

CANDIDA VIRATA, TOMAS VIRATA, MANOLITO VIRATA, EDERLINDA VIRATA, NAPOLEON VIRATA, ARACELY VIRATA, ZENAIDA VIRATA, LUZMINDA VIRATA, PACITA VIRATA, AND EVANGELINA VIRATA, PETITION...

G.R. No. L-46179. January 31, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an appeal by certiorari from the order of the Court of First Instance of Cavite, Branch V, in Civil Case No. B-134 granting the motion of the defendants to dismiss the complaint on the ground that there is another action pending between the same parties for the same cause.[1]

The record shows that on September 24, 1975 one Arsenio Virata died as a result of having been bumped while walking along Taft Avenue, Pasay City by a passenger jeepney driven by Maximo Borilla and registered in the name of Victorio Ochoa; that Borilla is the employee-driver of Ochoa; that for the death of Arsenio Virata, a criminal action for homicide through reckless imprudence was instituted on September 25, 1975 against Maximo Borilla in the Court of First Instance of Rizal at Pasay City, docketed as Criminal Case No. 3162-P of said court; that at the hearing of the said criminal case on December 12, 1975, Atty. Julio Francisco, the private prosecutor, made a reservation to file a separate civil action for damages against the driver on his criminal liability; that on February 19, 1976 Atty. Julio Francisco filed a motion in said criminal case to withdraw the reservation to file a separate civil action; that thereafter, the private prosecutor actively participated in the trial and presented evidence on the damages; that on June 29, 1976 the heirs of Arsenio Virata again reserved their right to institute a separate civil action; that on July 19, 1977 the heirs of Arsenio Virata, petitioners herein, commenced Civil Case No. B-134 in the Court of First Instance of Cavite at Bacoor, Branch V, for damages based on quasi-delict against the driver Maximo Borilla and the registered owner of the jeepney, Victorio Ochoa; that on August 13, 1976 the defendants, private respondents herein, filed a motion to dismiss on the ground that there is another action, Criminal Case No. 3162-P, pending between the same parties for the same cause; that on September 8, 1976 the Court of First Instance of Rizal at Pasay City rendered a decision in Criminal Case No. 3612-P acquitting the accused, Maximo Borilla, on the ground that he caused an injury by mere accident; and that on January 31, 1977, the Court of First Instance of Cavite at Bacoor granted the motion to dismiss Civil Case No. B-134 for damages.[2]

The principal issue is whether or not the petitioners, heirs of the deceased Arsenio Virata, can prosecute an action for damages based on quasi-delict against Maximo Borilla and Victorio Ochoa, driver and owner, respectively of the passenger jeepney that bumped Arsenio Virata.

It is settled that in negligence cases the aggrieved parties may choose between an action under the Revised Penal Code or for quasi-delict under Article 2176 of the Civil Code of the Philippines. What is prohibited by Article 2177 of the Civil Code of the Philippines is to recover twice for the same negligent act.

The Supreme Court has held that:

"According to the Code Commission: 'The foregoing provision (Article 2177) 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 '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 decision 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.'" (Report of the Code Commission, p. 162.)

Although, again, this Article 2177 does seem to literally refer to only acts of negligence, the same argument of Justice Bocobo about construction that upholds 'the spirit that giveth life' rather than that which is literal that killeth the intent of the lawmaker should be observed in applying the same. And considering that the preliminary chapter on human relations of the new Civil Code definitely establishes the separability and independence of liability in a civil action for acts criminal in character (under Articles 29 to 32) from the civil responsibility arising from crime fixed by Article 100 of the Revised Penal Code, and, in a sense, the Rules of Court, under Sections 2 and 3(c), Rule 111, contemplate also the same separability, it is 'more congruent with the spirit of law, equity and justice, and more in harmony with modern progress', to borrow the felicitous relevant language in *Rakes vs. Atlantic Gulf and Pacific Co.*, 7 Phil. 359, to hold, as We do hold, that Article 2176, where it refers to 'fault or negligence,' covers not only acts 'not punishable by law' but also acts 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, if he is actually charged also 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. (e) of Section 3, Rule 111, refers 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. Briefly stated, We here hold, in reiteration of *Garcia*, that culpa aquiliana includes voluntary and negligent acts which may be punishable by law." [3]

The petitioners are not seeking to recover twice for the same negligent act. Before Criminal Case No. 3162-P was decided, they manifested in said criminal case that they were filing a separate civil action for damages against the owner and driver of the passenger jeepney based on quasi-delict. The acquittal of the driver, Maximo Borilla, of the crime charged in Criminal Case No. 3162-P is not a bar to the prosecution of Civil Case No. B-134 for damages based on quasi-delict. The source of the obligation sought to be enforced in Civil Case No. B-134 is quasi-delict, not an act or omission punishable by law. Under Article 1157 of the Civil Code of the Philippines, quasi-delict and an act or omission punishable by law are two different sources of obligation.

Moreover, for the petitioners to prevail in the action for damages, Civil Case No. B-134, they have only to establish their cause of action by preponderance of the evidence.

WHEREFORE, the order of dismissal appealed from is hereby set aside and Civil Case No. B-134 is reinstated and remanded to the lower court for further proceedings, with costs against the private respondents.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Guerrero, JJ., concur.

[1] Annex "A", Rollo, pp. 38-42.

[2] Comment of Respondents, Rollo, pp. 48-51.

[3] Elcano vs. Hill, 77 SCRA 98, 105-107.

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