

CLAUDIO DEGOLLACION, PLAINTIFF AND APPELLANT, VS. LI CHUI ALIAS ONG PONG, DEFENDANT AND APPELLEE.*G.R. No. L-11640. May 28, 1958*

Ponente: MONTEMAYOR, J.

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Claudio Degollacion is appealing the order of the Court of First Instance of Cebu in Civil Case No. R-4024, dismissing his complaint on the ground of prescription.

The facts in this case are not controverted. In the month of September, 1949, plaintiff-appellant Degollacion was an employee of Chua Leh in his store and in his soap factory at Talisay, Cebu. On September 29 of that year, plaintiff, his employer Chua Leh, and Filemon Legaspina were riding in Leh's delivery truck S-1325 to deliver soap to customers. On the way home, within the town of Carcar, Cebu, and while said delivery truck was stopping on the correct side of the road to allow the "Bisaya" truck T-16969, owned by Li Chui alias Ong Pong, and driven by his employee, Telesforo Sagayno, to pass, the latter truck bumped the delivery truck from behind, causing it to fall into a precipice with its three passengers. As a result, the delivery truck was demolished, its cargo scattered in all directions, and the occupants suffered physical injuries.

On December 13, 1949, Sagayno, the driver of Ong Pong, was charged in the Justice of the Peace Court of Carcar, Cebu, in Criminal Case No. 304, with less serious physical injuries through reckless imprudence. After trial, he was found guilty and sentenced to suffer one month and twenty days imprisonment, with costs. He appealed the decision to the Court of First Instance of Cebu where, after repeated postponements at his instance, the case was on February 16, 1954, dismissed without prejudice. The dismissal was due to the alleged failure of Chua. Leh, one of the witnesses for the prosecution, to appear on the date of the last hearing set.

On May 14, 1955, after failing to have the criminal case reinstated through the Fiscal's Office, plaintiff-appellant Degollacion filed the present civil action for damages against defendant-appellee Li Chui alias Ong Pong, employer of the driver, Sagayno. Acting upon a motion to dismiss the complaint on the ground that the plaintiff's cause of action had already prescribed, the trial court on July 25, 1955, dismissed the complaint without pronouncement as to costs. This is the order of dismissal being appealed directly to us, involving as it does only questions of law.

The theory underlying the motion to dismiss as well as the order of dismissal is that the period of prescription of four years within which to enforce the right to damages for physical injuries suffered, began to run from the date of the accident on September 29, 1949, and consequently, when the present action was filed in 1955, the period of prescription had already run out. Appellee contended that the civil action for damages is separate from the criminal action, and so, the filing of the criminal charge in the Justice of the Peace Court in 1949 against Sagayno for less serious physical injuries through reckless imprudence, did not interrupt the running of the period of prescription. We find this theory untenable. Rule 107 (a) of the Rules of Court provides thus:

* * * "(a) 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."

Inasmuch as the offended party in the criminal case (Degollacion) neither expressly waived the civil action nor reserved his right to institute it separately, then the said civil action for recovery of civil liability was deemed impliedly instituted with the said criminal case. Under Article 1973 of the Old Civil Code and Article 1155 of the New Civil Code, the institution of said criminal action interrupted the running of the period of prescription during the time that the case was pending in court. The period again continued to run when the said criminal action was dismissed in 1954. It is therefore clear that considering this interruption, comprising the period from December 13, 1949 to February 16, 1954, the period of four years, starting from September 29, 1949, had not yet expired.

We deem it unnecessary to discuss the other points raised by appellee.

In view of the foregoing, the appealed order of dismissal is reversed and this case is hereby remanded for further proceedings. With costs.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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