

LAURA CORPUS, AND THE MINORS RICARDO, TERESITA AND CORAZON, ALL SURNAMED MARCIA AND REPRESENTED BY THEIR MOTHER LAURA CORPUS, PLAINTIFFS-APPELLANTS, VS. FELARDO PAJE AND THE VIC...

G.R. No. L-26737. July 31, 1969

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

This is a direct appeal on questions of law from an order of the Court of First Instance of Rizal dismissing the complaint in Civil Case No. 6880 of that court.

On December 23, 1956, a passenger bus of the Victory Liner Transportation Co., Inc. driven by Felardo Paje, collided within the municipality of Lubao, Pampanga, with a jeep driven by Clemente Marcia, resulting in the latter's death and in physical injuries to two other persons,

An information for homicide and double serious physical injuries through reckless imprudence was filed against Felardo Paje in the Court of First Instance of Pampanga. The heirs of Clemente Marcia reserved their right to institute a separate civil action for damages. On November 7, 1960, the accused, Felardo Paje, was found guilty and convicted of the crime charged in the information. Said defendant appealed the judgment of conviction to the Court of Appeals. On November 21, 1961, while defendant's appeal was pending decision in the Court of Appeals, Clemente Marcia's heirs, namely, his widow, Laura Corpus, and their minor children, instituted in the Court of First Instance of Rizal a separate civil action (Civil Case No. 6880) for damages based upon the criminal act of reckless imprudence against Felardo Paje and the Victory Liner Transportation Co., Inc., defendants, praying that said defendants be ordered to pay jointly and severally the amounts of damages claimed by the plaintiffs. On November 9, 1962, the Court of Appeals promulgated its decision in the appeal of Felardo Paje reversing the appealed judgment and acquitting the appellant after finding that the reckless imprudence charged against him did not exist, and that the collision was a case of pure accident.

On December 29, 1962, the defendants filed in the civil action a motion to dismiss on the ground that the action was barred by the acquittal by the Court of Appeals of the defendant Felardo Paje in the criminal action. The motion was denied.

At the pre-trial of the civil case, the defendants asked the court to rule on their special defense that plaintiffs' cause of action based upon a quasi-delict had prescribed considering that the complaint was brought four years and eleven months after the collision and that according to Article 1144 of the Civil Code an action based upon a quasi-delict must be instituted within four years. The lower court, in its order of May 31, 1966, dismissed the complaint on the ground that plaintiffs' action was based upon a quasi-delict and that it had prescribed. The plaintiffs appealed direct to this Court on questions of law from the order dismissing the complaint.

Plaintiffs-appellants contend that the lower court erred in dismissing the complaint. The contention is

unmeritorious in view of the following considerations.

(1) The acquittal of the defendant Felardo Paje by the Court of Appeals in the criminal action on the ground that the reckless imprudence or criminal negligence charged against him did not exist and that the collision was a case of pure accident, was a bar to the civil action for damages for the death of Clemente Marcia, which action was based upon the same criminal negligence of which the defendant Felardo Paje was acquitted in the criminal action. In the celebrated case of *Chantangco vs. Abaroa*, which was an appeal from the Philippine Supreme Court to the United States Supreme Court, 218 U.S. 476; 54 L. Ed., 1116; 40 Phil., 1056, Mr. Justice Lurton, speaking for the Supreme Court of the United States, said:

"It is true that one of the plaintiffs in the present case reserved whatever right he may have had to bring a civil action. This was obviously of no avail, inasmuch as there resulted a judgment for the defendant, and the plain inference from the foregoing is that a verdict of acquittal must carry with it exemption from civil responsibility."

Criminal negligence, that is, reckless imprudence, is not one of the three crimes mentioned in Article 33 of the Civil Code which authorizes the institution of an independent civil action, that is, of an entirely separate and distinct civil action for damages, which shall proceed independently of the criminal prosecution and shall be proved only by a preponderance of evidence. Said article mentions only the crimes of defamation, fraud (*estafa*) and physical injuries. Although in the case of *Dyogi, et al. vs. Yatco, et al.*, G. R. No. L-9623, January 22, 1957, this Court held that the term "physical injuries" used in article 33 of the Civil Code includes homicide,^[1] it is to be borne in mind that the charge against Felardo Paje was for reckless imprudence resulting in homicide, and not for homicide and physical injuries. In the case of *People vs. Buan*, G.R. No. L-25366, March 29, 1968, Mr. Justice J.B.L. Reyes, speaking for the Supreme Court, said that the "offense of criminal negligence under article 365 of the Revised Penal Code lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes thus the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty; it does not qualify the substance of the offense." It is, therefore, clear that the charge against Felardo Paje was not for homicide but for reckless imprudence, that is, criminal negligence resulting in homicide (death of Clemente Marcia) and double physical injuries suffered by two other persons. As reckless imprudence or criminal negligence is not one of the three crimes mentioned in Article 33 of the Civil Code, there is no independent civil action for damages that may be instituted in connection with said offense. Hence, homicide through reckless imprudence or criminal negligence comes under the general rule that the acquittal of the defendant in the criminal action is a bar to his civil liability based upon the same criminal act notwithstanding that the injured party reserved^[2] his right to institute a separate civil action (*Chantangco vs. Abaroa*, *supra*). In the language of the Rules of Court (Rule 111, Sec. 3), the extinction of the criminal action by acquittal of the defendant on the ground that the criminal act charged against him did not exist, necessarily extinguished also the civil action for damages based upon the same act.

(2) Assuming, *arguendo*, that the civil action for damages for the death of Clemente Marcia was based upon a quasi-delict,^[3] the trial court's finding that on that basis the action had prescribed is correct. An action upon a quasi-delict must be instituted within four (4) years (Article 1146, Civil Code). The four-year prescriptive period began to run from the day the quasi-delict was committed, or from December 23, 1956, and the running of the said period was not interrupted by the institution of the criminal action for reckless imprudence. (*Paulan vs. Sarabia*, G.R. No. L-10542, July 31, 1958.)

PREMISES CONSIDERED, the order appealed from is affirmed, without special pronouncement as to costs.

Concepcion, C.J., Castro, Fernando, and Barredo, JJ., concur.

Dizon, Makalintal, Sanchez, and Teehankee, JJ., in the result.

Reyes, J.B.L., and Zaldivar, JJ., did not take part.

[1] This and the following footnotes express my opinion on certain controversial articles of the New Civil Code, which was drafted when I was a member of the Code Commission.

(a) The holding in the case of *Dyogi, et al. vs. Yatco, etc., et al.*, supra, that the term "physical injuries" used in Article 33 of the Civil Code includes homicide or murder, is contrary to the letter and spirit of the law. I recall that when the draft of what is now Article 33 of the New Civil Code was presented for deliberation by Code Commission Chairman Dean Jorge C. Bocobo, a great civilian, before the Code Commission (then composed of, besides Chairman Bocobo, Professor Guillermo B. Guevarra, Dean Pedro Y. Ylagan, and Dean Francisco R. Capistrano, members), said Chairman made, in substance, the following remarks: In America the injured party in crime has the initiative, through his lawyer he immediately files a civil action for damages against the offender. In the Philippines the offended party depends upon the fiscal to demand in the criminal action the damages he has suffered. I think it is about time to educate our people the American way by giving the injured party in crime the initiative to go to court through his lawyer to demand damages, and for this purpose we should give him an independent civil action for damages. Let us begin with just three crimes which are of common occurrence, namely, defamation, fraud, and physical injuries. Depending upon the success of the experiment, when the new Civil Code may come up for revision about fifty (50) or one hundred (100) years from now, it will be up to our successors in the Code Commission to add more crimes to the three already mentioned or make the provision comprise all crimes causing damages to the injured party. This civil action, as in America, should proceed independently of the criminal action and should be proved only by preponderance of evidence. Defamation may be oral or written. Fraud comprises all forms of estafa. Physical injuries is to be understood in its ordinary meaning and does not include homicide or murder because where physical injuries result in homicide or murder, the reason for the law (namely, to give the injured party personally the initiative to demand damages by an independent civil action) ceases, for the reason that a dead person can no longer personally, through his lawyer, institute an independent civil action for damages. (All the members of the Code Commission agreed with the Chairman and the draft of the article was unanimously approved.)

In the Revised Penal Code, the crime of homicide is treated in Title Eight (Crimes Against Persons), Chapter One (Destruction of Life), while the crime of physical injuries is separately treated in Chapter Two of the same title. This shows that the two crimes are distinct from each other, that physical injuries is not included in homicide.

(b) Article 32 (drafted by Code Commission Chairman Bocobo) of the Civil Code is also intended, insofar as it provides for an independent civil action, to educate the Filipino the American way by going immediately to the courts to file a civil action for damages in vindication of his constitutional rights and liberties enumerated in the article in case of violation of any of them.

(c) Article 34 of the Civil Code, insofar as it authorizes the institution of an independent civil action, is also intended for the same purpose.

[2] (a) The crime of reckless imprudence resulting in the death of Clemente Marcia and physical injuries to two other persons not being one of the three crimes mentioned in Article 33 of the Civil Code which authorizes the institution of an independent civil action for damages, the heirs of the deceased correctly reserved their right to institute a separate civil action for damages against the bus driver, Felardo Paje, who stood charged with the crime of homicide and double physical injuries through reckless imprudence. The reservation was in accordance with what is now Rule 111, Section 1, of the Rules of Court, which provides:

"Institution of criminal and civil actions. - When a criminal action is instituted, the civil action for recovery of a 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."

The civil action for damages against Felardo Paje was prematurely instituted in view of Rule 111, Section 3, which, in part, provides:

"Criminal and civil actions arising from the same offense may be instituted separately, but after the criminal action has been commenced the civil action can not be instituted until final judgment has been rendered in the criminal action."

At any rate, said civil action was correctly suspended in the Court of First Instance until final judgment by the Court of Appeals in the criminal action was rendered pursuant to Section of said Rule 111 which provides that:

"After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted, and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered."

The decision of the Court of Appeals acquitting the appellant Felardo Paje of the crime of reckless imprudence charged against him on the ground that it did not exist, extinguished the civil action for damages filed against him, in accordance with Section 3(c) of Rule 111 which states that:

"Extinction of the penal action does not carry with it ex-tinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. * * *."

This rule finds support in the celebrated case of *Chantangco vs. Abaroa*, supra.

(b) Section 2 of Rule 111 which provides:

"Independent civil action. - In the cases provided for in Articles 31, 32, 33, 34 and 2177 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, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

is defective and imperfect in many ways:

First. Article 31 of the Civil Code does not provide for an independent civil action. An independent civil action is an action that is based upon the same criminal act as in the case of Articles 32, 33 and 34. When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action being based upon an obligation not arising from the criminal act but from a different source, is not an independent civil action within the meaning of Articles 32, 33 and 34. Article 31 (drafted by Code Commissioner Capistrano) which provides that:

"When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter."

states a self-explanatory rule different and distinct from that laid down in Articles 32, 33 and 34. For example: A is prosecuted for the crime of reckless imprudence resulting in homi-cide. The heirs of the deceased institute a civil action for damages against him based upon quasi-delict, under Article 2177 of the Civil Code, which is separate and distinct from criminal negligence punished as a crime or delict under the Revised Penal Code. Quasi-delict is culpa aquiliana and is separate and distinct from criminal negligence, which is a delict. The distinction is made in Article 2177 itself which in part provides that:

"Responsibility for fault or negligence under the pre-ceding article is entirely separate and distinct from the civil

liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant."

Code Commission Chairman Bocobo, who drafted Article 2177 of the New Civil Code, took the distinction from modern authorities in civil law. Accordingly, the report of the Code Commission on the Project of Civil Code makes reference to the sources of the distinction, thus:

"The foregoing provision though at first sight startling, is not so novel or extraordinary when we consider the exact nature of criminal and civil negligence. The former is a violation of the criminal law, while the latter is a distinct and independent negligence, which is the 'culpa aquiliana' or quasi-delict, of ancient origin, having always had its own foundation and individuality, separate from criminal negligence. Such distinction between criminal negligence and 'culpa extra-contractual' or 'quasi-delito' has been sustained by decisions of the Supreme Court of Spain and maintained as clear, sound, and perfectly tenable by Maura, an outstanding Spanish jurist.

"Therefore, under the proposed article 2177, acquittal from an accusation of criminal negligence, whether on reasonable doubt or not, shall not be a bar to a subsequent civil action, not for civil liability arising from criminal negligence, but for damages due to a 'quasi-delict' or 'culpa aquiliana.' But said article forestalls a double recovery." (Capistrano, Civil Code of the Philippines, With Comments and Annotations, Vol. 4, p. 470.)

Second. As above explained, Article 2177 of the Civil Code does not provide for an independent civil action in crime. The article precisely distinguishes quasi-delict or civil negligence from criminal negligence (reckless imprudence) and authorizes the institution of a civil action for damages based upon quasi-delict and not upon criminal negligence, which is a delict and not a quasi-delict. In accordance with Article 31, the civil action for damages based upon quasi-delict may proceed independently of the criminal proceeding for criminal negligence and regardless of the result of the latter. Hence, even if the defendant is acquitted in the criminal action of the charge of reckless imprudence resulting in homicide, the civil action for damages for the death of the deceased based upon quasi-delict may proceed to judgment.

Third. The proviso in Section 2 of Rule 111, with reference to the correctly cited Articles 32, 33 and 34 of the Civil Code, is contrary to the letter and spirit of the said articles, for these articles were drafted for the purpose explained in footnote one and are intended to constitute as exceptions to the general rule stated in what is now Section 1 of Rule 111. The proviso, which is procedural, may also be regarded as an unauthorized amendment of substantive law, Articles 32, 33 and 34 of the Civil Code, which do not provide for the reservation required in the proviso.

In view of all the foregoing, Section 2 of Rule 111 should be amended so as to read as follows:

"Independent civil action. - 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 before or after the criminal action is instituted. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence. Notice shall be given in the criminal action of the institution of the civil action or of the intention to institute the same."

[3] The prayer of the complaint in the civil action asked that the defendants, Felardo Paje and the Victory Liner Transportation Co., Inc., be ordered to pay jointly and severally the damages claimed by plaintiffs. This prayer, considering the action as one upon a quasi-delict, is not in accordance with law. In quasi-delict, according to Article 2180 of the Civil Code, the obligation to pay damages is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. The article then, in part, continues: "The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their

employees in the service of the branches in which the latter are employed or on the occasion of their functions." Hence, the bus driver, Felardo Paje, was responsible for the quasi-delict, he being, in the language of the American law, a tort-feasor. Likewise, the bus operator, Victory Liner Transportation Co., Inc., was liable for the quasi-delict of its bus driver. This liability is not solidary but primary, with right to full reimbursement pursuant to Article 2181, which provides:

"Whoever pays for the damages caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim."

The prayer of the complaint, based upon a quasi-delict, against the bus driver, Felardo Paje, and the bus operator, Victory Liner Transportation Co., Inc., should have been that the plaintiffs recover the damages claimed from either of them. The bus operator defendant Victory Liner Transportation Co., Inc., could have filed a third-party complaint against the defendant bus driver, pleading its right for reimbursement under Article 2181.

When is the bus operator solidarily liable with the bus driver? Article 2184 of the Civil Code provides:

"In motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have by the use of due diligence, prevented the misfortune. * * *.

"If the owner was not in the motor vehicle, the provisions of article 2180 are applicable."

This article (drafted by Code Commission Chairman Bocobo) is intended to cover only the owners of private motor vehicles for private use. It is not generally applicable to motor vehicles for public use and convenience because the operator thereof, usually a corporation, cannot in the very nature of things, be in the motor vehicle at the time of the mishap. However, if the manager of the bus company was in the bus at the time of the mishap, Article 2184 may be applied by analogy.

In the case of *De Leon Brokerage Co., Inc. vs. Court of Appeals, et al.*, G.R. No. L-15247, February 28, 1962, it was held that in quasi-delict, the bus operator is solidarily liable with the bus driver in view of article 2194 of the Civil Code which provides:

"The responsibility of two or more persons who are liable for a quasi-delict is solidary."

This article (drafted by Code Commissioner Capistrano) merely restates the basic rule in American law that joint tort-feasors are jointly and severally liable for the tort. In the case of a quasi-delict committed by bus driver, he alone is the tort-feasor; the bus operator is not a joint tort-feasor. For this reason the liability of the bus operator is not governed by Article 2194 but by Article 2180.

Joint tort-feasor in American law are the same as co-authors or co-principals of a quasi-delict in the civil law, and it is only to them that Article 2194 is applicable. A bus operator is not a co-author or co-principal of the tort committed by its bus driver; hence, it cannot be made solidarily liable with the bus driver under Article 2180, with right to full reimbursement under Article 2181.

To make the bus operator solidarily liable with the driver would diminish its right to full reimbursement from the driver because in passive solidarity, the solidary debtors share equally in the obligation (Article 1208, Civil Code). Consequently, if the bus operator's liability were solidary, in the event of full payment by it of the obligation, its right to reimbursement from the bus driver would only be of one-half of the obligation because its share of the solidary obligation would be one-half. This would result in reducing by one-half its right to full reimbursement under Article 2181.

The prayer for solidary liability in the complaint against the defendants Felardo Paje and the Victory Liner Transportation Co., Inc., considering the complaint as based upon criminal negligence, is likewise not in

accordance with law. In crime committed by an employee within the scope of his duties, the employer's liability is subsidiary, not solidary, in accordance with Article 103 of the Revised Penal Code which provides:

"ART. 103. Subsidiary civil liability of other persons. - The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, ap-prentices, or employees in the discharge of their duties."

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