

**CLODUALDO MENESES, EUPEMIO TRINIDAD, JOSE CALARA,
NARCISO SIGUA AND NICOLAS LORENZO, PLAINTIFFS AND
APPELLANTS, VS. ESTANISLAO LUAT AND ABELARDO, G. TINIO,
DEFENDANTS AND APPELL...**

G. R. No. L-18116. November 28, 1964

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal by plaintiffs from the order of the Court of First Instance of Pampanga in its civil case No. 1853, dismissing their complaint for damages upon motion to dismiss filed by defendants.

The complaint recites: that defendant Abelardo G. Tinio was the owner of a cargo truck with trailer which, on February 14, 1960, while being driven by defendant Estanislao Luat in A pal it, Pampanga, hit a horse-drawn rig (carretela) owned and driven by plaintiff Nicolas Lorenzo, the other plaintiffs being then his passengers: that the accident was caused by the negligence of truck driver Luat; that as a result the horse was killed, the rig totally wrecked and all of the plaintiffs sustained injuries; and that demands made upon defendants for the payment of damages were refused.

It appears that a criminal case for damage to property with serious physical injuries through reckless imprudence was filed against Estanislao Luat in the Court of First Instance of Pampanga. Herein plaintiffs, as the offended parties in that case, were represented by counsel, who entered their appearance as private prosecutors. Upon arraignment the accused entered a plea of guilty and was accordingly sentenced to suffer a term of imprisonment and to pay a fine. The Court, however, made no pronouncement on the matter of pecuniary damages suffered by plaintiffs. Indeed no claim therefor was put forward; nor was a reservation made of the right to institute a separate civil action. The decision became final, the accused having started to serve his sentence immediately.

The civil action was filed thereafter against both the driver and the owner of the truck, obviously on the theory of quasi-delict and specifically on the basis of Article 33 of the Civil Code, which states that 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, and the same shall proceed independently of the criminal prosecution and shall require on1y a preponderance of evidence.

Defendant's motion to dismiss was predicated and upheld on the ground that the action was barred by the judgment in the criminal case, on the authority of our decision in *Maria C. Roa vs. Segundina de la Cruz, et al*, 107 Phil., 8, promulgated February 13, 1960. In that case we said:

"In the instant case, it is not disputed that plaintiff Maria C. Roa — upon whose initiative the criminal action for defamation against the defendant Segunda dela Cruz was filed did not reserve her right to institute an independent civil action. Instead, she chose to intervene in the criminal proceedings as private prosecutor through counsel employed by her. Such intervention, as observed by the court below, could only be for the purpose of claiming damages or indemnity, and not to secure the conviction and punishment of the accused

therein as plaintiff now pretends. This must be so because an offended party in a criminal case may intervene personally or by attorney, in the prosecution of the offense, only if he has not waived the civil action or expressly reserved his right to institute it, subject, always, to the direction and control of the prosecuting fiscal. (Section 15 in connection with section 4 of Rule 106, Rules of Court; *Lim Tek Goan vs. Yatco*, 94 Phil., 197. The reason of the law in not permitting the offended party to intervene in the prosecution of the offense if he had waived or reserved his right to institute the civil action is that.. such action her interest in the criminal case has disappeared. It prosecution becomes the sole function of the public prosecutor. (*Gorospe, et al., vs. Gatmaitan et al.*, 98 Phil., 600). The rule, therefore, is that the right of intervention reserved to the offended party is for the sole purpose of enforcing the civil liability born of the criminal act and not of demanding punishment of the accused (*People vs. Orais*, 65 Phil. 744; *People vs. Veles* 77 Phil. 1026; *People vs. Flores et al.*, G. R. No. L-7528; December 1057; see also *U.S. vs. Malabon*, 1 Phil. 731; *U. S. vs. Heery*, 25 Phil. 600)."

In a number of cases decided prior to *Roa vs. De la Cruz*. it had been held that upon the institution of a criminal action for physical injuries the offended party need no reserve his right to file a separate civil action arising op the same injuries, for the reason that the law itself (Art. 33 of Civil Code) already makes the reservation and the failure of the offended party to do so does not bar W from bringing such action. (See *Estrada vs. Briones*, 56 Off. Gaz. No. 12, p. 2041, Aug. 28, 1959, and cases cited.) In those instances, of course, the offended parties did not intervene actively in the criminal prosecution through private counsel.

The issue now before us is whether or not the rule laid down in the *Roa* case should govern this one. We are of the opinion that there is a demonstrable material difference between the circumstances of the two cases. In the first not only was the offended party represented by a private prosecutor in the criminal action but the action went through trial on the merits. In fact it was the private prosecutor who actually handled the case. He there- fore had sufficient opportunity to claim and prove damages, for which purpose alone, according to the decision of this Court, his active intervention was allowed. For if that had not been the purpose, or if the offended party had reserved the right to file a separate civil action, such intervention would not have been justified.

In the instant case the criminal action against defendant *Luat* did not proceed to trial, as he pleaded guilty upon arraignment. The mere appearance of private counsel in representation of the offended party did not constitute such active intervention as could only import an intention to press a claim for damages in the same action. It is as reasonable to indulge the possibility that the private prosecutors appeared precisely to be able to make a seasonable reservation of the right to file a separate civil action which, even if unnecessary at the time,[1] would nevertheless have been the prudent and practical thing to Jo for the purpose of better protecting the interests of their clients. But as matters turned out, the accused leaded guilty upon arraignment and was immediately sentenced.

Thereafter there was no chance to enter such a reservation in the record.

We do not believe that plaintiffs' substantive right to claim damages should necessarily be foreclosed by the fact — at best equivocal as to its purpose — that private prosecutors entered their appearance at the very inception of the proceeding, which was then cut short at that stage. It cannot be said with any reasonable certainty that plaintiffs had thereby committed themselves to the submission pf their action for damages in that action. The rule laid down in *Roa vs. De la Cruz*, *supra*, does not govern this case. The ends of justice will be better served if plaintiffs are given their day in court.

The order appealed from is set aside and the case remanded for further proceedings, with costs.

Bautista Angelo, Concepcion, Reyes, J. B. L. Barrera, Paredes, Regala, Bengzon, J. P. and Zaldivar, JJ. concur.

[1] Rule 111 Sec. 2 (Revised Rules of Court) now requires an express reservation of the right to institute a separate civil action the cases provided for in Articles 31, 32, 33, 34 and 2177 Civil Code.

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