

**REYNALDO BERMUDEZ, SR., AND ADONITA YABUT BERMUDEZ,
PETITIONERS-APPELLANTS, VS. HON. JUDGE A.
MELENCIO--HERRERA, DOMINGO PONTINO Y TACORDA AND
CORDOVA NG SUN KWAN, RESPONDENTS-A...**

G.R. No. L-32055. February 26, 1988

Ponente: YAP, J.

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YAP, J.:

This is a direct appeal on pure questions of law from the Order of March 10, 1970 of the Honorable Judge (now Supreme Court Justice) Ameurfina Melencio-Herrera of the defunct court of First Instance of Manila, Branch XVII, dismissing plaintiffs-appellants' complaint in Civil Case No. 77188 entitled "Reynaldo Bermudez, Sr. and Adonita Yabut Bermudez, plaintiffs, versus Domingo Pontino y Tacorda and Cordova Ng Sun Kwan, defendants", and from the Order of May 7, 1970 denying plaintiffs-appellants' Motion for Reconsideration.

The background facts of the case are as follows:

A cargo truck, driven by Domingo Pontino and owned by Cordova Ng Sun Kwan, bumped a jeep on which Rogelio, a six-year old son of plaintiffs-appellants, was riding. The boy sustained injuries which caused his death. As a result, Criminal Case No. 92944 for Homicide Through Reckless Imprudence was filed against Domingo Pontino by the Manila City Fiscal's Office. Plaintiffs-appellants filed on July 27, 1969 in the said criminal case "A Reservation to File Separate Civil Action."

On July 28, 1969, the plaintiffs-appellants filed a civil case for damages with the Court of First Instance of Manila docketed as Civil Case No. 77188, entitled "Reynaldo Bermudez, Sr., et al., Plaintiffs, vs. Domingo Pontino y Tacorda and Cordova Ng Sun Kwan, Defendants." Finding that the plaintiffs instituted the action "on the assumption that defendant Pontino's negligence in the accident of May 10, 1969 constituted a quasi-delict," the trial court stated that plaintiffs had already elected to treat the accident as a "crime" by reserving in the criminal case their right to file a separate civil action. That being so, the trial court decided to order the dismissal of the complaint against defendant Cordova Ng Sun Kwan and to suspend the hearing of the case against Domingo Pontino until after the criminal case for Homicide Through Reckless Imprudence is finally terminated. From said order, plaintiffs filed the present appeal, stating as their main reasons the following:

I.

The main issue brought before this Honorable Court is whether the present action is based on quasi-delict under the Civil Code and therefore could proceed independently of the criminal case for homicide thru reckless imprudence.

II.

The second question of law is whether the lower court could properly suspend the hearing of the civil action against Domingo Pontino and dismissed the civil case against his employer Cordova Ng Sun Kwan by reason of the fact that a criminal case for homicide thru reckless imprudence is pending in the lower court against Domingo Pontino.

III.

The last question of law is whether the suspension of the civil action against Domingo Pontino and the dismissal of the civil case against his employer Cordova Ng Sun Kwan by reason of the pending criminal case against Domingo Pontino for homicide thru reckless imprudence in the lower court could be validly done considering that the civil case against said defendants-appellees also sought to recover actual damages to the jeep of plaintiffs-appellants."

We find the appeal meritorious.

The heart of the issue involved in the present case is whether the civil action filed by the plaintiffs-appellants is founded on crime or on quasi-delict. The trial court treated the case as an action based on a crime in view of the reservation made by the offended party in the criminal case (Criminal Case No. 92944), also pending before the court, to file a separate civil action. Said the trial court:

"It would appear that plaintiffs instituted this action on the assumption that defendant Pontino's negligence in the accident of May 10, 1969 constituted a quasi-delict. The Court cannot accept the validity of that assumption. In Criminal Case No. 92944 of this Court, plaintiffs had already appeared as complainants. While that case was pending, the offended parties reserved the right to institute a separate civil action. If, in a criminal case, the right to file a separate civil action for damages is reserved, such civil action is to be based on crime and not on tort. That was the ruling in *Joaquin vs. Aniceto*, L-18719, Oct. 31, 1964."

We do not agree. The doctrine in the case cited by the trial court is inapplicable to the instant case. In *Joaquin vs. Aniceto*, the Court held:

"The issue in this case is: May an employee's primary civil liability for crime and his employer's subsidiary liability therefor be proved in a separate civil action even while the criminal case against the employee is still pending?

To begin with, obligations arise from law, contract, quasi-contract, crime and quasi-delict. According to appellant, her action is one to enforce the civil liability arising from crime. With respect to obligations arising from crimes, Article 1161 of the New Civil Code provides:

'Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of Article 2177, and of the pertinent provisions of Chapter 2, Preliminary, Title, on Human Relations and of Title XVIII of this Book, regulating damages.'

x x x x

It is now settled that for an employer to be subsidiary liable, the following requisites must be present: (1) That an employee has committed a crime in the discharge of his duties; (2) that said employee is insolvent and has not satisfied his civil liability; (3) that the employer is engaged in some kind of industry. (1 *Padilla*, Criminal Law, Revised Penal Code 794 [1964])

Without the conviction of the employee, the employer cannot be subsidiary liable."

In cases of negligence, the injured party or his heirs has the choice between an action to enforce the civil liability arising from crime under Article 100 of the Revised Penal Code and an action for quasi-delict under Article

2176-2194 of the Civil Code. If a party chooses the latter, he may hold the employer solidarily liable for the negligent act of his employee, subject to the employer's defense of exercise of the diligence of a good father of the family.

In the case at bar, the action filed by appellant was an action for damages based on quasi-delict.[1] The fact that appellants reserved their right in the criminal case to file an independent civil action did not preclude them from choosing to file a civil action for quasi-delict.

The appellants invoke the provisions of Sections 1 and 2 of Rule 111 of the Rule of Court, which provide:

"Section 1. - Institution of criminal and civil action. - When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately.

"Section 2. - Independent civil action. - In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

Article 2177 of the Civil Code, cited in Section 2, of Rule 111, provides that -

"Article 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."

The appellant precisely made a reservation to file an independent civil action in accordance with the provisions of Section 2 of Rule 111, Rules of Court. In fact, even without such a reservation, we have allowed the injured party in the criminal case which resulted in the acquittal of the accused to recover damages based on quasi-delict. In *People vs. Ligon*, G.R. No. 74041, we held:

"However, it does not follow that a person who is not criminally liable is also free from civil liability. While the guilt of the accused in a criminal prosecution must be established beyond reasonable doubt, only a preponderance of evidence is required in a civil action for damages (Article 29, Civil Code). The judgment of acquittal extinguishes the civil liability of the accused only when it includes a declaration that the facts from which the civil liability might arise did not exist (*Padilla vs. Court of Appeals*, 129 SCRA 559).

WHEREFORE, we grant the petition and annul and set aside the appealed orders of the trial court, dated March 10, 1970 and May 7, 1970, and remand the case for further proceedings. No costs.

SO ORDERED.

Paras, Padilla, and Sarmiento, JJ., concur.

Melencio-Herrera, J., no part.

[1] Appellant's Brief, pp. 20-21.

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