

ISMAEL GULA, FOR HIMSELF AND AS GUARDIAN AD LITEM OF THE MINORS, NAMELY: ISMAEL GULA, JR., LILIA GULA, JACINTO GULA, MILAGROSA GULA ACCOMPANIED BY HER HUSBAND MAMERTO BOLIVAR, DO...

G.R. No. L-40308. September 28, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

On September 19, 1968, Esperanza Gula, wife of plain-tiff-appellant, Ismael Gula, was run over and killed by a cargo truck driven by defendant-appellee, Pedro Dianala, and owned by defendant, Ponciano Rejon, on the public highway inside Bago City, Negros Occidental.

On September 23, 1968, the City Fiscal of Bago City filed Criminal Case No. 3092 against the driver, Pedro Dianala, for Homicide thru Reckless Imprudence before the Bago City Court. Plaintiffs-appellants participated in the criminal case through their private prosecutors. No reservation to file a separate civil action was made. The defense was that while the accused was driving in front of the old market of Bago City, suddenly, an old woman (the deceased), crossed the street from the right side and his truck bumped her even as he swerved to the left to avoid her.

On October 13, 1969, the Bago City Court acquitted the accused on reasonable doubt upon the following findings:

"13. The most important and paramount factor in cases of this nature is to evidently prove the reckless-ness, negligence, and imprudence of the driver, but in the present case such paramount factors were not proven by the prosecution."

"14. The Court, therefore, is inclined to believe that the speed of the truck was only 15 km. per hour taking into consideration the fact that it was passing thru two street corners where traffic is always brisk and where north and south bound vehicles usually pass."

"15. Had there been even one witness only who had testified that the accused was recklessly, imprudently and negligently driving at the time of the accident the Court will have no hesitancy in convicting him, but in the present case the two witnesses against the accused contradicted their testimonies by averring that they saw the accident only when they heard people shout in the street."

"16. The evidence thus adduced inevitably led the Court to seriously doubt the veracity of the two principal witnesses' testimonies, hence the Court has no other alternative than acquit him of the present charge." (Italics supplied).

On September 9, 1972, plaintiffs-appellants sued for damages, based on quasi delict, against defendants-appellees in the then Court of First Instance of Negros Occidental. Forthrightly, the latter filed a Motion to Dismiss contending that "the damages claimed has been waived, abandoned, and extinguished; that the Court has no jurisdiction over the nature or subject of the suit; and that the present action is barred by prior judgment."

Plaintiffs-appellants filed an Opposition to the Motion to Dismiss arguing that the civil liability of defendant driver based on his tortious acts is different and distinct from his civil liability based on criminal negligence, and that his civil liability based on tort is likewise separate and distinct from the civil liability of the defendant-owner of the vehicle, as provided for in the Civil Code.

On August 22, 1972, the Court dismissed the case in an Order, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, the motion for dismissal of this case on the ground that the present action is barred by a prior judgment and which judgment also indicates a lack of cause of action against the defendant Ponciano Rejon, appears to be well founded and therefore said motion is granted. This case is hereby dismissed, without pronouncement however as to costs.

So Ordered."

Plaintiffs-appellants then filed a Motion for Reconsideration claiming that a reservation in a criminal case for purposes of filing a civil action based on quasi-delict is not necessary; that judgment in a criminal case cannot be considered as res judicata constituting a bar to an action based on tort; and that the acquittal of an employee in a criminal case does not preclude a civil action for damages against the employer based on culpa aquiliana. The defendants filed an Opposition to the Motion for Reconsideration, and on November 14, 1972, the Court issued an Order denying reconsideration.

Plaintiffs-appellants appealed to the then Court of Appeals, but the Appellate Court certified the case to this instance because it involves only a question of law, to wit: whether or not the Trial Court erred in dismissing the complaint for damages on the ground of res judicata and lack of cause of action as against the defendant-owner.

The question has since been squarely resolved in *Elcano vs. Hill*[1], which has enunciated the following doctrine:

"x x x a separate civil action lies against the offender in a criminal act whether or not he is criminal-ly prosecuted and found guilty or acquitted, provided that the offended party is not allowed, if he is also actually charged criminally, to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary. In other words, the extinction of civil liability referred to in Par. (c) of Sec. 3, Rule 111, refer exclusively to civil liability founded on Article 100 of the Revised Penal Code; whereas the civil liability for the same act considered as a quasi-delict only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused. x x x"

Since the cause of action of plaintiffs-appellants is based on culpa aquiliana and not culpa criminal, thus precluding the application of the exception in Sec. 3(c) of Rule 111,[2] and the fact that it can be inferred from the criminal case that defendant-accused, Pedro Dianala, was acquitted on reasonable doubt because of dearth of evidence and lack of veracity of the two principal witnesses, the doctrine in *Mendoza vs. Arrieta*, 91 SCRA 113, will not find application. In that case, the acquittal was not based on reasonable doubt and the cause of action was based on culpa criminal, for which reason we held the suit for damages barred.

Article 31 of the Civil Code thus finds full application and there is no reason why plaintiffs-appellants' suit for damages may not prosper:

"Art. 31. 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."

Neither can the principle of res judicata apply as against defendant-employer for the simple reason that he was not included as a co-accused in the criminal case.[3] The cause of action against him is based on Article 2180 of the

Civil Code[4] and is predicated on his primary liability thereunder and not on his secondary liability under Article 103 of the Revised Penal Code.

Nor was there need for plaintiffs-appellants to have filed a reservation for a separate civil action inasmuch as the civil action contemplated in the case at bar is not derived from the criminal liability but one based on culpa aquiliana under the Civil Code.[5]

WHEREFORE, the Order of the former Court of First Instance of Negros Occidental dismissing the suit for damages, dated August 22, 1975, and its subsequent Order denying plaintiffs-appellants' Motion for Reconsideration, dated November 14, 1972, are hereby REVERSED and SET ASIDE, and the Regional Trial Court corresponding thereto is directed to reinstate and hear the case on the merits.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

[1] 77 SCRA 98 (1977).

[2] "Rule 111

Prosecution of Civil Action

"Sec. 3. Other civil actions arising from offenses. - x x x

(c) Extinction of the penal action does not carry with it extinction 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. In other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damage suffered."

[3] Tan vs. Standard Vacuum Oil Co., et al., 91 Phil. 672 (1952); Manio, et al. vs. Gaddi, et al., 44 SCRA 198 (1972).

[4] "Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x

"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.

x x x

"The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."

[5] Manio, et al., Gaddi, et al., 44 SCRA 198, 204 (1972).

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