

QUIRINA PACHOCO, PETITIONER AND APPELLANT, VS. AGRIPINA TUMANGDAY AND HIGINO A. FERNANDO, JUSTICE OF THE PEACE OF PATNONGON, ANTIQUE, RESPONDENTS AND APPELLEES.

G.R. No. L-14500. May 25, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

Appeal from the order of the Antique court of first instance denying a petition for certiorari and prohibition.

It appears that: on March 31, 1958, in the justice of the peace court of Patnongon, same province, Quirina Pachoco, pleaded guilty to a criminal charge of slight physical injuries she had inflicted on Agripina Tumangday, and was accordingly required to pay a fine plus the costs; she interposed no appeal; then on May 5, 1958, Agripina Tumangday filed a civil action in the same justice of the peace court, to recover damages from Quirina Pachoco for the identical physical injuries that had given ground to the criminal case; the defendant Pachoco promptly filed a motion to dismiss on the ground of *res judicata*, pointing to the decision in the criminal proceeding wherein Tumangday had not reserved her right to file a civil action; the justice of the peace denied the motion; thereafter Pachoco filed a petition for certiorari and prohibition, in the Antique court of first instance, to stop the civil action on the principle of *res judicata*; the court, after hearing, dismissed the petition, explaining that as petitioner had an adequate remedy—i.e., to appeal if, she should be required in the civil case to pay damages—the special civil action could not be validly sustained.

From such dismissal Quirina Pachoco appealed to this Court.

We find no merit in this appeal. The Honorable Juan de Borja, Judge, correctly ruled that the special civil action of certiorari and prohibition may be maintained only where petitioner had no adequate remedy by appeal.^[1] In this case, Pachoco could appeal any judgment for damages which may be rendered against her.

It is true that in some cases, this Court granted certiorari and prohibition even if petitioner had the remedy of appealing after entry of judgment by the respondent judge; but those were instances, wherein the broader interests of justice or public policy required an exception, or wherein the petitioners contention appeared to be clearly tenable. Here the appellant's position resting on sec. 1 of Rule 107, and cases applying it, does not seem to agree with Article 33 of the New Civil Code and subsequent adjudications:

"Art. 33.—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. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

"The independent civil action for damages arising from physical injuries under Art. 33 may be brought by the injured party even if he had not reserved the right to file the same in the criminal case for the same injuries. (*Ortaliz vs. Echarri*, 101 Phil., 947.) As a matter of fact, two different courts may at the same time try the same accident, one from the criminal standpoint, the other from the standpoint of Art. 33. The result of the criminal case, whether acquittal or conviction, would be, in such a case, entirely irrelevant to the civil action. (*Dionisio*

and Almodovar vs. Judge Alvendia, et al., 102 Phil., 443; 55 Off. Gaz., [25] 4633). See also (Bisaya Land Trans. Co. vs. Mejia, et al., 99 Phil., 50; 52 Off. Gaz., [9] 4241), [Paras, Civil Code of the Philippines, Vol. I, pages 114-115] See also Reyes vs. De la Rosa, 99 Phil., 1013; 52 Off. Gaz., [15] 6548.

In Roa vs. De la Cruz, 103 Phil., 116, we declared that when the offended party intervened in the prosecution of a criminal case by appearing therein through a private prosecutor, he will be deemed to have waived the civil action if he failed to make reservation therefor. In this case, however, the record shows no appearance for Tumangday in the criminal proceeding.

The dismissal is affirmed, on the ground specified by the Court a quo. Costs against appellant.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

Endencia, J., did not take part.

[1] See case cited in Moran, Rules of Court (1957 Ed.) Vol. II p. 159.

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