

**PEDRO ELCANO AND PATRICIA ELCANO, IN THEIR CAPACITY AS
ASCENDANTS OF AGAPITO ELCANO, DECEASED,
PLAINTIFFS-APPELLANTS, VS. REGINALD HILL, MINOR, AND
MARVIN HILL, AS FATHER AND NA...**

G.R. No. L-24803. May 26, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the order of the Court of First Instance of Quezon City dated January 29, 1965 in Civil Case No. Q-8102, Pedro Elcano et al. vs. Reginald Hill et al. dismissing, upon motion to dismiss of defendants, the complaint of plaintiffs for recovery of damages from defendant Reginald Hill, a minor, married at the time of the occurrence, and his father, the defendant Marvin Hill, with whom he was living and getting subsistence, for the killing by Reginald of the son of the plaintiffs, named Agapito Elcano, of which, when criminally prosecuted, the said accused was acquitted on the ground that his act was not criminal, because of "lack of intent to kill, coupled with mistake."

Actually, the motion to dismiss based on the following grounds:

"1. The present action is not only against but a violation of section 1, Rule 107, which is now Rule 111, of the Revised Rules of Court;

"2. The action is barred by a prior judgment which is now final and or in res-judicata;

"3. The complaint had no cause of action against defendant Marvin Hill, because he was relieved as guardian of the other defendant through emancipation by marriage."

(p. 23, Record [p. 4, Record on Appeal.])

was first denied by the trial court. It was only upon motion for reconsideration of the defendants of such denial, reiterating the above grounds that the following order was issued:

"Considering the motion for reconsideration filed by the defendants on January 14, 1965 and after thoroughly examining the arguments therein contained, the Court finds the same to be meritorious and well-founded.

"WHEREFORE, the Order of this Court on December 8, 1964 is hereby reconsidered by ordering the dismissal of the above entitled case.

"SO ORDERED.

"Quezon City, Philippines, January 29, 1965." (p. 40, Record [p. 21, Record on Appeal.])

Hence, this appeal where plaintiffs-appellants, the spouses Elcano, are presenting for Our resolution the following assignment of errors:

"THE LOWER COURT ERRED IN DISMISSING THE CASE BY UPHOLDING THE CLAIM OF DEFENDANTS THAT –

I

"THE PRESENT ACTION IS NOT ONLY AGAINST BUT ALSO A VIOLATION OF SECTION 1, RULE 107, NOW RULE 111, OF THE REVISED RULES OF COURT, AND THAT SECTION 3(c) OF RULE 111, RULES OF COURT IS INAPPLICABLE;

II

"THE ACTION IS BARRED BY A PRIOR JUDGMENT WHICH IS NOW FINAL OR RES-ADJUDICATA;

III

"THE PRINCIPLES OF QUASI-DELICTS, ARTICLES 2176 TO 2194 OF THE CIVIL CODE, ARE INAPPLICABLE IN THE INSTANT CASE; and

IV

"THAT THE COMPLAINT STATES NO CAUSE OF ACTION AGAINST DEFENDANT MARVIN HILL BECAUSE HE WAS RELIEVED AS GUARDIAN OF THE OTHER DEFENDANT THROUGH EMANCIPATION BY MARRIAGE." (page 4, Record.)

It appears that for the killing of the son, Agapito, of plaintiffs-appellants, defendant-appellee Reginald Hill was prosecuted criminally in Criminal Case No. 5102 of the Court of First Instance of Quezon City. After due trial, he was acquitted on the ground that his act was not criminal because of "lack of intent to kill, coupled with mistake." Parenthetically, none of the parties has favored Us with a copy of the decision of acquittal, presumably because appellants do not dispute that such indeed was the basis stated in the court's decision. And so, when appellants filed their complaint against appellees Reginald and his father, Atty. Marvin Hill, on account of the death of their son, the appellees filed the motion to dismiss above-referred to.

As We view the foregoing background of this case, the two decisive issues presented for Our resolution are:

1. Is the present civil action for damages barred by the acquittal of Reginald in the criminal case wherein the action for civil liability was not reserved?
2. May Article 2180 (2nd and last paragraphs) of the Civil Code be applied against Atty. Hill, notwithstanding undisputed fact that at the time of the occurrence complained of, Reginald, though a minor, living with and getting subsistence from his father, was already legally married?

The first issue presents no more problem than the need a reiteration and further clarification of the dual character, criminal and civil, of fault or negligence as a source of obligation which was firmly established in this jurisdiction in *Barredo vs. Garcia*, 73 Phil. 607. In that case, this Court postulated, on the basis of a scholarly dissertation by Justice Bocobo on the nature of culpa aquiliana in relation to culpa criminal or delito and mere culpa or fault, with pertinent citation of decisions of the Supreme Court of Spain, the works of recognized civilians, and earlier jurisprudence of our own, that the same given act can result in civil liability not only under the Penal Code but also under the Civil Code. Thus, the opinion holds:

"The above case is pertinent because it shows that the same act may come under both the Penal Code and the Civil Code. In that case, the action of the agent was unjustified and fraudulent and therefore could have been

the subject of a criminal action. And yet, it was held to be also a proper subject of a civil action under article 1902 of the Civil Code. It is also to be noted that it was the employer and not the employee who was being sued." (pp. 615-616, 73 Phil.)[1]

"It will be noticed that the defendant in the above case could have been prosecuted in a criminal case because his negligence causing the death of the child was punishable by the Penal Code. Here is therefore a clear instance of the same act of negligence being a proper subject-matter either of a criminal action with its consequent civil liability arising from a crime or of an entirely separate and independent civil action for fault or negligence under article 1902 of the Civil Code. Thus, in this jurisdiction, the separate individuality of a cuasi-delito or culpa aquiliana under the Civil Code has been fully and clearly recognized, even with regard to a negligent act for which the wrongdoer could have been prosecuted and convicted in a criminal case and for which, after such a conviction, he could have been sued for this civil liability arising from his crime." (p. 617, 73 Phil.)[2]

"It is most significant that in the case just cited, this Court specifically applied article 1902 of the Civil Code. It is thus that although J. V. House could have been criminally prosecuted for reckless or simple negligence and not only punished but also made civilly liable because of his criminal negligence, nevertheless this Court awarded damages in an independent civil action for fault or negligence under article 1902 of the Civil Code." (p. 618, 73 Phil.)[3]

"The legal provisions, authors, and cases already invoked should ordinarily be sufficient to dispose of this case. But inasmuch as we are announcing doctrines that have been little understood in the past, it might not be inappropriate to indicate their foundations.

"Firstly, the Revised Penal Code in article 365 punishes not only reckless but also simple negligence. 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 a crime. In such a state of affairs, what sphere would remain for cuasi-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 cuasi-delito, which is conserved and made enduring in articles 1902 to 1910 of the Spanish Civil Code.

Contrary to an immediate impression one might get upon a reading of the foregoing excerpts from the opinion in Garcia - that the concurrence of the Penal Code and the Civil Code therein referred to contemplate only acts of negligence and not intentional voluntary acts - deeper reflection would reveal that the thrust of the pronouncements therein is not so limited, but that in fact it actually extends to fault or culpa. This can be seen in the reference made therein to the Sentence of the Supreme Court of Spain of February 14, 1919, supra, which involved a case of fraud or estafa, not a negligent act. Indeed, Article 1093 of the Civil Code of Spain, in force here at the time of Garcia, provided textually that obligations "which are derived from acts or omissions in which fault or negligence, not punishable by law, intervene shall be the subject of Chapter II, Title XV of this book (which refers to quasi-delicts.)" And it is precisely the underlined qualification, "not punishable by law", that Justice Bocobo emphasized could lead to an undesirable construction or interpretation of the letter of the law that "killeth, rather than the spirit that giveth life" hence, the ruling that "(W)e 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 cuasi-delito, which is conserved and made enduring in articles 1902 to 1910 of the Spanish Civil Code." And so, because Justice Bocobo was Chairman of the Code Commission that drafted the original text

of the new Civil Code, it is to be noted that the said Code, which was enacted after the Garcia doctrine, no longer uses the term, "not punishable by law, " thereby making it clear that the concept of culpa aquiliana includes acts which are criminal in character or in violation of the penal law, whether voluntary or negligent. Thus, the corresponding provision to said Article 1093 in the new code, which is Article 1162, simply says, "Obligations derived from quasi-delicts shall be governed by the provisions of Chapter 2, Title XVII of this Book, (on quasi-delicts) and by special laws." More precisely, a new provision, Article 2177 of the new code provides:

"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."

According to the Code Commission: "The foregoing provision (Article 2177) though at first sight startling, is not so novel or extraordinary when we consider the exact nature of criminal and civil negligence. The former is a violation of the criminal law, while the latter is a 'culpa aquiliana' or quasi-delict, of ancient origin, having always had its own foundation and individuality, separate from criminal negligence. Such distinction between criminal negligence and 'culpa extra-contractual' or 'cuasi-delito' has been sustained by decisions of the Supreme Court of Spain and maintained as clear, sound and perfectly tenable by Maura, an outstanding Spanish jurist. Therefore, under the proposed article 2177, acquittal from an accusation of criminal negligence, whether on reasonable doubt or not, shall not be a bar to a subsequent civil action, not for civil liability arising from criminal negligence, but for damages due to a quasi-delict or 'culpa aquiliana'. But said article forestalls a double recovery." (Report of the Code Commission, p. 162.)

Although, again, this Article 2177 does seem to literally refer to only acts of negligence, the same argument of Justice Bocobo about construction that upholds "the spirit that giveth life" rather than that which is literal that killeth the intent of the lawmaker should be observed in applying the same. And considering that the preliminary chapter on human relations of the new Civil Code definitely establishes the separability and independence of liability in a civil action for acts criminal in character (under Articles 29 to 32) from the civil responsibility arising from crime fixed by Article 100 of the Revised Penal Code, and, in a sense, the Rules of Court, under Sections 2 and 3 (c), Rule 111, contemplate also the same separability, it is "more congruent with the spirit of law, equity and justice, and more in harmony with modern progress", to borrow the felicitous relevant language in *Rakes vs. Atlantic, Gulf and Pacific Co.*, 7 Phil. 359, to hold, as We do hold, that Article 2176, where it refers to "fault or negligence," covers not only acts "not punishable by law" but also acts criminal in character, whether intentional and voluntary or negligent. Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, if he is actually charged also criminally, to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary. In other words, the extinction of civil liability referred to in Par. (e) of Section 3, Rule 111, refers exclusively to civil liability founded on Article 100 of the Revised Penal Code, whereas the civil liability for the same act considered as a quasi-delict only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused. Briefly stated, We here hold, in reiteration of Garcia, that culpa aquiliana includes voluntary and negligent acts which may be punishable by law.[4]

It results, therefore, that the acquittal of Reginald Hill in the criminal case has not extinguished his liability for quasi-delict, hence that acquittal is not a bar to the instant action against him.

Coming now to the second issue about the effect of Reginald's emancipation by marriage on the possible civil liability of Atty. Hill, his father, it is also Our considered opinion that the conclusion of appellees that Atty. Hill is

already free from responsibility cannot be upheld.

While it is true that parental authority is terminated upon emancipation of the child (Article 327, Civil Code), and under Article 397, emancipation takes place "by the marriage of the minor (child)", it is, however, also clear that pursuant to Article 399, emancipation by marriage of the minor is not really full or absolute. Thus "(E)mancipation by marriage or by voluntary concession shall terminate parental authority over the child's person. It shall enable the minor to administer his property as though he were of age, but he cannot borrow money or alienate or encumber real property without the consent of his father or mother, or guardian. He can sue and be sued in court only with the assistance of his father, mother or guardian."

Now, under Article 2180, "(T)he 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. 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." In the instant case, it is not controverted that Reginald, although married, was living with his father and getting subsistence from him at the time of the occurrence in question. Factually, therefore, Reginald was still subservient to and dependent on his father, a situation which is not unusual.

It must be borne in mind that, according to Manresa, the reason behind the joint and solidary liability of parents with their offending child under Article 2180 is that it is the obligation of the parent to supervise their minor children in order to prevent them from causing damage to third persons.[5] On the other hand, the clear implication of Article 399, in providing that a minor emancipated by marriage may not, nevertheless, sue or be sued without the assistance of the parents, is that such emancipation does not carry with it freedom to enter into transactions or do any act that can give rise to judicial litigation. (See Manresa, id., Vol. II, pp. 766-767, 776.) And surely, killing someone else invites judicial action. Otherwise stated, the marriage of a minor child does not relieve the parents of the duty to see to it that the child, while still a minor, does not give cause to any litigation, in the same manner that the parents are answerable for the borrowings of money and alienation or encumbering of real property which cannot be done by their minor married child without their consent. (Art. 399; Manresa, supra.)

Accordingly, in Our considered view, Article 2180 applies to Atty. Hill notwithstanding the emancipation by marriage of Reginald. However, inasmuch as it is evident that Reginald is now of age, as a matter of equity, the liability of Atty. Hill has become merely subsidiary to that of his son.

WHEREFORE, the order appealed from is reversed and the trial court is ordered to proceed in accordance with the foregoing opinion. Costs against appellees.

Fernando, (Chairman), Antonio, and Martin, JJ., concur.

Aquino, J., see concurring opinion.

Concepcion, Jr., J., on leave.

[1] Referring to Sentence of the Supreme Court of Spain of February 14, 1919.

[2] Referring to Manzanares vs. Moreta, 38 Phil. 821.

[3] Referring to Bernal et al. vs. House et al., 54 Phil. 327.

[4] Parenthetically, Manresa seemingly holds the contrary view thus:

"Sin embargo, para no incurrir en error hay que tener en cuenta que los limites del precepto contenido en el presente articulo son bastante mas reducidos, pues no se hallan comprendidos en el todos los daños que pueden tener por causa la culpa o la negligencia.

"En efecto, examinando detenidamente la teoria general de la culpa y de la negligencia, se observa que, tanto en una como en otra de dichas causas, hay tres generos o tres especies distintas, a saber:

1. La que representa una accion u omision voluntaria por la que resulte incumplida una obligacion anteriormente constituida.
2. La que sin existencia de una obligacion anterior produce un daño o perjuicio que, teniendo su origen en un hecho ilicito, no reviste los caracteres de delito o falta; y
3. La que teniendo por origen un hecho que constituya delito o falta produce una responsabilidad civil como accesoria de la responsabilidad criminal.

"La primera de estas tres especies de culpa o negligencia es siempre accesoria de una obligacion principal, cuyo incumplimiento da origen a la teoria especial de la culpa en materia de contratos, y el estudio de esta debe hacerse al examinar cada contrato, en especial, como lo hicimos asi, analizando entonces los peculiares efectos de dicha culpa en cada uno de ellos.

"La tercera de las especies citadas es accesoria tambien, pues no puede concebirse su existencia sin la de un delito o falta que la produzca. Es decir, que solo al lado de la responsabilidad criminal puede subsistir esa responsabilidad civil y la obligacion proveniente de la culpa, indicada como una consecuencia de la responsabilidad criminal, y, por consiguiente, su examen y regulacion pertenecen al Derecho penal.

"Como consecuencia de ello, resulta que la unica especie de culpa y omision o negligencia que puede ser y es materia del presente capitulo, es la segunda, o sea la que sin la existencia de una obligacion anterior, y sin ningun antecedente contractual, produce un daño o perjuicio que tiene su origen en una accion u omision culpable solo civilmente; es decir, que siendo ilicita, no revista, sin embargo, los caracteres de un delito o falta por no estar penada por la ley. Y aun dentro de estos limites hay que restringir aun mas los terminos o la materia propia de este articulo, el cual se refiere unicamente a la culpa o negligencia personales del obligado, pero no a las que provienen de actos o de omisiones de personas distintas de este." (pp. 642-643, Vol. XII, Manresa,Codigo Civil Español.)

[5] "Nuestro Codigo no ha seguido la escuela italiana, sino que mas bien se ha inspirado en el criterio de la doctrina francesa, puesto que impone la obligacion de reparar el daño causado en virtud de una presuncion juris tantum de culpa por parte del que tiene bajo su autoridad o dependencia al causante del daño, derivada del hecho de no haber puesto el cuidado y la vigilancia debida en los actos de sus subordinados para evitar dicho resultado. Asi es que, segun el parrafo ultimo del art. 1,903, cesa dicha responsabilidad cuando se prueba que los obligados por los actos ajenos emplearon toda la diligencia de un buen padre de familia. Luego no es la causa de la obligacion impuesta la representacion, ni el interes, ni la necesidad de que haya quien responda del daño causado por el que no tiene personalidad ni garantias de solvencia para responder por si, sino el incumplimiento implicito o supuesto de los deberes de precaucion y de prudencia que imponen los vinculos civiles que unen al obligado con las personas por quienes debe reparar el mal causado. Por ese motivo coloca dicha obligacion entre las que provienen de la culpa o negligencia." (pp. 670-671, Manresa, Codigo Civil Español, Vol. XII.)

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CONCURRING OPINION

AQUINO, J.:

I concur. Article 2176 of the Civil Code comprehends any culpable act, which is blameworthy, when judged by accepted legal standards. "The idea thus expressed is undoubtedly broad enough to include any rational conception of liability for the tortious acts likely to be developed in any society." (Street, J. in *Daywalt vs. Corporacion de PP. Agustinos Recoletos*, 39 Phil. 587, 600). See article 38, Civil Code and the ruling that "the infant tortfeasor is liable in a civil action to the injured person in the same manner and to the same extent as an adult" (27 Am. Jur. 812 cited by *Bocobo, J., in Magtibay vs. Tiangco*, 74 Phil. 576, 579).

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