, based on different causes of action. The criminal case for violation of Republic Act 9262 is based on *culpa criminal* while the civil action for damages is anchored on Article 33 of the Civil Code. Moreover, there can be no forum-shopping in the instant case because the law expressly allows the filing of a separate civil action which can proceed independently of the criminal action.[20]

Clearly, therefore, the RTC erred in dismissing plaintiff-appellant's complaint for damages. Being an independent civil action which is separate and distinct from any criminal prosecution and which require no prior reservation for its institution, the doctrine of *res judicata* and forum-shopping will not operate to bar the same.

The submission that the civil liability of defendant-appellee is extinguished by his acquittal in the criminal case is irrelevant because the civil case for damages herein is not based on civil liability *ex delicto*. The case herein is an independent civil action based on Article 33 of the Civil Code.

Even assuming *arguendo* that this is a civil action *ex delicto*, such argument would still not hold water. The basic principle in civil liability *ex delicto* is that every person criminally liable is also civilly liable, crime being one of the five sources of obligations under the Civil Code. A person acquitted of a criminal charge, however, is not necessarily civilly free because the quantum of proof required in criminal prosecution (proof beyond reasonable doubt) is greater than that required for civil liability (mere preponderance of evidence). In order to be completely free from civil liability, a person's acquittal must be based on the fact that he did not commit the offense. If the acquittal is based merely on reasonable doubt, the accused may still be held civilly liable since this does not mean he did not commit the act complained of. It may only be that the facts proved did not constitute the offense charged. Here, the RTC was explicit when it held thus:

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“WHEREFORE, due to reasonable doubt, the accused, ALASTAIR JOHN KANE, is hereby ACQUITTED of the crime fo violation of Sec 5(a) of R.A. 9262, penalized by Sec 6 (a) of the said Act.

SO ORDERED.” (Emphasis supplied)

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Acquittal will not bar a civil action in the following cases: (1) where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases; (2) where the court declared the accused's liability is not criminal but only civil in nature and (3) where the civil liability does not arise from or is not based upon the criminal act of which the accused was acquitted[21].

Venue was properly laid too. The general rule on the venue of personal actions, as in this case for damages filed by plaintiff-appellant, is embodied in Section 2, Rule 4[22] of the Rules of Court.

The case of *Aniceto Saludo, Jr. vs. American Express Inetrnational, Inc.*[23], explained the import of the term “residence” for purposes of venue,

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“On the other hand, for purposes of venue, the less technical definition of “residence” is adopted. Thus, it is understood to mean as “the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. In this popular sense, the term means merely residence, that is, personal residence, not legal residence or domicile. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile.”

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At the time of the filing of this case, plaintiff-appellant was already residing at A1-5F, California Gaden Square, Libertad St., Mandaluyong City. Thus, venue was properly laid at the RTC of Mandaluyong City.

WHEREFORE, the appeal is GRANTED. The Orders dated June 8, 2010 and November 19, 2010 of the Regional Trial Court of Mandaluyong City, Branch 214 in Civil Case No. MC08-3871 are REVERSED AND SET ASIDE.

The Regional Trial Court of Mandaluyong City, Branch 214 is DIRECTED to reinstate Civil Case No. MC08-3871, to continue with the proceedings and to resolve the same with deliberate dispatch.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Abdulwahid, H.S., Chairperson and Barza, R.F., JJ., concur.

[1] Rollo, pp. 370- 373.

[1] Rollo, p. 431.

[2] Rollo, pp. 341-359.

[3] Rollo, pp. 92-100.

[5] Rollo, pp. 162-164.

[6] Rollo, pp. 170-186.

[7] Rollo, pp. 204-215.

[8] Rollo, pp. 282-283.

[9] Rollo, pp. 360-363.

[10] Rollo, pp. 378-384.

[11] Rollo, p. 428.

[12] Notice of Appeal dated December 21, 2010, Rollo, p. 438.

[13] Rollo, pp. 61-80.

[14] Spouses Antonio Santos and Esperanza Santos, et., al. vs. Hon. Normandie Pizarro, G.R. No. 151452, July 29, 2005.

[15] Safeguard Security Agency, Inc. and Admer Pajarillo vs. Lauro Tangco, et., al., G.R. No. 165732, December 14, 2006.

[16] G.R. No. 175256, August 23, 2012.

[17] Section 1. Institution of criminal and civil actions. — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees thereof shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action. (1a)

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions. (cir. 57-97).

[18] Section 3. When civil action may proceed independently. — In the cases provided for in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action. (3a)

[19] Art. 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

[20] Avelino Casupanan and Roberto Capitulo vs. Mario Llavore Laroya, G.R. No. 145391, August 26, 2002.

[21] Emma Nuguid vs. Clarita Nicdao, G.R. No. 150785, September 15, 2006.

[22] Sec. 2. Venue of personal actions. – All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a nonresident defendant, where he may be found, at the election of the plaintiff.

[23] G.R. No. 159507, April 19, 2006.

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