

CESAR M. CARANDANG, PETITIONER, VS. VICENTE SANTIAGO, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA AND TOMAS VALENTON, SR. AND TOMAS VALENTON, JR., RESPONDE...*G.R. No. L-8238. May 25, 1955*

Ponente: LABRADOR, J.

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This is a petition for certiorari against Honorable Vicente Santiago, Judge of the Court of First Instance of Manila, to annul his order in Civil Case No. 21173, entitled Cesar M. Carandang vs. Tomas Valenton, Sr. et al., suspending the trial of said civil case to await the result of the criminal Case No. 534, Court of First Instance of Batangas. In this criminal case, Tomas Valenton, Jr. was found guilty of the crime of frustrated homicide committed against the person of Cesar Carandang, petitioner herein. Tomas Valenton, Jr. appealed the decision to the Court of Appeals where the case is now pending.

The decision of the Court of First Instance of Batangas in the criminal case was rendered on September 1, 1953 and petitioner herein filed a complaint in the Court of First Instance of Manila to recover from the defendant Tomas Valenton, Jr. and his parents, damages, both actual and moral, for the bodily injuries received by him on occasion of the commission of the crime of frustrated homicide by said accused Tomas Valenton, Jr. After the defendants submitted their answer, they presented a motion to suspend the trial of the civil case, pending the termination of the criminal case against Tomas Valenton, Jr. in the Court of Appeals. The judge ruled that the trial of the civil action must await the result of the criminal case on appeal. A motion for reconsideration was submitted, but the court denied the same; hence this petition for certiorari.

Petitioner invokes Article 33 of the new Civil Code, which is as follows:

"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."

The Code Commission itself states that the civil action allowed (under Article 33) is similar to the action in tort for libel or slander and assault and battery under American law (Report of the Code Commission, pp 46-47). But respondents argue that the term "physical injuries" is used to designate a specific crime defined in the Revised Penal Code, and therefore said term should be understood in its peculiar and technical sense, in accordance with the rules statutory construction (Sec- 578, 59 C. J. 979).

In the case at bar, the accused was charged with and convicted of the crime of frustrated homicide, and while it was found in the criminal case that a wound was inflicted by the defendant on the body of the petitioner herein Cesar Carandang, which wound is a bodily injury, the crime committed is not physical injuries but frustrated homicide, for the reason that the infliction of the wound is attended by the intent to kill. So the question arises

whether the term "physical injuries" used in Article 33 means physical injuries in the Revised Penal Code only, or any physical injury or bodily injury, whether inflicted with intent to kill or not.

The Article in question uses the words "defamation", "fraud" and "physical injuries." Defamation and fraud are used in their ordinary sense because there are no specific provisions in the Revised Penal Code using these terms as means of offenses defined therein, so that these two terms defamation and fraud must have been used not to impart to them any technical meaning in the laws of the Philippines, but in their generic sense. With this apparent circumstance in mind, it is evident that the term "physical injuries" could not have been used in its specific sense as a crime defined in the Revised Penal Code, for it is difficult to believe that the Code Commission would have used terms in the same article—some in their general and another in its technical sense. In other words, the term "physical injuries" should be understood to mean bodily injury, not the crime of physical injuries, because the terms used with the latter, are general terms. In any case the Code Commission recommended that the civil action for physical injuries be similar to the civil action for assault and battery in American Law, and this recommendation must have been accepted by the Legislature when it approved the article intact as recommended. If the intent has been to establish a civil action for the bodily harm received by the complainant similar to the civil action for assault and battery, as the Code Commission states, the civil action should lie whether the offense committed is that of physical injuries, or frustrated homicide, or attempted homicide, or even death.

A parallel case arose in that of *Bixby vs. Sioux City*, 164 N. W. 641, 643. In that case, the appellant sought to take his case from the scope of the statute by pointing out that inasmuch as notice is required where the cause of action is founded on injury to the person, it has no application when the damages sought are for the death of the person. The court ruled that a claim to recover for death resulting from personal injury is as certainly "founded on injury to the person" as would be a claim to recover damages for a non-fatal injury resulting in a crippled body.

For the foregoing considerations, we find that the respondent judge committed an error in suspending the trial of the civil case, and his order to that effect is hereby revoked, and he is hereby ordered to proceed with the trial of said civil case without awaiting the result of the pending criminal case. With costs against the defendant-appellees.

Pablo, Acting C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

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