

LAMBERTO V. TORRIJOS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, RESPONDENT.

G.R. No. L-40336. October 24, 1975

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner seeks the reversal of the order of the respondent Court of Appeals dated February 20, 1975.

The undisputed facts are as follows:

Wakat Diamnuan and his wife were the registered owners of one-fourth share of a parcel of land containing an area of 39.9643 hectares situated in Sitio Cacuban, Barrio Gumatdang, Pitogon, Benguet, covered by OCT No. O-36, issued in their names and in the names of Kangi Erangyas, and the heirs of Komising Tagle, who owned the remaining portions.

On May 11, 1968, Wakat Diamnuan and his wife sold their one-fourth share in favor of petitioner Torrijos for P7,493.00. The deed of sale, however, was refused registration because Torrijos, who produced OCT No. O-36, did not have the copies thereof held by the other co-owners, Kangi Erangyas and heirs of Komising Tagle.

In 1969, the entire property, together with the share of Wakat Diamnuan and his wife, was sold to Victor de Guia for P 189,379.50. Hence, Torrijos prosecuted Wakat Diamnuan for estafa before the Baguio Court of First Instance, docketed as Criminal Case No. 70 entitled "People of the Philippines versus Wika Diamnuan."

After trial, the trial Judge convicted the accused in a decision dated January 17, 1973 sentencing him to an imprisonment of 3 months of arresto mayor, to pay a fine of P7,493.00 with subsidiary imprisonment, to indemnify petitioner Lamberto Torrijos in the sum of P7,493.00 and to pay the costs. The trial Judge added as the second paragraph of the dispositive portion of the decision that "Whatever damages may have been suffered by Torrijos before the Deed of Sale in favor of Victor de Guia was made by the accused and his co-owners may be the subject of some other action, perhaps civil, but not in this case."

Upon motion for reconsideration filed by complainant Torrijos, in an order dated March 5, 1973, the trial court modified its decision by increasing the indemnity in favor of Torrijos from P7,493.00 to P25,000.00 and the fine from P7,493.00 to P25,000.00.

On March 7, 1973, the accused filed a motion for reconsideration of the order of March 5, 1973, which was denied by the court a quo in an order dated April 11, 1973. Thereafter, the accused appealed to the Court of Appeals.

On August 5, 1973, the accused died, for which reason his counsel moved to dismiss the appeal under paragraph 1 of Article 89 of the Revised Penal Code, which provides that the death of a convict extinguishes, not only the personal penalties, but also the "pecuniary penalties" as long as the death occurs before final judgment.

Complainant Torrijos opposed the said motion to dismiss appeal on the ground that the term "pecuniary penalty"

should not include civil liability in favor of the offended party, which was decreed by the trial court in this case, as the civil action therefor was not reserved, much less filed separately from the criminal action.

The respondent Court of Appeals sustained the motion, which is shared by the Solicitor General, and forthwith issued the challenged order dated February 20, 1975 dismissing the appeal.

Hence, this petition.

It should be stressed that the extinction of civil liability follows the extinction of the criminal liability under Article 89, only when the civil liability arises from the criminal act as its only basis. Stated differently, where the civil liability does not exist independently of the criminal responsibility, the extinction of the latter by death, ipso facto extinguishes the former, provided, of course, that death supervenes before final judgment. The said principle does not apply in instant case wherein the civil liability springs neither solely nor originally from the crime itself but from a civil contract of purchase and sale. The estafa or swindle existed only after the subsequent sale by the accused of the same interest in favor of Victor de Guia. There was no crime of estafa until the accused re-sold the same property to another individual about 5 years after the first sale to Torrijos. If the accused did not comply with the sale he executed in favor of Torrijos in 1964, after his receipt of the purchase price from Torrijos, but before the second sale to Victor de Guia in 1969, there is no question that the accused would be merely civilly liable either through an action by Torrijos for specific performance with damages or for rescission of contract also with damages. If rescission were pursued by the first vendee, the vendor would be liable to refund the purchase price as well as be responsible in damages. Consequently, in the case at bar, the civil liability of the accused survives his death; because death is not a valid cause for the extinguishment of civil obligations.

Thus, WE held that, despite the acquittal based on death for the crime of homicide or physical injuries or damage to property through reckless imprudence, notwithstanding the absence of any reservation to file a civil action, such acquittal does not preclude the offended party from pursuing a civil action for damages based on tort or culpa aquiliana. And the civil action based on tort or contract need not be reserved (*Tan vs. Standard Vacuum Oil Co., et al.*, 91 Phil. 972; *Dionisio, et al. vs. Alvendia, et al.*, 102 Phil. 443, 445-447; *Chan vs. Yatco*, L-11162, April 30, 1958; *Capuno vs. Pepsi Cola*, 13 SCRA 658).

Then again, Articles 19, 20 and 21 of the New Civil Code on human relations establish the civil liability of the accused in this particular case independently of his criminal liability, despite his death before final conviction.

Article 19 directs that "every person must, in the exercise of his right and the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." The accused in the case at bar, by executing a second sale of the property which he already sold to the offended party, certainly did not observe honesty nor good faith, much less act with justice to the complaining witness.

Article 20 provides that "every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same." Certainly in deliberately selling again the same property to another person after he had sold the same to the offended party, the accused willfully or intentionally inflicted damage on the offended party, to whom indemnification therefor shall be made by him.

Article 21 states that "any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy, shall compensate the latter for the damage." It is patent that the act of the accused in the case at bar in alienating the same property which he already sold to the complainant, has violated all the rules of morality and good customs. Hence, he should be answerable to the offended party for the injury thus caused to him. Even if the moral wrong or injury does not constitute a violation of the statute, his civil liability under this article subsists (*Velayo vs. Shell Co.*, 100 Phil. 186). In the instant case, the wrong committed

by the accused is a breach of statutory as well as moral law, for there was deceit perpetrated on both the first and second vendees.

Consequently, while the death of the accused herein extinguished his criminal liability including fine, his civil liability based on the laws of human relations aforecited, remains.

Moreover, in "People of the Philippines, plaintiff and appellee. Nicolas Manuel, aggrieved or offended party-appellant, vs. Celestino Coloma, defendant and appellee," WE ruled that a criminal case may be reopened in order that the offended party can prove damages, although the decision therein convicting the accused had already become final and made no award of damages upon the ground that the information failed to allege any damages suffered; or the aggrieved party may appeal from an unsatisfactory award, as long as he did not reserve his right to file a separate civil action or has not waived his right to civil indemnity arising from the offense (105 Phil. 1287-1288; see also People vs. Rodriguez, 97 Phil. 349; People vs. Ursua, 60 Phil. 252; People vs. Celorico, 67 Phil. 185). In said Coloma case, Chief Justice, then Associate Justice, Roberto Concepcion, stated the rationale, thus:

"x x x every criminal case involves two actions, one criminal and another civil. From a judgment convicting the accused, two appeals may, accordingly, be taken. The accused may seek a review of said judgment, as regards both actions. Similarly, the complainant may appeal, with respect only to the civil action, either because the lower court has refused or failed to award damages, or because the award made is unsatisfactory to him. The right of either to appeal or not to appeal, in the event of conviction of the accused, is not dependent upon the other. The complainant may not, by expressing his conformity to the award of damages, prevent the accused from appealing, either from said award or, from the judgment of conviction. Neither may the accused, by acquiescing thereto, prevent the complainant from appealing therefrom, insofar as the civil liability is concerned. Upon the other hand, an appeal by the complainant, with respect to the aforementioned civil liability, would not impose upon the accused the legal obligation to appeal. He may choose not to appeal from the judgment of conviction, and, hence, the same may become final and executory, and may be fully executed, without prejudice to the aforementioned appeal taken by the complainant. In the language of this Court, in People vs. Ursua (60 Phil. 252, 254-255):

'The right of the injured persons in an offense to take part in its prosecution and to appeal for purposes of the civil liability of the accused (section 107, General Orders No. 58), necessarily implies that such right is protected in the same manner as the right of the accused to his defense. If the accused has the right within fifteen days to appeal from the judgment of conviction, the offended party should have the right within the same period to appeal from so much of the judgment as is prejudicial to him, and his appeal should not be made dependent on that of the accused. If upon appeal by the accused the court altogether loses its jurisdiction over the case, the offended party would be deprived of his right to appeal, although fifteen days have not yet elapsed from the date of the judgment, if the accused files his appeal before the expiration of said period. Therefore, if the court, independently of the appeal of the accused, has jurisdiction, within fifteen days from the date of the judgment, to allow the appeal of the offended party, it also has jurisdiction to pass upon the motion for reconsideration filed by the private prosecution in connection with the civil liability of the accused.'

"The case of People vs. Rodriguez (decided on July 29, 1955) is, even more, in point. The facts therein were: On March 24, 1952, Rodriguez was convicted of abduction with consent and sentenced accordingly. Thereupon, he commenced to serve the sentence. Three days later, the complainant moved that he be ordered to indemnify her. On April 5, the court granted this motion and ordered Rodriguez to pay her P1,000.00, with subsidiary imprisonment in case of insolvency. On May 7, the corresponding writ of execution was issued, and on May 12, the sheriff levied upon a house of the defendant, who, subsequently, asked the court to set aside its order on April 5 and said writ of execution. This petition was granted on August 9 upon the ground that the judgment rendered on March 24, 1952 became final on that date, he having immediately begun to serve his sentence, and that, hence,

the court had no jurisdiction to enter the order of April 5, granting indemnity to the offended party. In a unanimous decision, penned by Mr. Justice Padilla, we held, after quoting from *People vs. Ursua*, supra, that the trial court had retained its jurisdiction over the civil phase of the case, despite service of the penalty meted out to the accused, and that no error had been committed, in the order of April 5, 1952, in ordering him to indemnify the offended party in the amount of P1,000.00, before the expiration of the fifteen (15) days period provided for the appeal.

"Referring now to the issue raised by the appeal of complainant herein, it will be recalled that, in order to justify the absence of an award for damages in its decision of conviction, the lower court said therein that 'the information failed to allege any damages suffered.' This was the very reason by the lower court in *People vs. Celorico* (67 Phil. 185, 186), in refusing to allow the prosecution to prove damages, which was eventually declared erroneous, for the reason that:

"Every person criminally liable for a felony is also civilly liable (Art. 100, Revised Penal Code). The civil liability of the accused is determined in the criminal action, unless the injured party expressly waives such liability or reserves his right to have civil damages determined in a separate action. (Art. 112, Spanish Code of Criminal Procedure in relation to sec. 107 of General Orders No. 58; vide, also *U.S. vs. Heery*, 25 Phil. 600, and cases therein cited.) Here, there was no waiver or reservation of civil liability, and evidence should have been allowed to establish the extent of the injuries by the offended party and to 'recover the same, if proven.' (Italics supplied.)"

To repeat, the offended parties in the *Coloma* and *Rodriguez* cases were allowed to appeal despite the fact that the decision of conviction had already become final and had been executed, either because the accused had fully served the sentence or was then serving sentence; and the names of the offended parties were included in the title of said cases.

In the case at bar, there is greater reason to allow the appeal to proceed with respect to the civil liability of the accused as the judgment of conviction did not become final by reason of the appeal of the accused, who died during the pendency of the appeal.

Finally, Section 21 of Rule 3 of the Revised Rules of Court, provides that if defendant dies before the final judgment in the Court of First Instance, an action for the recovery of money, debt or interest thereon "shall be dismissed to be prosecuted in the manner specially provided in these rules," meaning the claim should be presented in the testate or intestate proceedings over the estate of the deceased. The implication is that if death supervenes after the judgment of the Court of First Instance but pending appeal in the appellate court, the action for the recovery of money may not be dismissed. In such case, the name of the offended party shall be included in the title of the case as plaintiff-appellee and the legal representatives or the heirs of the deceased accused should be substituted as defendants-appellants.

Consequently, the appeal in the case at bar should proceed with respect to the right of petitioner herein as offended party in the criminal case to recover the civil liability in the amount of P25,000.00 awarded by the trial court.

WHEREFORE, THE CHALLENGED ORDER DATED FEBRUARY 20, 1975 IS HEREBY SET ASIDE, THE APPEAL SHALL PROCEED WITH RESPECT TO THE ISSUE OF CIVIL LIABILITY OF THE ACCUSED APPELLANT, AND THE TITLE OF THE CASE SHALL INCLUDE THE NAME OF PETITIONER AS OFFENDED PARTY OR PLAINTIFF-APPELLEE AND THE LEGAL REPRESENTATIVE OR HEIRS OF THE DECEASED ACCUSED SUBSTITUTED AS DEFENDANTS-APPELLANTS. NO COSTS.

Teehankee, Aquino, and Martin, JJ., concur.

Muñoz Palma, J., concurs in the result.

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