

GILBERT RILLON AND MARCELINA RILLON, PLAINTIFFS AND APPELLANTS, VS. FILEMON RILLON, DEFENDANT AND APPELLEE.

G.R. No. 13172. April 28, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a civil action instituted by the minor Gilbert Rillon, assisted by his mother, Marcelina Rillon, as his guardian ad litem, alleging the following facts:

"3. Que en o hacia el dia 10 de Septiembre de 1953, en el municipio de San Fernando, La Union, el demandado arriba mencionado valiendose de fuerza e intimidacion cohabito, yacio con la demandante Marcelina Rillon en contra o sin la voluntad de esta, sujetandola, y amenazandola; y como consecuencia de tal ayuntamiento y yacimiento carnal se concebio el citado menor Gilbert Rillon, siendo la demandante Marcelina Rillon y el demandado referido son de estado soltera y soltero respectivamente al tiempo de la citada concepcion capaces de contraer matrimonio sin ningun impedimento legall, y siguen en el mismo estado civil hasta la fecha.

"4. Que el citado menor Gilbert Rillon nacio en o hacia el dia 12 de Abril de 1954 en San Fernando, La Union, o sea despues de 180 dias, desde el yacimiento carnal o coito y dentro de 300 dias"

In other paragraphs of the complaint it is further alleged that the minor needs food for subsistence as he is living with his mother who has no means to support him; that his mother has asked the defendant to recognize the minor as a natural child and provide him with support, but these demands were refused by defendant; that the illegal act of defendant has caused the mother mental anguish, physical and mental inconvenience, degradation and shame, and has caused her moral damages in the amount of P5,000 and a right to support for the amount of P200; that the plaintiff mother was a student of the Normal School in Manila and needed only three months to complete her studies when her misfortune occurred and by reason of the acts of the defendant she has been caused actual damages in the amount of P30,000. In conclusion plaintiffs pray that the defendant be ordered to recognize the minor as his natural child, declaring the latter entitled to the rights of a natural child and to receive the sum of P20.00 a month for his maintenance and support, and that the defendant be further ordered to pay the plaintiff mother P30,000 as actual damages, P5,000 as moral damages and P200 as the expenses during the delivery and birth of the child.

In his answer the defendant denies the material allegations of the complaint and, by way of special defense, alleges that the minor is the son of plaintiff Marcelina Rillon by another man with whom she had carnal knowledge long before September 10, 1952; that her failure to finish her studies was due to her amorous relations with her "boy friend," her failure to pay her tuition fees and her poor and unsatisfactory scholastic record. By way of counterclaim he alleges that plaintiffs' complaint is false, fictitious and malicious, made in evident and wilful bad faith, and has caused the defendant moral damages in the amount of P40,000.

After the filing of a reply to defendant's counterclaim, defendant moved to dismiss the complaint or proceeding on the ground that the action is premature as there is no final judgment in a criminal case for rape against the

defendant; and that no cause of action has accrued against him. The court, Hon. Juan O. Reyes, presiding, dismissed the case without prejudice, in order that a decision may first be had on the prejudicial question, that is, whether or not defendant committed the crime as alleged in plaintiffs' complaint. Failing to obtain a reconsideration of this order, plaintiffs have appealed to us.

The legal question squarely presented is whether or not a civil action for recognition and support and for moral damages filed by an offended party, under allegations of facts constituting the crime of rape, can proceed even without the institution of a criminal action for rape against the defendant and a judgment thereon convicting him of such crime.

Under Article 135 of the Civil Code of Spain enforced in the islands prior to the adoption of the Civil Code of the Philippines, the civil responsibility that devolves upon a man accused of rape is to be governed by the provisions of the Penal Code. Article 135 of the former Civil Code is as follows:

"Art. 135. The father is obliged to acknowledge the natural child in the following cases:

- When there exists an indubitable writing of his in which he expressly acknowledges his paternity.
- When the child is in the continuous possession of the status of a natural child of the defendant father, justified by direct acts of the father himself or of his family.

In cases of rape, seduction, or abduction, the provisions of the Penal Code with regard to the acknowledgment of the issue ft shall be observed."

The provisions of the Revised Penal Code regarding the civil liability arising" from the crime of rape is embodied in Article 345, which is as follows:

"ART. 345. Civil liability of persons guilty of crimes against chastity.— Persons guilty of rape, seduction or abduction, shall also be sentenced:

- To indemnify the offended woman.
- To acknowledge the offspring, unless the law should prevent him from so doing".
- In every case to support the offspring.

* * *

To carry out the above provisions of the civil law, when General Orders No. 58 was issued, Section 107 thereof provided that a person claiming to be injured by the commission of an offense may take part in the prosecution thereof and may recover damages for the injury sustained, by reason of the said offense. Said Section 107 reads:

"SEC. 107. The privileges now secured by law to the person claiming to be injured by the commission of an offense to take part in the prosecution of the offense and to recover damages for tile injury sustained by reason of the same shall not be held to be abridged by the provisions of this order; but such person may appear and shall be heard either individually or by attorney at all stages of the case, and the court upon conviction of the accused may enter judgment against him for the damages occasioned by his wrongful act. It shall, however, be the duty of the promoter fiscal to direct the prosecution, subject to the right of the person injured to appeal from any decision of the court denying him a legal right."

The rights of an offended party to take part in the criminal case, as recognized in the above-quoted section, are denned in Article 742 and Article 114 of the Law of Criminal Procedure of Spain of 1882, as follows:

"In said judgment there shall be decided all questions arising in the trial, and the accused shall he condemned or acquitted not only of the principal offense and offenses connected therewith but also of any incidental

misdemeanors which may have been proven in the case; and the tribunal, at this stage of the proceedings, can not dismiss the case in respect to the accused persons who ought not to be condemned.

"All questions referring to civil liability and responsibility which arise in the trial shall also be decided in the said judgment." (Art. 712)

"When a criminal proceeding is instituted for the judicial, investigation of a crime or misdemeanor, no civil action arising from the same act can be prosecuted; but the same shall be suspended, if there be one, in whatever stage or state it may be found, until final sentence in the criminal proceeding is pronounced." (Art. 114).

Following the above provisions we have held:

"Instituting a criminal action only, it will be understood, brings the civil action as well, unless the damaged or prejudiced person waives the same or expressly reserves the right to institute the civil action after the termination of the criminal case, if there be any reason therefor. (Art. 112 of the Law of Criminal Procedure.)" (Almeida, et al. vs. Abaroa; 8 Phil. 178, 182.).

Therefore, all questions referring to civil liability and responsibility which arise in the trial (of the criminal case) shall be decided in the judgment in the criminal case.

Interpreting the above-quoted provisions, this Court further said in the case of Almeida, et al. vs. Abaroa, supra, that the Supreme Court of Spain, had decided that in any criminal case, the civil liability or responsibility must arise as a consequence of the criminal liability and that, therefore, if the accused has been acquitted of the crime, the court cannot order payment of indemnity therefor. To the same effect is the decision of this Court in U. S. vs. Heery, 25 Phil., 600:

"In this jurisdiction it is well settled that the civil liability of the accused must be determined in the criminal action, unless the injured party expressly waives such liability or reserves his right to have the civil damages determined in a separate action. Section 107 of General Orders No. 58 reads: * * *

"The procedure under the Spanish Code of Criminal Procedure for determining the civil liability of persons accused of crime, referred to in the above quoted section, has been discussed by this court a number of times.

"In Springer vs. Odlin (3 Phil. Hep., 344), it was said: 'By General Orders, No. 58, section 107, the privileges secured by the Spanish law to persons claiming to be injured by the commission of an offense to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same, are preserved and remain, in force, and it is therein expressly provided that the court, upon conviction of the accused, may enter judgment in favor of the injured person, against the defendant in the criminal case for the damage occasioned by the wrongful act:

* * *

"Almeida vs. Abaroa (8 Phil. Rep. 178), was a civil action for damages brought by the plaintiff against a person who had been previously acquitted on a criminal charge. It was held that his acquittal in the criminal action was a complete bar to a civil action for damages based upon the alleged criminal act of which the defendant had been accused. In the course of this decision it was said:

" 'Instituting a criminal action only, it will be understood, brings the civil action as well, unless the damaged or prejudiced person waives the same or expressly reserves the right to institute the civil action after the termination of the criminal case, if there be any reason therefor. (Art. 112 of the said Law of Criminal Procedure.)

" 'The right to bring the civil action, as reserved by the person damaged or prejudiced, after the termination of

the criminal case, is only permitted, if there be any reason therefor, and so says the law, in the event that the judgment rendered in the criminal cause is a finding of guilt against the accused; but if the accused be acquitted, then the complaint in the civil action must be based on some fact and or cause distinct and separate from the criminal act itself."

When the present Rules of Court was promulgated, the above provisions contained in the Spanish Code of Criminal Procedure of 1882 and applied in the cases of *Almeida, et al. vs. Abaroa*, *supra*, and *U. S. vs. Heery*, *supra*, and others, were recast into the provisions of Section 1 of Rule 107, as follows:

"Section 1. Rules governing civil actions arising from offenses.— Except as otherwise provided by law, the following rules shall be observed:

(a) 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;

(b) Criminal and civil actions arising from the same offense may be instituted separately, but after the criminal action has been commenced the civil action can not be instituted until final judgment has been rendered in the criminal action;

(c) After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted: and the same shall be suspended, in whatever stage, it may be found, until final judgment in the criminal proceeding has been rendered;

(d) 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. In the other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damages suffered;

(e) A final judgment rendered in a civil action absolving the defendant from civil liability, is no bar to a criminal action.'

The above provisions were in force on August 30, 1950 when the Civil Code of the Philippines was enacted. The Civil Code of the Philippines contains the following provisions:

"Art. 283. In any of the following cases, the father is obliged to recognize the child as his natural child:

(1) In cases of rape, abduction or seduction, when the period of the offense coincides more or less with that of the conception;

(2) When the child is in continuous possession of status of a child of the alleged father by the direct acts of the latter or of his family;

(3) When the child was conceived during the time when the mother cohabited with the supposed father;

(4) When the child has in his favor any evidence or proof that the defendant is his father."

It will be noted that contrary to the provisions of Article 135 of the Civil Code of Spain, to the effect that in cases of rape the provisions of the Penal Code regarding the acknowledgment of the issue is to be observed, Article 283 of the Civil Code of the Philippines does not make the civil liability of the offender in a case of rape determinable in a criminal action only. This is also to be inferred from Article 30, which provides:

"ART. 30. 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."

This last article implies the right of an offended party to bring a separate civil action for the criminal act without instituting the criminal proceedings for the prosecution of the offense. This is the opposite of the provisions of the old Criminal Procedure of Spain of 1882 and of Rule 107 of the present Rules of Court. For, whereas under Rule 107 the civil action for damages for an offense has to await the results of the criminal action, and if a civil action is first instituted, the same shall be suspended until after the criminal action has been instituted and decided, which provisions of the present Rules of Court are based on the old Spanish Law of Criminal Procedure, said provisions are no longer in force because a civil action may now be instituted and prosecuted to final judgment without awaiting the institution and termination of a criminal action, as expressly declared in Articles 38 and 283 of the Civil Code of the Philippines. These new provisions are inconsistent with the provisions of Rule 107 of the Rules of Court and the latter must give way thereto. In consequence, it is not now necessary that a criminal prosecution for rape be first instituted and prosecuted to final judgment before a civil action based on said offense in favor of the offended woman and the recognition of the offspring can be instituted and prosecuted to final judgment. "The provisions of Rule 107 of the present Rules promulgated in 1940 are, therefore, considered repealed or modified pro tanto by the above-mentioned articles of the Civil Code and, as above stated, the offended woman in the rape and the child born out of the crime may institute a civil action for damages and for recognition and support without a previous action and judgment in a criminal case for rape against the offender.

For the foregoing considerations, the order of the court, dismissing the case provisionally for the purpose of awaiting the results of the criminal action for rape against defendant, is hereby set aside and the case is hereby remanded to the court below for further proceedings in accordance with this decision. With costs against defendant-appellee. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Barrera, and Gutierrez David, JJ., concur. Padilla and Endencia, JJ., did not take part.

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