

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO BAYOTAS Y CORDOVA, ACCUSED-APPELLANT.

G.R. No. 102007. September 02, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

In Criminal Case No. C-3217 filed before Branch 16, RTC Roxas City, Rogelio Bayotas y Cordova was charged with Rape and eventually convicted thereof on June 19, 1991 in a decision penned by Judge Manuel E. Autajay. Pending appeal of his conviction, Bayotas died on February 4, 1992 at the National Bilibid Hospital due to cardio respiratory arrest secondary to hepatic encephalopathy secondary to hepato carcinoma gastric malingering. Consequently, the Supreme Court in its Resolution of May 20, 1992 dismissed the criminal aspect of the appeal. However, it required the Solicitor General to file its comment with regard to Bayotas' civil liability arising from his commission of the offense charged.

In his comment, the Solicitor General expressed his view that the death of accused-appellant did not extinguish his civil liability as a result of his commission of the offense charged. The Solicitor General, relying on the case of *People v. Sendaydiego*[1] insists that the appeal should still be resolved for the purpose of reviewing his conviction by the lower court on which the civil liability is based.

Counsel for the accused-appellant, on the other hand, opposed the view of the Solicitor General arguing that the death of the accused while judgment of conviction is pending appeal extinguishes both his criminal and civil penalties. In support of his position, said counsel invoked the ruling of the Court of Appeals in *People v. Castillo and Ocfemia*[2] which held that the civil obligation in a criminal case takes root in the criminal liability and, therefore, civil liability is extinguished if accused should die before final judgment is rendered.

We are thus confronted with a single issue: Does death of the accused pending appeal of his conviction extinguish his civil liability?

In the aforementioned case of *People v. Castillo*, this issue was settled in the affirmative. This same issue posed therein was phrased thus: Does the death of Alfredo Castillo affect both his criminal responsibility and his civil liability as a consequence of the alleged crime?

It resolved this issue thru the following disquisition:

"Article 89 of the Revised Penal Code is the controlling statute. It reads, in part:

‘ART. 89. How criminal liability is totally extinguished. - Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to the pecuniary penalties liability therefor is extinguished only when the death of the offender occurs before final judgment;’

With reference to Castillo's criminal liability, there is no question. The law is plain. Statutory construction is unnecessary. Said liability is extinguished.

The civil liability, however, poses a problem. Such liability is extinguished only when the death of the offender occurs before final judgment. Saddled upon us is the task of ascertaining the legal import of the term 'final judgment.' Is it final judgment as contradistinguished from an interlocutory order? Or, is it a judgment which is final and executory?

We go to the genesis of the law. The legal precept contained in Article 89 of the Revised Penal Code heretofore transcribed is lifted from Article 132 of the Spanish El Código Penal de 1870 which, in part, recites:

‘La responsabilidad penal se extingue.

1. Por la muerte del reo en cuanto a las penas personales siempre, y respecto a las pecuniarias, solo cuando a su fallecimiento no hubiere recaído sentencia firme.’

x x x x x x x x

The code of 1870 x x x it will be observed employs the term ‘sentencia firme.’ What is ‘sentencia firme’ under the old statute?

XXVIII Enciclopedia Jurídica Española, p. 473, furnishes the ready answer: It says:

‘SENTENCIA FIRME. La sentencia que adquiere la fuerza de las definitivas por no haberse utilizado por las partes litigantes recurso alguno contra ella dentro de los terminos y plazos legales concedidos al efecto.’

‘Sentencia firme’ really should be understood as one which is definite. Because, it is only when judgment is such that, as Medina y Marañon puts it, the crime is confirmed – ‘en condena determinada;’ or, in the words of Groizard, the guilt of the accused becomes – ‘una verdad legal.’ Prior thereto, should the accused die, according to Viada, ‘no hay legalmente, en tal caso, ni reo, ni delito, ni responsabilidad criminal de ninguna clase.’ And, as Judge Kapunan well explained, when a defendant dies before judgment becomes executory, ‘there cannot be any determination by final judgment whether or not the felony upon which the civil action might arise exists,’ for the simple reason that ‘there is no party defendant.’ (I Kapunan, Revised Penal Code, Annotated, p. 421. Senator Francisco holds the same view. Francisco, Revised Penal Code, Book One, 2nd ed., pp. 859-860)

The legal import of the term ‘final judgment’ is similarly reflected in the Revised Penal Code. Articles 72 and 78 of that legal body mention the term ‘final judgment’ in the sense that it is already enforceable. This also brings to mind Section 7, Rule 116 of the Rules of Court which states that a judgment in a criminal case becomes final ‘after the lapse of the period for perfecting an appeal or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal.’

By fair intendment, the legal precepts and opinions here collected funnel down to one positive conclusion: The term final judgment employed in the Revised Penal Code means judgment beyond recall. Really, as long as a judgment has not become executory, it cannot be truthfully said that defendant is definitely guilty of the felony charged against him.

Not that the meaning thus given to final judgment is without reason. For where, as in this case, the right to institute a separate civil action is not reserved, the decision to be rendered must, of necessity, cover ‘both the criminal and the civil aspects of the case.’ People vs. Yusico (November 9, 1942), 2 O.G., No. 100, p. 964. See also: People vs. Moll, 68 Phil., 626, 634; Francisco, Criminal Procedure, 1958 ed., Vol. I, pp. 234, 236. Correctly, Judge Kapunan observed that as ‘the civil action is based solely on the felony committed and of which the offender might be found guilty, the death of the offender extinguishes the civil liability.’ I Kapunan, Revised Penal Code, Annotated, supra.

Here is the situation obtaining in the present case: Castillo’s criminal liability is out. His civil liability is sought to be enforced by reason of that criminal liability. But then, if we dismiss, as we must, the criminal action and

let the civil aspect remain, we will be faced with the anomalous situation whereby we will be called upon to clamp civil liability in a case where the source thereof - criminal liability - does not exist. And, as was well stated in *Bautista, et al. vs. Estrella, et al.*, CA-G.R. No. 19226-R, September 1, 1958, 'no party can be found and held criminally liable in a civil suit,' which solely would remain if we are to divorce it from the criminal proceeding."

This ruling of the Court of Appeals in the *Castillo* case[3] was adopted by the Supreme Court in the cases of *People of the Philippines v. Bonifacio Alison, et al.*,[4] *People of the Philippines v. Jaime Jose, et al.*[5] and *People of the Philippines v. Satorre*[6] by dismissing the appeal in view of the death of the accused pending appeal of said cases.

As held by then Supreme Court Justice Fernando in the *Alison* case:

"The death of accused-appellant Bonifacio Alison having been established, and considering that there is as yet no final judgment in view of the pendency of the appeal, the criminal and civil liability of the said accused-appellant Alison was extinguished by his death (Art. 89, Revised Penal Code; Reyes' Criminal Law, 1971 Rev. Ed., p. 717, citing *People v. Castillo and Ofemia C.A.*, 56 O.G. 4045); consequently, the case against him should be dismissed."

On the other hand, this Court in the subsequent cases of *Buenaventura Belamala v. Marcelino Polinar*[7] and *Lamberto Torrijos v. The Honorable Court of Appeals*[8] ruled differently. In the former, the issue decided by this court was: Whether the civil liability of one accused of physical injuries who died before final judgment is extinguished by his demise to the extent of barring any claim therefor against his estate. It was the contention of the administrator-appellant therein that the death of the accused prior to final judgment extinguished all criminal and civil liabilities resulting from the offense, in view of Article 89, paragraph 1 of the Revised Penal Code. However, this court ruled therein:

"We see no merit in the plea that the civil liability has been extinguished, in view of the provisions of the Civil Code of the Philippines of 1950 (Rep. Act No. 386) that became operative eighteen years after the revised Penal Code. As pointed out by the Court below, Article 33 of the Civil Code establishes a civil action for damages on account of physical injuries, entirely separate and distinct from the criminal action.

'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.'

Assuming that for lack of express reservation, *Belamala's* civil action for damages was to be considered instituted together with the criminal action still, since both proceedings were terminated without final adjudication, the civil action of the offended party under Article 33 may yet be enforced separately."

In *Torrijos*, the Supreme Court held that:

"x x x x x x x x x x"

It should be stressed that the extinction of civil liability follows the extinction of the criminal liability under Article 89, only when the civil liability arises from the criminal act as its only basis. Stated differently, where the civil liability does not exist independently of the criminal responsibility, the extinction of the latter by death, ipso facto extinguishes the former, provided, of course, that death supervenes before final judgment. The said principle does not apply in instant case wherein the civil liability springs neither solely nor originally from the crime itself but from a civil contract of purchase and sale. (*Italics ours*)

x x x x x x x x x x."

In the above case, the court was convinced that the civil liability of the accused who was charged with estafa could likewise trace its genesis to Articles 19, 20 and 21 of the Civil Code since said accused had swindled the first and second vendees of the property subject matter of the contract of sale. It therefore concluded: "Consequently, while the death of the accused herein extinguished his criminal liability including fine, his civil liability based on the laws of human relations remains."

Thus it allowed the appeal to proceed with respect to the civil liability of the accused, notwithstanding the extinction of his criminal liability due to his death pending appeal of his conviction.

To further justify its decision to allow the civil liability to survive, the court relied on the following ratiocination: Since Section 21, Rule 3 of the Rules of Court[9] requires the dismissal of all money claims against the defendant whose death occurred prior to the final judgment of the Court of First Instance (CFI), then it can be inferred that actions for recovery of money may continue to be heard on appeal, when the death of the defendant supervenes after the CFI had rendered its judgment. In such case, explained this tribunal, "the name of the offended party shall be included in the title of the case as plaintiff-appellee and the legal representative or the heirs of the deceased-accused should be substituted as defendants-appellants."

It is, thus, evident that as jurisprudence evolved from Castillo to Torrijos, the rule established was that the survival of the civil liability depends on whether the same can be predicated on sources of obligations other than delict. Stated differently, the claim for civil liability is also extinguished together with the criminal action if it were solely based thereon, i.e., civil liability *ex delicto*.

However, the Supreme Court in *People v. Sendaydiego, et al.*[10] departed from this long-established principle of law. In this case, accused Sendaydiego was charged with and convicted by the lower court of malversation thru falsification of public documents. Sendaydiego's death supervened during the pendency of the appeal of his conviction.

This court in an unprecedented move resolved to dismiss Sendaydiego's appeal but only to the extent of his criminal liability. His civil liability was allowed to survive although it was clear that such claim thereon was exclusively dependent on the criminal action already extinguished. The legal import of such decision was for the court to continue exercising appellate jurisdiction over the entire appeal, passing upon the correctness of Sendaydiego's conviction despite dismissal of the criminal action, for the purpose of determining if he is civilly liable. In doing so, this Court issued a Resolution of July 8, 1977 stating thus:

"The claim of complainant Province of Pangasinan for the civil liability survived Sendaydiego because his death occurred after final judgment was rendered by the Court of First Instance of Pangasinan, which convicted him of three complex crimes of malversation through falsification and ordered him to indemnify the Province in the total sum of P61,048.23 (should be P57,048.23).

The civil action for the civil liability is deemed impliedly instituted with the criminal action in the absence of express waiver or its reservation in a separate action (Sec. 1, Rule 111 of the Rules of Court). The civil action for the civil liability is separate and distinct from the criminal action (*People and Manuel vs. Coloma*, 105 Phil. 1287; *Roa vs. De la Cruz*, 107 Phil. 8).

When the action is for the recovery of money and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in Rule 87 of the Rules of Court (Sec. 21, Rule 3 of the Rules of Court).

The implication is that, if the defendant dies after a money judgment had been rendered against him by the Court of First Instance, the action survives him. It may be continued on appeal (*Torrijos vs. Court of Appeals*, L-40336, October 24, 1975; 67 SCRA 394).

The accountable public officer may still be civilly liable for the funds improperly disbursed although he has no criminal liability (U.S. vs. Elvina, 24 Phil. 230; Philippine National Bank vs. Tugab, 66 Phil. 583).

In view of the foregoing, notwithstanding the dismissal of the appeal of the deceased Sendaydiego insofar as his criminal liability is concerned, the Court Resolved to continue exercising appellate jurisdiction over his possible civil liability for the money claims of the Province of Pangasinan arising from the alleged criminal acts complained of, as if no criminal case had been instituted against him, thus making applicable, in determining his civil liability, Article 30 of the Civil Code x x x and, for that purpose, his counsel is directed to inform this Court within ten (10) days of the names and addresses of the decedent's heirs or whether or not his estate is under administration and has a duly appointed judicial administrator. Said heirs or administrator will be substituted for the deceased insofar as the civil action for the civil liability is concerned (Secs. 16 and 17, Rule 3, Rules of Court)."

Succeeding cases^[11] raising the identical issue have maintained adherence to our ruling in Sendaydiego; in other words, they were a reaffirmance of our abandonment of the settled rule that a civil liability solely anchored on the criminal (civil liability *ex delicto*) is extinguished upon dismissal of the entire appeal due to the demise of the accused.

But was it judicious to have abandoned this old ruling? A re-examination of our decision in Sendaydiego impels us to revert to the old ruling.

To restate our resolution of July 8, 1977 in Sendaydiego: The resolution of the civil action impliedly instituted in the criminal action can proceed irrespective of the latter's extinction due to death of the accused pending appeal of his conviction, pursuant to Article 30 of the Civil Code and Section 21, Rule 3 of the Revised Rules of Court.

Article 30 of the Civil Code provides:

"When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of."

Clearly, the text of Article 30 could not possibly lend support to the ruling in Sendaydiego. Nowhere in its text is there a grant of authority to continue exercising appellate jurisdiction over the accused's civil liability *ex delicto* when his death supervenes during appeal. What Article 30 recognizes is an alternative and separate civil action which may be brought to demand civil liability arising from a criminal offense independently of any criminal action. In the event that no criminal proceedings are instituted during the pendency of said civil case, the quantum of evidence needed to prove the criminal act will have to be that which is compatible with civil liability and that is, preponderance of evidence and not proof of guilt beyond reasonable doubt. Citing or invoking Article 30 to justify the survival of the civil action despite extinction of the criminal would in effect merely beg the question of whether civil liability *ex delicto* survives upon extinction of the criminal action due to death of the accused during appeal of his conviction. This is because whether asserted in the criminal action or in a separate civil action, civil liability *ex delicto* is extinguished by the death of the accused while his conviction is on appeal. Article 89 of the Revised Penal Code is clear on this matter:

"Art. 89. How criminal liability is totally extinguished. - Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;

x x x x x x x x."

However, the ruling in Sendaydiego deviated from the expressed intent of Article 89. It allowed claims for civil

liability ex delicto to survive by ipso facto treating the civil action impliedly instituted with the criminal, as one filed under Article 30, as though no criminal proceedings had been filed but merely a separate civil action. This had the effect of converting such claims from one which is dependent on the outcome of the criminal action to an entirely new and separate one, the prosecution of which does not even necessitate the filing of criminal proceedings.[12] One would be hard put to pinpoint the statutory authority for such a transformation. It is to be borne in mind that in recovering civil liability ex delicto, the same has perforce to be determined in the criminal action, rooted as it is in the court's pronouncement of the guilt or innocence of the accused. This is but to render fealty to the intendment of Article 100 of the Revised Penal Code which provides that "every person criminally liable for a felony is also civilly liable." In such cases, extinction of the criminal action due to death of the accused pending appeal inevitably signifies the concomitant extinction of the civil liability. *Mors Omnia Solvi*. Death dissolves all things.

In sum, in pursuing recovery of civil liability arising from crime, the final determination of the criminal liability is a condition precedent to the prosecution of the civil action, such that when the criminal action is extinguished by the demise of accused-appellant pending appeal thereof, said civil action cannot survive. The claim for civil liability springs out of and is dependent upon facts which, if true, would constitute a crime. Such civil liability is an inevitable consequence of the criminal liability and is to be declared and enforced in the criminal proceeding. This is to be distinguished from that which is contemplated under Article 30 of the Civil Code which refers to the institution of a separate civil action that does not draw its life from a criminal proceeding. The Sendaydiego resolution of July 8, 1977, however, failed to take note of this fundamental distinction when it allowed the survival of the civil action for the recovery of civil liability ex delicto by treating the same as a separate civil action referred to under Article 30. Surely, it will take more than just a summary judicial pronouncement to authorize the conversion of said civil action to an independent one such as that contemplated under Article 30.

Ironically however, the main decision in Sendaydiego did not apply Article 30, the resolution of July 8, 1977 notwithstanding. Thus, it was held in the main decision:

"Sendaydiego's appeal will be resolved only for the purpose of showing his criminal liability which is the basis of the civil liability for which his estate would be liable." [13]

In other words, the Court, in resolving the issue of his civil liability, concomitantly made a determination on whether Sendaydiego, on the basis of evidenced adduced, was indeed guilty beyond reasonable doubt of committing the offense charged. Thus, it upheld Sendaydiego's conviction and pronounced the same as the source of his civil liability. Consequently, although Article 30 was not applied in the final determination of Sendaydiego's civil liability, there was a reopening of the criminal action already extinguished which served as basis for Sendaydiego's civil liability. We reiterate: Upon death of the accused pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for recovery of civil liability ex delicto is ipso facto extinguished, grounded as it is on the criminal.

Section 21, Rule 3 of the Rules of Court was also invoked to serve as another basis for the Sendaydiego resolution of July 8, 1977. In citing Sec. 21, Rule 3 of the Rules of Court, the Court made the inference that civil actions of the type involved in Sendaydiego consist of money claims, the recovery of which may be continued on appeal if defendant dies pending appeal of his conviction by holding his estate liable therefor. Hence, the Court's conclusion:

"'When the action is for the recovery of money' 'and the defendant dies before final judgment in the court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided' in Rule 87 of the Rules of Court (Sec. 21, Rule 3 of the Rules of Court).

The implication is that, if the defendant dies after a money judgment had been rendered against him by the Court of First Instance, the action survives him. It may be continued on appeal."

Sadly, reliance on this provision of law is misplaced. From the standpoint of procedural law, this course taken in Sendaydiego cannot be sanctioned. As correctly observed by Justice Regalado:

"x x x x x x x x.

I do not, however, agree with the justification advanced in both Torrijos and Sendaydiego which, relying on the provisions of Section 21, Rule 3 of the Rules of Court, drew the strained implication therefrom that where the civil liability instituted together with the criminal liabilities had already passed beyond the judgment of the then Court of First Instance (now the Regional Trial Court), the Court of Appeals can continue to exercise appellate jurisdiction thereover despite the extinguishment of the component criminal liability of the deceased. This pronouncement, which has been followed in the Court's judgments subsequent and consonant to Torrijos and Sendaydiego, should be set aside and abandoned as being clearly erroneous and unjustifiable.

Said Section 21 of Rule 3 is a rule of civil procedure in ordinary civil actions. There is neither authority nor justification for its application in criminal procedure to civil actions instituted together with and as part of criminal actions. Nor is there any authority in law for the summary conversion from the latter category of an ordinary civil action upon the death of the offender. x x x."

Moreover, the civil action impliedly instituted in a criminal proceeding for recovery of civil liability *ex delicto* can hardly be categorized as an ordinary money claim such as that referred to in Sec. 21, Rule 3 enforceable before the estate of the deceased accused.

Ordinary money claims referred to in Section 21, Rule 3 must be viewed in light of the provisions of Section 5, Rule 86 involving claims against the estate, which in Sendaydiego was held liable for Sendaydiego's civil liability. "What are contemplated in Section 21 of Rule 3, in relation to Section 5 of Rule 86,[14] are contractual money claims while the claims involved in civil liability *ex delicto* may include even the restitution of personal or real property." [15] Section 5, Rule 86 provides an exclusive enumeration of what claims may be filed against the estate. These are: funeral expenses, expenses for the last illness, judgments for money and claim arising from contracts, expressed or implied. It is clear that money claims arising from *delict* do not form part of this exclusive enumeration. Hence, there could be no legal basis in (1) treating a civil action *ex delicto* as an ordinary contractual money claim referred to in Section 21, Rule 3 of the Rules of Court and (2) allowing it to survive by filing a claim therefor before the estate of the deceased accused. Rather, it should be extinguished upon extinction of the criminal action engendered by the death of the accused pending finality of his conviction.

Accordingly, we rule: if the private offended party, upon extinction of the civil liability *ex delicto* desires to recover damages from the same act or omission complained of, he must subject to Section 1, Rule 111[16] (1985 Rules on Criminal Procedure as amended) file a separate civil action, this time predicated not on the felony previously charged but on other sources of obligation. The source of obligation upon which the separate civil action is premised determines against whom the same shall be enforced.

If the same act or omission complained of also arises from quasi-delict or may, by provision of law, result in an injury to person or property (real or personal), the separate civil action must be filed against the executor or administrator[17] of the estate of the accused pursuant to Sec. 1, Rule 87 of the Rules of Court:

"SECTION 1. Actions which may and which may not be brought against executor or administrator. – No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or

personal, may be commenced against him."

This is in consonance with our ruling in *Belamala*[18] where we held that, in recovering damages for injury to persons thru an independent civil action based on Article 33 of the Civil Code, the same must be filed against the executor or administrator of the estate of deceased accused and not against the estate under Sec. 5, Rule 86 because this rule explicitly limits the claim to those for funeral expenses, expenses for the last sickness of the decedent, judgment for money and claims arising from contract, express or implied. Contractual money claims, we stressed, refers only to purely personal obligations other than those which have their source in delict or tort.

Conversely, if the same act or omission complained of also arises from contract, the separate civil action must be filed against the estate of the accused, pursuant to Sec. 5, Rule 86 of the Rules of Court.

From this lengthy disquisition, we summarize our ruling herein:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability *ex delicto* in *sensu strictiore*."

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict.[19] Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law[20]

b) Contracts

c) Quasi-contracts

d) x x x x x x x x

e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155[21] of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[22]

Applying this set of rules to the case at bench, we hold that the death of appellant Bayotas extinguished his criminal liability and the civil liability based solely on the act complained of, i.e., rape. Consequently, the appeal is hereby dismissed without qualification.

WHEREFORE, the appeal of the late Rogelio Bayotas is DISMISSED with costs de oficio.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.
Cruz, J., on leave.

[1] Nos. L-33252, L-33253 and L-33254, 81 SCRA 120.

[2] No. 22211-R, November 4, 1959, 56 O.G. No. 23, p. 4045.

[3] *supra*.

[4] L-30612, April 27, 1972, 44 SCRA 523.

[5] No. L-28397, June 17, 1976, 71 SCRA 273.

[6] No. L-26282, August 27, 1976, 72 SCRA 439.

[7] No. L-24098, November 18, 1967, 21 SCRA 970.

[8] No. L-40336, October 24, 1975, 67 SCRA 394.

[9] "Section 21. Where claim does not survive. - When the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules."

[10] *Supra*.

[11] *People v. Badeo*, G.R. No. 72990, November 21, 1991, 204 SCRA 122; *Petralba v. Sandiganbayan*, G.R. No. 81337, August 16, 1991, 200 SCRA 644; *Dumlao v. Court of Appeals*, No. L-51625, October 5, 1988, 166 SCRA 269; *Rufo Mauricio Construction v. Intermediate Appellate Court*, No. L-75357, November 27, 1987, 155 SCRA 712; *People v. Salcedo*, No. L-48642, June 22, 1987, 151 SCRA 220; *People v. Pancho*, No. L-32507, November 4, 1986, 145 SCRA 323; *People v. Navoa*, No. L-67966, September 28, 1984, 132 SCRA 410; *People v. Asibar*, No. L-37255, October 23, 1982, 117 SCRA 856; *People v. Tirol*, No. L-30538, January 31, 1981, 102 SCRA 558; and *People v. Llamoso*, No. L-24866, July 13, 1979, 91 SCRA 364.

[12] Justice Barredo in his concurring opinion observed that:

"x x x this provision contemplates prosecution of the civil liability arising from a criminal offense without the need of any criminal proceeding to prove the commission of the crime as such, that is without having to prove the criminal liability of the defendant so long as his act causing damage or prejudice to the offended party is proven by preponderance of evidence."

[13] *Supra*, p. 134.

[14] SEC. 5. Claims which must be filed under the notice. If not filed, barred; exceptions. - All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead

of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value.

[15] As explained by J. Regalado in the deliberation of this case.

[16] SECTION 1. Institute of criminal and civil actions. - When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Article 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others.

The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

In no case may the offended party recover damages twice for the same act or omission of the accused.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate or exemplary damages, the filing fees for such civil action as provided in these Rules shall constitute a first lien on the judgment except in an award for actual damages.

In cases wherein the amount of damages, other than actual, is alleged in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial.

[17] Justice Regalado cited the Court's ruling in *Belamala* that since the damages sought, as a result of the felony committed amounts to injury to person or property, real or personal, the civil liability to be recovered must be claimed against the executor/administrator and not against the estate.

[18] *Ibid.*

[19] Justice Vitug who holds a similar view stated: "The civil liability may still be pursued in a separate civil action but it must be predicated on a source of obligation other than delict, except when by statutory provision an independent civil action is authorized such as, to exemplify, in the instance enumerated in Article 33 of the Civil Code." Justice Regalado stressed that:

"Conversely, such civil liability is not extinguished and survives the deceased offender where it also arises simultaneously from or exists as a consequence or by reason of a contract, as in *Torrijos*; or from law, as stated in *Torrijos* and in the concurring opinion in *Sendaydiego*, such as in reference to the Civil Code; or from a quasi-contract; or is authorized by law to be pursued in an independent civil action, as in *Belamala*. Indeed, without these exceptions, it would be unfair and inequitable to deprive the victim of his property or recovery of damages therefor, as would have been the fate of the second vendee in *Torrijos* or the provincial government in *Sendaydiego*."

[20] See Articles 19, 20, 21, 31, 32, 33, 34, 2176 of the Civil Code; see related provisions of the Rules on Criminal Procedure, as amended, particularly Sec. 1, Rule 111.

[21] ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a

written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

[22] As explained by J. Vitug in the deliberation of this case.

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