

**JOSE GARRIDO, PLAINTIFF-APPELLEE, VS. CAYETANO ENRIQUEZ, AND SIMEONA JAVIER, DEFENDANTS-APPELLANTS.***G.R. No. L-23833. October 31, 1969*

Ponente: MAKALINTAL, J.

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This is an appeal from the decision of the Court of First Instance of Manila "sentencing the defendants, jointly and severally, to pay the plaintiff the sum of P1,800.00 with interest at the legal rate from February 20, 1959, until the obligation is fully paid plus the sum of P100.00 as attorney's fees, and the cost of the suit." Originally elevated to the Court of Appeals, this case was certified to us since no question of fact is involved.

On September 20, 1947 defendant Simeona Javier received from the plaintiff two pieces of jewelry under the terms and conditions set forth in a receipt executed by the former, which reads as follows:

"He recibido de Don Jose Garrido un broche de oro con un brillante de medio kilate y un anillo de caballero con un brillante solitario del tamaño de un kilate, ambas alhajas de la propiedad de dicho Señor Jose Garrido, para ser vendidas dichas alhajas por el valor de mil ochocientos pesos (P1,800.00). Entendiéndose que dichas alhajas o la cantidad arriba estipulada de mil ochocientos (P1,800.00) seran entregadas a dicho Señor Jose Garrido en su residencia 55 Alejandro VI Sampaloc, Manila en o antes del primero de Octubre de 1947.

The said defendant failed to return the two pieces of jewelry described in the above receipt or to pay the agreed value thereof in the sum of P1,800.00 in spite of repeated demands made on her. As a consequence, she was charged with estafa in an information filed on December 16, 1947 in the Court of First Instance of Manila. On March 19, 1948 while the criminal case was pending in the trial court, she wrote to the plaintiff requesting him to allow her pay the sum of P1,800.00 by installments at the rate of P50.00 each, payable on the 5th and 20th days of each month beginning April 5, 1948. Acceding to the request, the plaintiff endorsed the letter to the City Fiscal and informed him that he was not interposing any objection to the suspension of the hearing of the case in order to give the defendant another chance. Upon motion of the City Fiscal, the case was provisionally dismissed with the written consent of the defendant on March 22, 1948.

Evidently the said defendant failed to pay the installments due as proposed by her in her letter of March 19, 1948. At the instance of the plaintiff, the Assistant City Fiscal moved to set aside the order of provisional dismissal dated March 22, 1948, to revive the case, and to set the same for trial. The trial court granted the motion on January 12, 1950. However, notwithstanding the lapse of time since the order of arrest was issued, the authorities failed to apprehend the accused, thereby causing delay in the hearing of the case. In order that said case might not appear pending for an indefinite period, the trial court on July 6, 1950 "ordered that the above-entitled case be sent to the files without prejudice on the part of the Fiscal to prosecute the same as soon as the defendant is apprehended."

When the whereabouts of defendant Simeona Javier was discovered sometime during the first week of January 1959, the City Fiscal filed a petition for the issuance of an alias warrant of arrest, which was granted by the trial

court on January 14, 1959. Having been arrested, the said defendant posted a bail bond for her release. On February 18, 1959, prior to the hearing of the criminal case, the plaintiff filed therein a reservation of the right to institute a separate civil action against the defendant and on February 20, 1959 he filed the instant case for the recovery of the value of the two pieces of jewelry in the sum of P1,800.00. Being the husband of defendant Simeona Jaiver, Cayetano Enriquez was joined as party-defendant. On March 9, 1959 the defendants filed their answer with counterclaim, alleging, among other defenses, that the cause of action of the plaintiff had already prescribed.

In the meantime, on June 9, 1959 the trial of the criminal case proceeded. In view of the failure of the prosecution "to prove the guilt of the accused beyond reasonable doubt," Simeona Javier was acquitted on October 2, 1959.

On the basis of the transcript in the criminal case as well as other evidence submitted by the parties, the lower court, on March 21, 1962, rendered the decision now subject of this appeal.

The only issue raised by the appellants is prescription. They contend that since the cause of action accrued on October 1, 1947, the date when appellant Simeona Javier was supposed to return the two pieces of jewelry or pay the value thereof under the terms of the receipt which she executed on September 20, 1947, the ten-year prescriptive period had already lapsed when the appellee filed his complaint in the lower court on February 20, 1959.

The contention is without merit. Section 1, Rule 111 of the Revised Rules of Court[1] provides as follows:

"Section 1. Institution of Criminal And Civil Actions. - When a criminal action is instituted, the civil action for recovery of 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.

Consequently, when the criminal action was filed against Simeona Javier on December 16, 1947 the civil action for recovery of her civil liability was deemed instituted with it. The appellee did not then reserve his right to institute the civil action separately; he did so on a much later date - February 18, 1959. In the interim the civil aspect of the case was kept alive by its pendency in the criminal action, from the time it was revived on January 12, 1950, up to the time the reservation was made.

Actually, therefore, the only periods available for purposes of prescription were from October 1, 1947, when the cause of action accrued, up to December 16 of the same year, when the criminal action for estafa was filed; then from March 22, 1948, when the said action was provisionally dismissed, up to January 12, 1950, when it was revived by order of the Court; and lastly, from February 18, 1959, when the appellee expressly reserved his right to institute a separate civil action, to February 20, 1959, when the complaint in said action was filed. The aggregate duration thereof is less than the prescriptive period.

Wherefore, the judgment appealed from is hereby affirmed, with costs against the appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.  
Sanchez, J., did not take part.

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[1] Formerly Section 1(a), Rule 107.

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