

ESPERO SALAO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND JOWIE APOLONIO, RESPONDENTS.

G.R. No. 107725. January 22, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals affirming the decision of the Regional Trial Court, Branch XIV, Malolos, Bulacan, which ordered petitioner Espero Salao to pay private respondent Jowie Apolonio P20,000.00 in actual damages, P10,000.00 in moral damages, and P15,000.00 in attorney's fees, as well as the appellate court's resolution of October 23, 1992 denying petitioner's motion for reconsideration.

This case originated from a complaint for damages filed by the private respondent for head injuries allegedly inflicted on him by petitioner on August 24, 1986. Private respondent, then a senior student at the Philippine Air Transport and Training Services, Inc., testified that on August 24, 1986, at around 6:30 p.m., he saw a friend's jeep parked outside the compound of the petitioner. Upon entering the compound he saw his friend having drinks with petitioner. He therefore decided to join them but petitioner saw him and drove him away for being a drug addict. As he was leaving petitioner hit him on the head with a gun and threatened him with further harm. Only the timely intervention of private respondent's brother, Gary Apolonio, and petitioner's mother, Lourdes Salao, saved him from further injuries in the hands of petitioner.[2]

Private respondent submitted in evidence a certification and receipts,[3] in support of his claim for damages. The expenses were incurred for an operation at Martinez Memorial Hospital which necessitated private respondent's confinement there from September 4 to 9, 1986.[4]

The private respondent's claim was corroborated by his brother, Gary Apolonio, who testified that while he was buying cigarettes from a store in front of petitioner's residence, he saw the latter hit his brother on the head with a gun, even as he accused him of teaching petitioner's son, Dennis, how to abuse drugs. Gary said he had to take his brother to the hospital because of injuries on the head caused by petitioner.[5]

Dr. Antonio Sarrosa testified that he operated on Jowie Apolonio for a fractured skull at the Martinez Memorial Hospital.[6]

On the other hand, petitioner claimed it was private respondent who tried to assault him and he only acted in self defense by hitting private respondent with his gun. According to petitioner, on August 24, 1986, between 5 and 6:30 p.m., he was surprised to see private respondent inside their yard having drinks with his nephew and the latter's friends. Because he told the group to stop drinking, private respondent resented his order and left. Later, petitioner's wife arrived and told him that private respondent was very angry and making threats against petitioner. As petitioner went to buy cigarettes at the store of his sister-in-law located also within the compound, private respondent shouted at him and hit him. Petitioner claimed that, in self defense, he pulled his gun and hit the private respondent with it. He asked the group to throw private respondent out of the compound.[7]

Petitioner also claimed he was going to file charges against private respondent but was persuaded not to do so by private respondent's mother because they were neighbors.[8] He said he counseled his sons not to keep private respondent in their company as he suspected him to be engaged in illegal acts and trying to make his sons do the same.[9]

The trial court found the private respondent's version of the incident to be more convincing than that of the petitioner which it found to be "uncorroborated and self-serving." [10] Accordingly, it rendered judgment against the petitioner. The trial court also denied petitioner's subsequent motion for reconsideration and new trial.

On appeal, the Court of Appeals affirmed the trial court's decision in toto and later denied petitioner's motion for reconsideration. Petitioner then brought this appeal questioning the award of damages and attorney's fees to private respondent. In his Reply to Private Respondent's Comment, he raised as additional ground the fact that in the criminal case for serious physical injuries and grave threats based on the same incident, the Municipal Trial Court of Obando, Bulacan found him "not guilty" and accordingly dismissed the case against him.

The appeal is without merit.

First. It is settled that issues not raised in the court a quo cannot be raised for the first time on appeal in this Court without violating the basic rules of fair play, justice and due process.[11] In the case at bar, petitioner appealed to the Court of Appeals, assigning two errors allegedly committed by the trial court, to wit:

- The Trial Court erred in taking cognizance of and hearing the case without plaintiff first availing the conciliation process provided by PD 1508; and
- The Trial Court erred in denying defendant-appellants motion for reconsideration and alternatively motion for new trial.

The propriety of such award of damages and the effect of petitioner's acquittal in the criminal cases were not questioned by petitioner. Consequently, he is barred from raising these questions for the first time in this appeal.

Second. Petitioner has not shown that the award of damages is not supported by evidence. For example, the award of P20,000.00 for actual damages is based on hospital bills and receipts for medicine which private respondent properly identified in court and formally offered in evidence.[12]

That private respondent is competent to testify regarding the authenticity and due execution of these documents is beyond doubt. Rule 132, §20 of the Revised Rules on Evidence provides:

§20. Proof of private document. - Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
- (b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

Needless to say, this factual finding of the trial court, especially because it was affirmed by the Court of Appeals and petitioner in this case has presented no rebutting evidence, is well nigh conclusive in this appeal.[13]

The award of P10,000.00 for moral damages is likewise appropriate. This being a case of physical injuries resulting from a crime or quasi-delict, moral damages may be awarded in the discretion of the court, as provided by Art. 2219(1) or (2) of the Civil Code. The evidence gives no ground for doubt that such discretion was properly and judiciously exercised by the trial court. The award is in fact consistent with the rule that moral damages are not intended to enrich the injured party, but to alleviate the moral suffering he has undergone by

reason of the defendant's culpable action.[14]

With regard to the award of P15,000.00 for attorney's fees, petitioner invokes rulings[15] that in view of the policy against placing a premium on the right to litigate, awards for attorney's fees must be based on findings of fact and law, expressed in the judgment of the trial court, which bring the case within the exceptions enumerated in Art. 2208 of the Civil Code. In this case, the award of attorney's fees is based on the trial court finding that because of this case private respondent was compelled to secure the services of counsel for P20,000.00.[16] (The actual award is for P15,000.00) Art. 2208(2) provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: . . .

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; . . .

Contrary to petitioner's contention, there was compliance by the trial court with the rule regarding attorney's fees.

Third. Nor is there merit in petitioner's claim that his acquittal in the criminal action for serious physical injuries constitutes a definitive finding that he has no civil liability to the private respondent. Petitioner invokes Rule 111, §2(b) of the Rules of Criminal Procedure which provides:

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.[17]

The civil liability referred to in this Rule is the civil liability arising from crime (ex delicto). It is not the civil liability for quasi delict which is allowed to be brought "separately and independently" of the criminal action by Art. 33 of the Civil Code.[18] The civil liability based on such cause of action 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.[19] Indeed, because the offended party does not intervene in the criminal prosecution, it is entirely possible that all the witnesses presented in the civil action may not have been presented by the public prosecutor in the criminal action with the result that the accused in the criminal case may be acquitted. This is what happened in the recent case of *Heirs of Guaring v. Court of Appeals*[20] where, because the only survivor in a motor car accident whose testimony proved to be pivotal in the civil case was not called to testify in the criminal prosecution of the driver of the other vehicle, the latter was acquitted on reasonable doubt.

We therefore hold that petitioner's acquittal in the criminal case for serious physical injuries and grave threats is not conclusive of his liability for damages to private respondent. This case is separate, distinct and independent of the criminal action and requires only a preponderance to prove it.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED, with costs against petitioner.

SO ORDERED.

Regalado, (Chairman), Puno, and Martinez, JJ., concur.

[1] Penned by Justice Artemon D. Luna and concurred in by Justices Jose A. R. Melo and Segundino G. Chua.

[2] TSN, pp. 3-6, Jan. 21 1988.

[3] Exhs. A to D and D-1 to D-13.

[4] TSN, pp. 6-14, Jan. 21 1988.

[5] TSN, pp. 3-6, Feb. 23, 1989.

[6] TSN, pp. 4-5, March 7, 1989.

[7] TSN, pp. 3-8, June 1, 1989.

[8] Ibid.

[9] Id., pp. 20-24.

[10] Record, p. 106.

[11] E.g., *Abella v. Court of Appeals*, 257 SCRA 482 (1996); *Lopez Realty, Inc. v. Court of Appeals*, 247 SCRA 183 (1995); *National Power Corp. v. Gutierrez*, 193 SCRA 1 (1991).

[12] Exhs. D, D-1 to D-13; TSN, pp. 11-14, Jan. 21, 1988.

[13] See *Catapusan v. Court of Appeals*, 264 SCRA 534 (1996); *People v. Flores*, 243 SCRA 374 (1995); *Lufthansa Airlines v. Court of Appeals*, 243 SCRA 600 (1995).

[14] *Philippine Airlines v. Court of Appeals*, 226 SCRA 423, 436 (1993).

[15] E.g., *Buan v. Camaganacan*, 16 SCRA 321 (1966); *Ramos v. Ramos*, 61 SCRA 284 (1974); *Mirasol . De la Cruz*, 84 SCRA 337 (1978).

[16] TSN, pp. 6-7, July 28, 1988.

[17] Rule 111, §2(b).

[18] This provision reads: “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.”

[19] *Heirs of Guaring v. Court of Appeals*, G.R. No. 108395, March 7, 1997; *Padilla v. Court of Appeals*, 129 SCRA 558 (1984); *Gula v. Dianala*, 132 SCRA 245 (1984); *Tayag v. Alcantara*, 98 SCRA 723 (1980).

[20] *Supra*.

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