

**FRANCISCO BONITE, CANDIDO BONITE, VENECIA BONITE,  
CONSTANCIO BONITE, ERNESTO BONITE, ANGELINA BONITE, MARIA  
BONITE AND JUANITA BONITE, FOR HERSELF AND FOR HER MINOR  
CHILDREN NAM...**

*G.R. No. L-33772. June 20, 1988*

Ponente: PADILLA, J.

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**PADILLA, J.:**

Petition for review on certiorari of the order of the Court of First Instance of Misamis Occidental, Branch III, dated 25 February 1971,[1] in Civil Case No. 2806 filed by herein petitioners against private respondent, dismissing the complaint for damages, and the order dated 27 March 1971[2] denying petitioners' motion for reconsideration of aforesaid order. The factual background of the case is as follows:

At about 2:00 P.M. of 24 September 1968, while Florencio Bonite was working as "caminero" of the Bureau of Public Highways in Barrio Vicente Alto (Dagatan), Oroquieta City, he was hit by a truck driven by private respondent, as a result of which, Bonite died on that same day. Consequently, a criminal complaint for Homicide through Reckless Imprudence was filed by the surviving heirs of the deceased (now petitioners) against the respondent Abamonga, with the City Court of Oroquieta City, docketed as Criminal Case No. 9328. Petitioners through their counsel Atty. Alberto Dulalas, as private prosecutor, actively participated in the prosecution of the criminal case against the accused.[3]

After trial on the merits, a decision was rendered by the court in the criminal case, acquitting the accused Abamonga for failure of the prosecution to prove his guilt beyond reasonable doubt.[4]

On 28 December 1970, petitioners filed an action for recovery of damages against the same accused on account of the death of Florencio Bonite, with the Court of First Instance of Misamis Occidental, 16th Judicial District, Branch III, docketed as Civil Case No. 2806. In an order dated 25 February 1971, the court a quo dismissed the complaint for damages. The pertinent portion of the order[5] reads as follows:

"x x x, the court believes and so holds that as the plaintiffs did not reserve the right to file an independent civil action, and the further fact that the plaintiffs have been represented by a private prosecutor in the prosecution of the criminal case, the action presently filed by the plaintiffs is already res adjudicata and therefore, dismisses the complaint without pronouncement as to costs.

SO ORDERED."

Petitioners moved for reconsideration of the aforesaid order, but the same was denied:[6] hence, this petition for review.

The main issue to be resolved in this petition is whether or not an independent civil action for damages, under Article 29 of the Civil Code, is deemed barred by petitioners' failure in the criminal action to make a reservation to file a separate civil action and by their active participation in the prosecution of such criminal action.

When the accused in a criminal case is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may still be instituted against him, and only a preponderance of evidence is required to hold the accused liable. The civil liability is not extinguished by acquittal of the accused, where the acquittal is based on reasonable doubt.

Article 29, Civil Code, provides thus —

"When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

"If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground."

In the instant case, the criminal complaint for homicide through reckless imprudence was dismissed on the ground that the guilt of the accused (herein private respondent) was not proved beyond reasonable doubt. Clearly, herein petitioners have the right to file an independent civil action for damages, the acquittal of the accused in the criminal case notwithstanding.

In addition to anchoring their right to bring a separate civil action for damages under the express provisions of Article 29 of the Civil Code, petitioners may base such separate civil action for damages on Article 2176 of the Civil Code.[7] Acquittal of the accused from a charge of criminal negligence, whether on reasonable doubt or not, is not a bar to a subsequent civil action for recovery of civil liability, arising not from criminal negligence, but from a quasi-delict or culpa aquiliana. It has been held that Article 2176 of the Civil Code, in referring to "fault or negligence" covers acts "not punishable by law" as well as acts that may be criminal in character, whether intentional and voluntary or negligent. Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed to recover damages on both scores (delict and quasi -delict).,[8]

In regard to private respondent's claim that the specific provision applicable in the case at bar is Article 33 of the Civil Code[9] (and not Article 29), because the latter is not applicable to criminal offenses proceeding from a tortious act, we find the same to be devoid of merit. It is important to note that Article 29 of the Civil Code does not state that the right to file an independent civil action for damages (under said article) can be availed of only in offenses not arising from a tortious act. The only requisite set forth therein for the exercise of the right to file a civil action for damages is that the accused must have been acquitted in the criminal action based on reasonable doubt. It is a well known main in statutory construction that where the law does not distinguish, the courts should not distinguish.[10]

Moreover, Article 33 of the Civil Code assumes a defamation, fraud, or physical injuries[11] intentionally committed. The death of the deceased in the case at bar was alleged to be the result of criminal negligence, i.e., not inflicted with malice. Criminal negligence under Article 365 of the Revised Penal Code consists in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. Thus, the law penalizes the negligent or reckless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty.[12]

As reckless imprudence or criminal negligence is not mentioned in Article 33, no independent civil action for damages arising from reckless imprudence or criminal negligence may be instituted under said article.[13] It is, therefore, not applicable to the case at bar.

Coming now to private respondent's contention that the enforcement of the right to file an action for damages under Article 29, should be subject to the procedure outlined in Rule 111 of the former Rules on Criminal Procedure, i.e., that a reservation be made in the criminal case of the right to institute an independent civil action, we find such contention to be without merit. Article 29 of the Civil Code does not include any such reservation requirement. It allows an action for damages against the accused upon the latter's acquittal in the criminal case based upon reasonable doubt.

Besides, the requirement in Section 2 of Rule 111 of the former Rules on Criminal Procedure that there be a reservation in the criminal case of the right to institute an independent civil action, has been declared as not in accordance with law. It is regarded as an unauthorized amendment to the substantive law, i.e. the Civil Code, which does not require such a reservation.[14] In fact, the reservation of the right to file an independent civil action has been deleted from Section 2, Rule 111 of the 1985 Rules on Criminal Procedure, in consonance with the decisions of this Court declaring such requirement of a reservation as ineffective.

Lastly, that petitioners actively participated in the prosecution of the criminal case does not bar them from filing an independent and separate civil action for damages under Article 29 of the Civil Code. The civil action based on criminal liability and a civil action under Article 29 are two separate and independent actions.

WHEREFORE, the Orders dated 25 February 1971 and 27 March 1971 of the respondent court are hereby REVERSED and SET ASIDE, and a new one is entered reinstating the complaint in Civil Case No. 2806 and directing said court to proceed with the trial of the case. Costs against private respondent.

**SO ORDERED.**

Yap, C. J. (Chairman), Paras, and Sarmiento, JJ., concur.

Melencio-Herrera, J., see separate opinion.

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[1] Penned by Judge Mariano Zosa, Rollo, pp. 43 to 43-(5).

[2] Rollo, p. 43 - Annex B.

[3] Rollo, p. 43.

[4] Id.

[5] id.

[6] Rollo, p. 43 - Annex B.

[7] Article 2176 of the Civil Code states:

ART. 2176. Whoever by act or omission causes damage to another,<sup>1</sup> there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[8] *Virata v. Ochoa*, 81 SCRA 472; *Elcano v. Hill*, 77 SCRA 98.

[9] Article 33 of the Civil Code states:

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.

- [10] Robles v. Zambales Chromite Mining Co., G.R. No. 12560, 30 September 1958, 104 Phil. 688.
- [11] The term "physical injuries" used in Article 33 of the Civil Code includes homicide (Carandang vs. Santiago, 97 Phil. 04).
- [12] People v. Buan, 22 SCRA 1383.
- [13] Marcia v. CA, 120 SCRA 193; Corpus v. Paje, 23 SCRA 1062.
- [14] Garcia v. Florida. 52 SCRA 420; Mendoza v. Arriela. 91 SCRA 13.

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**SEPARATE OPINION:****MELENCIO-HERRERA, J.,**

I concur but, in my opinion, the following distinction should be made. If there has been active participation in the prosecution of a criminal case by the offended party, the civil action arising from the crime is deemed to have been also brought in the criminal case. Consequently, a judgment finding the accused guilty and granting him damages is binding upon the offended party and he may not thereafter file a separate civil action under Article 33 of the Civil Code (Roa vs. de la Cruz, 107 Phil. 8). This is so because the civil action for damages which Article 33 allows to be instituted is ex delicto, this being manifest from the provision which uses the expressions "criminal action" and "criminal prosecution" (Madeja vs. Hon. Caro, 51183, December 21, 1983, 126 SCRA 293). However, where the accused is acquitted on the ground of reasonable doubt, as in this case, the civil action for damages for the same act may be instituted under Article 29 of the Civil Code, notwithstanding the fact that the offended party had actively participated in the criminal action.

Incidentally, the rule in Corpus vs. Paje (L-26737, July 21, 1969. 28 SCRA 1062), which states that reckless imprudence is not included in Article 33 of the Civil Code, was deemed not an authoritative doctrine because, of eleven Justices, only nine took part in the Decision and four of them merely concurred in the result (Madeja vs. Caro, et al. supra). In that case involving a criminal prosecution for Reckless Imprudence resulting in Homicide, it was held that the civil action may proceed independently of the criminal action, following Article 33 of the Civil Code.

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