

MARIA C. ROA, PLAINTIFF AND APPELLANT, VS. SEGUNDA DE LA CRUZ, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 13134. February 13, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Direct appeal to this Court from an order of the Court of First Instance of Pampanga dismissing plaintiff's complaint for damages upon defendants' motion on the ground that it was barred by prior judgment.

The facts are not disputed. In Criminal Case No. 1225 of the court below, Segunda de la Cruz, one of herein defendants, was charged with serious oral defamation. The offended party, herein plaintiff Maria C. Roa, did not waive the civil action or reserve her right to institute it, but intervened through counsel in the prosecution of the offense. After trial, the court on April 30, 1957 rendered a decision finding the defendant Segunda de la Cruz guilty of slight slander and sentencing her to pay a fine of P50.00. It, likewise, ordered her to suffer subsidiary imprisonment in case of insolvency, with costs, but made, no award as to damages.

About a month later, or on May 28, 1957, the offended party Maria C. Roa filed the present action in the same court below against Segunda de la Cruz and her husband Juan Aguas to recover moral and exemplary damages. The cause of action was based on the defamatory remarks which were the subject matter of the criminal action against Segunda de la Cruz. The aggregate amount sought to be recovered, including attorney's fees, was P28,000.00.

Instead of filing an answer, defendants moved for the dismissal of the complaint on the grounds that it was barred by prior judgment and that it did not state a cause of action. Sustaining the motion on the first ground, the court below dismissed the complaint. Plaintiff in due time filed a motion for reconsideration, but the same was, denied. Hence, this appeal.

Article 33 of the new Civil Code provides:

"Art. 33. In case 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."

Under the above provisions, independently of a criminal action for defamation, a civil suit for the recovery of damages arising therefrom may be brought by the injured party. It is apparent, however, from the use of the words "may be", that the institution of such suit is optional. (An Outline of Philippine Civil Law by J.B.L. Reyes and R. C. Puno, Vol. I, p. 54.) In other words, the civil liability arising from the crime charged may still be determined in the criminal proceedings if the offended party does not waive to have it adjudged, or does not reserve his right to institute a separate civil action against the defendant.[1] (Dionisio vs. Alvendia, 102 Phil., 443; 55 Off. Gaz., [25] 4633.)

In the instant case, it is not disputed that plaintiff Maria C. Roa—upon whose initiative the criminal action for

defamation against the defendant Segunda de la Cruz was filed—did not reserve her right to institute an independent civil action. Instead, she chose to intervene in the criminal proceedings as private prosecutor through counsel employed by her. Such intervention, as observed by the court below, could only be for the purpose of claiming damages or indemnity, and, not to secure the conviction and punishment of the accused therein as plaintiff now pretends. This must be so because an offended party in a criminal case may intervene, personally or by attorney, in the prosecution of the offense, only if he has not waived the civil action or expressly reserved his right to institute it, subject, always, to the direction and control of the prosecuting fiscal. (Section 15 in connection with section 4 of Rule 106, Rules of Court; *Lim Tek Goan vs. Yatco*, 94 Phil., 197.) The reason of the law in not permitting the offended party to intervene in the prosecution of the offense if he had waived or reserved his right to institute the civil action is that by such action her interest in the criminal case has disappeared. Its prosecution becomes the sole function of the public prosecutor. (*Gorospe, et al. vs. Gatmaitan, et al.*, 98 Phil., 600; 52 Off. Gaz., [5] 2526.) The rule, therefore, is that the right of intervention reserved to the injured party is for the sole purpose of enforcing the civil liability born of the criminal act and not of demanding punishment of the accused. (*People vs. Orais*, 65 Phil., 744; *People vs. Velez*, 77 Phil., 1026; *People vs. Flores et al.*, G. R. No. L-7528, December 18, 1957; see also *U. S. vs. Malabon*, 1 Phil., 731; *U. S. vs. Heery*, 25 Phil., 600.)

Plaintiff having elected to claim damages arising from the offense charged in the criminal case through her appearance or intervention as private prosecutor, we hold that the final judgment rendered therein constitutes a bar to the present civil action for damages based upon the same cause. (See *Tan vs. Standard Vacuum Oil Co., et al.*, 91 Phil., 672; 48 Off. Gaz., [7] 2745.)

"* * * A judgment upon the merit bars a subsequent suit upon the same cause, brought in a different form of action, and a party, therefore, cannot by varying the form of action or adopting a different method of presenting his case escape the operation of the principle that one and the same cause of action shall not be twice litigated." (*Francisco vs. Bias, et al.*, 93 Phil., 1.)

The fact that there is no claim or allegation of damages in the complaint or information is of no legal consequence. Every person criminally liable for a felony is also civilly liable. (Art. 100, Revised Penal Code.) It has, therefore, been held that even if the complaint or information is silent as to damages or the intention to prove and claim them, the offender is still liable for them, and the offended has the right to prove and claim for them in the criminal case, unless a waiver or the reservation of the civil action is made, (*People vs. Orazza*, 83 Phil., 633; 46 Off. Gaz. Supp. No. 11, p. 86.) As already stated, herein plaintiff not only did not waive or reserve her right to file a separate civil action but actually intervened in the criminal action.

The criminal court, it is true, did not enter a judgment for indemnity when it was duty bound to do so because of the intervention of the offended party. (See *People vs. Ursua*, 60 Phil., 253.) It would appear, however, that plaintiff failed to submit evidence of her damages. For such failure, she has only herself or her counsel to blame. Of course, she could have still filed a motion for reconsideration or an appeal to rectify the error. But this she failed to do, thus allowing the decision to become final and executory. Under the principle of *res judicata*, that judgment is conclusive as to future proceedings at law not only as to every matter which was offered and received to sustain the claim or demand, but as to any other admissible matter that could have been offered for that purpose. (*Miranda vs. Tiangco, et al.*, 96 Phil., 526; 51 Off. Gaz., [3] 1366; *NAMARCO vs. Judge Macadaeg*, 98 Phil., 185; 52 Off. Gaz. 182.)

In view of the foregoing, the order of dismissal appealed from is hereby affirmed. Without pronouncement as to costs.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Barrera, JJ., concur.

Paras, C. J., reserves vote.

[1] The case of Reyes vs. de la Rosa (52 Off. Gaz., [15] 6548; 99 Phil., 1013) cited by plaintiff in support of her contention that under Art. 33 of the New Civil Code the injured party is not required to reserve her right to institute the civil action, is not applicable to the present case. There was no showing in that case that the offended party intervened in the prosecution of the offense, and the amount of damages sought to be recovered was beyond the jurisdiction of the criminal court so that a reservation of the civil action was useless or unnecessary.

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