

ASELA P. TACTAQUIN, PLAINTIFF AND APPELLANT, VS. JOSE B. PALILEO, DE-FENDANT AND APPELLEE.

G.R. No. L-20865. December 29, 1967

Ponente: DIZON, J.

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DIZON, J.:

Before Us is a motion filed by plaintiff-appellant praying that We reconsider our decision promulgated on September 29, 1967, upon the ground that the reservation to file a separate civil action made at the trial of Criminal Case No. 4736 was timely made and that, therefore, the doctrine of *res judicata* does not bar the action (Civil Case No. Q-6601) filed by her in the Court of First Instance of Rizal.

As stated in our original decision, appellant filed the action aforesaid to recover from appellee the total sum of P37,636.35 as damages for the death of her daughter, Norma Tactaquin, and serious physical injuries inflicted upon her on June 16, 1961 when a car recklessly driven by appellee hit them at Marulas, Valenzuela, Bulacan. In connection with this accident, appellee was charged criminally (Criminal Case No. 4736, Court of First Instance of Bulacan) and was found guilty of homicide, with serious physical injuries, through reckless imprudence, and was sentenced not only to suffer imprisonment but also to pay the sum of P4,000 to appellant as damages. Because of this, appellee moved to dismiss the civil case for damages, upon the ground that the action was already barred by the final judgment rendered in the criminal case just mentioned. Sustaining this motion the lower court dismissed the case, and appellant appealed to Us. Our original decision affirmed the order of dismissal, with costs.

Upon consideration of the motion for reconsideration now before Us, We find that, according to the record, appellee, when arraigned in connection with Criminal Case No. 4736 mentioned heretofore, pleaded not guilty. However, when the case was called for trial on August 14, 1962, he was allowed to withdraw said plea and he immediately entered a plea of guilty, the provincial fiscal forthwith recommending the imposition of the corresponding penalty and civil liability. Thereupon, the private prosecutor, Atty. Sundiam, made this statement for the record:

"May this representation be heard because we reserve the right to civil liability."

to which the Court replied -

"That manifestation of the private prosecutor be recorded." (T.s.n. pp. 1-3, session of August 14, 1962)

The record further discloses that notwithstanding the above reservation and the Court's corresponding statement, the latter subsequently proceeded to render judgment as stated heretofore.

Upon the foregoing facts it is clear, firstly, that the private prosecutor timely made a reservation on behalf of the offended party in connection with the filing of a separate civil action; secondly, that such reservation was duly recorded by order of the Court; thirdly, that, as a result thereof, the question of civil liability was automatically taken out of the case and was not before the court any longer. Upon these premises, the conclusion becomes inescapable that the portion of the decision of the Court in Criminal Case No. 4736 concerning civil indemnity

was a nullity, and being so, it can not be accorded the authority of res judicata.

The rule in this connection is that when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with it "unless the offended party expressly waives the civil action or reserves his right to institute it separately". While the rule does not say when or at what stage of the criminal proceeding the reservation should be made, it seems logical to presume that for the reservation to be timely and legally effective, it must be made - as in the present case - before the rendition of judgment.

Upon the other hand, it has been held that once the offended party has reserved his right to institute a separate civil action to recover indemnity, he thereby loses his right to intervene in the prosecution of the criminal case (*Gorospe vs. Honorable Gatmaitan*, 52 O. G. p. 2526). For this reason, herein appellant no longer had any right - nor should she had been expected - to move for the reconsideration of, much less to appeal from the decision in the criminal case in so far as it decided the question of civil indemnity. She no longer had any standing in the case.

WHEREFORE, ruling upon appellant's motion for re-consideration, the Court hereby sets aside its original decision and directs that the present case be remanded below for further proceedings.

Concepcion, C.J., Reyes, JBL, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.
Fernando, J., did not take apart.

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