

MARCO BORDAS, PLAINTIFF-APPELLANT, VS. SENCENO CANADALLA AND PRIMO TABAR, DEFENDANTS-APPELLEES.

G.R. No. L-30036. April 15, 1988

Ponente: YAP, J.

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YAP, J.:

In this petition for review on certiorari, plaintiff-appellant seeks the reversal and setting aside of the decision of the Court of First Instance of Cebu dated November 2, 1968 affirming in toto the Order of the City Court of Cebu dated September 2, 1968, granting defendants-appellees' motion to dismiss Civil Case No. L-13110, on the ground that no express reservation was made by the plaintiff-appellant in the criminal action (Criminal Case No. R-28941) to institute a separate civil action.

Record shows that defendant-appellee Senceno Canadalla was charged before the City Court of Cebu, Branch III, with the offense of Serious Physical Injuries Thru Reckless Imprudence, docketed as Criminal Case No. R-28941, for having allegedly sideswiped plaintiff-appellant Marcos Bordas along M. C. Briones St., Cebu City, on May 2, 1968 at about 8:40 a.m. Canadalla was driving a jeepney Plate No. PUJ-13914 owned and registered in the name of Primo Tabar, who is Canadalla's employer. While Criminal Case No. R-28941 was pending, plaintiff-appellant filed a separate civil action for damages based on culpa aquiliana against Canadalla and the latter's employer, Primo Tabar, docketed as Civil Case No. 13110. In lieu of an answer to the complaint, defendants-appellees filed a motion to dismiss Civil Case No. 13110 on the ground that the complaint for damages was filed without the proper reservation in the criminal action to institute a separate and independent civil action as provided by Sections 1 and 2 of Rule III of the Rules of Court. The trial court granted motion and dismissed Civil Case No. 13110 in an Order dated September 2, 1968. Plaintiff-appellant appealed to the Court of First Instance of Cebu wherein the case was docketed as Civil Case No. R-10824. On November 2, 1968, the Court of First Instance promulgated the questioned decision, affirming in toto the order appealed from. Hence, this petition on a pure question of law.

We find the petition meritorious. Indeed, there is no need for the plaintiff-appellant to make a reservation of his right to file a separate civil action inasmuch as the civil action contemplated is not derived from the criminal liability of the accused but one based on culpa aquiliana. The trial court was therefore in error in considering the conviction of the accused as a "prejudicial question" to the civil liability of Canadalla and his employer Primo Tabar. The confusion lies in the failure to distinguish between the civil liability arising out of criminal negligence (governed by the Penal Code) on one hand, and the responsibility for culpa aquiliana or quasi-delict on the other, the latter being separate and distinct from the civil liability arising from crime. It is thus clear that the plaintiff-appellant's action, being one for culpa aquiliana (Article 2176) may not be classified as a civil action arising from the criminal offense of Senceno Canadalla to be suspended "until judgment in the criminal case has been rendered."

Moreover, Section 2, Rule III of the Rules of Court on independent civil actions has been amended on January 1, 1985 to read as follows:

"In the cases provided for in Articles 32, 33 and 34 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. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

As revised, it should be noted that Section 2, Rule III, eliminated not only the requirement that the right to institute such independent civil actions be reserved by the complainant, but more significantly, eliminated Articles 31 and 2177 of the Civil Code from its purview. This is so because the civil actions contemplated in Articles 31 and 2177 are not civil actions ex delicto. Moreover, said articles by themselves, authorize the institution of a civil action for damages based on quasi-delict which may proceed independently of the criminal proceeding for criminal negligence and regardless of the result of the latter. (Articles 31 and 2177, Civil Code; *Corpus vs. Paje*, 28 SCRA 1062).

WHEREFORE, the petition is GRANTED and the appealed order of the trial court dated November 2, 1968 is hereby set aside, and it is ordered that the hearing of the civil case be resumed without regard to the criminal case. This decision is immediately executory.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

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