

SPS. ANTONIO C. SANTOS AND ESPERANZA C. SANTOS, NORA BARNALO, BELINDA LUMACTAD, MARIENELA DY, NIKKA SANTOS AND LEONARDO FERRER, PETITIONERS, VS. HON. NORMANDIE B. PIZARDO, AS PR...

G.R. No. 151452. July 29, 2005

Ponente: TINGA, J.

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TINGA, J.:

In this Petition for Review on Certiorari[1] dated March 1, 2002, petitioners assail the Resolutions of the Court of Appeals dated September 10, 2001 and January 9, 2002, respectively dismissing their petition for certiorari and denying their motion for reconsideration, arising from the dismissal of their complaint to recover civil indemnity for the death and physical injuries of their kin.

The following facts are matters of record.

In an Information dated April 25, 1994, Dionisio M. Sibayan (Sibayan) was charged with Reckless Imprudence Resulting to Multiple Homicide and Multiple Physical Injuries in connection with a vehicle collision between a southbound Viron Transit bus driven by Sibayan and a northbound Lite Ace Van, which claimed the lives of the van's driver and three (3) of its passengers, including a two-month old baby, and caused physical injuries to five (5) of the van's passengers. After trial, Sibayan was convicted and sentenced to suffer the penalty of imprisonment for two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. However, as there was a reservation to file a separate civil action, no pronouncement of civil liability was made by the municipal circuit trial court in its decision promulgated on December 17, 1998.[2]

On October 20, 2000, petitioners filed a complaint for damages against Sibayan, Viron Transit and its President/Chairman, Virgilio Q. Rondaris, with the Regional Trial Court of Quezon City, pursuant to their reservation to file a separate civil action.[3] They cited therein the judgment convicting Sibayan.

Viron Transit moved to dismiss the complaint on the grounds of improper service of summons, prescription and laches, and defective certification of non-forum shopping. It also sought the dropping of Virgilio Q. Rondaris as defendant in view of the separate personality of Viron Transit from its officers.[4]

Petitioners opposed the motion to dismiss contending, among others, that the right to file a separate action in this case prescribes in ten (10) years reckoned from the finality of the judgment in the criminal action. As there was no appeal of the decision convicting Sibayan, the complaint which was filed barely two (2) years thence was clearly filed within the prescriptive period.

The trial court dismissed the complaint on the principal ground that the cause of action had already prescribed. According to the trial court, actions based on quasi delict, as it construed petitioners' cause of action to be, prescribe four (4) years from the accrual of the cause of action. Hence, notwithstanding the fact that petitioners reserved the right to file a separate civil action, the complaint ought to be dismissed on the ground of

prescription.[5]

Improper service of summons was likewise cited as a ground for dismissal of the complaint as summons was served through a certain Jessica Ubalde of the legal department without mentioning her designation or position.

Petitioners filed a motion for reconsideration pointing out yet again that the complaint is not based on quasi delict but on the final judgment of conviction in the criminal case which prescribes ten (10) years from the finality of the judgment.[6] The trial court denied petitioners' motion for reconsideration reiterating that petitioners' cause of action was based on quasi delict and had prescribed under Article 1146 of the Civil Code because the complaint was filed more than four (4) years after the vehicular accident.[7] As regards the improper service of summons, the trial court reconsidered its ruling that the complaint ought to be dismissed on this ground.

Petitioners filed a petition for certiorari with the Court of Appeals which dismissed the same for error in the choice or mode of appeal.[8] The appellate court also denied petitioners' motion for reconsideration reasoning that even if the respondent trial court judge committed grave abuse of discretion in issuing the order of dismissal, certiorari is still not the permissible remedy as appeal was available to petitioners and they failed to allege that the petition was brought within the recognized exceptions for the allowance of certiorari in lieu of appeal.[9]

In this petition, petitioners argue that a rigid application of the rule that certiorari cannot be a substitute for appeal will result in a judicial rejection of an existing obligation arising from the criminal liability of private respondents. Petitioners insist that the liability sought to be enforced in the complaint arose ex delicto and is not based on quasi delict. The trial court allegedly committed grave abuse of discretion when it insisted that the cause of action invoked by petitioners is based on quasi delict and concluded that the action had prescribed. Since the action is based on the criminal liability of private respondents, the cause of action accrued from the finality of the judgment of conviction.

Assuming that their petition with the appellate court was procedurally flawed, petitioners implore the Court to exempt this case from the rigid operation of the rules as they allegedly have a legitimate grievance to vindicate, i.e., damages for the deaths and physical injuries caused by private respondents for which no civil liability had been adjudged by reason of their reservation of the right to file a separate civil action.

In their Comment[10] dated June 13, 2002, private respondents insist that the dismissal of the complaint on the ground of prescription was in order. They point out that the averments in the complaint make out a cause of action for quasi delict under Articles 2176 and 2180 of the Civil Code. As such, the prescriptive period of four (4) years should be reckoned from the time the accident took place.

Viron Transit also alleges that its subsidiary liability cannot be enforced since Sibayan was not ordered to pay damages in the criminal case. It is Viron Transit's contention that the subsidiary liability of the employer contemplated in Article 103 of the Revised Penal Code presupposes a situation where the civil aspect of the case was instituted in the criminal case and no reservation to file a separate civil case was made.

Private respondents likewise allege that the recourse to the Court of Appeals via certiorari was improper as petitioners should have appealed the adverse order of the trial court. Moreover, they point out several other procedural lapses allegedly committed by petitioners, such as lack of certification against forum-shopping; lack of duplicate original or certified true copy of the assailed order of the trial court; and non-indication of the full names and addresses of petitioners in the petition.

Petitioners filed a Reply[11] dated September 14, 2002, while private respondents filed a Rejoinder[12] dated October 14, 2002, both in reiteration of their arguments.

We grant the petition.

Our Revised Penal Code provides that every person criminally liable for a felony is also civilly liable.[13] Such civil liability may consist of restitution, reparation of the damage caused and indemnification of consequential damages.[14] When a criminal action is instituted, the civil liability arising from the offense is impliedly instituted with the criminal action, subject to three notable exceptions: first, when the injured party expressly waives the right to recover damages from the accused; second, when the offended party reserves his right to have the civil damages determined in a separate action in order to take full control and direction of the prosecution of his cause; and third, when the injured party actually exercises the right to maintain a private suit against the offender by instituting a civil action prior to the filing of the criminal case.

Notably, it was the 1985 Rules on Criminal Procedure, as amended in 1988, which governed the institution of the criminal action, as well as the reservation of the right to file a separate civil action. Section 1, Rule 111 thereof states:

Section 1. Institution 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 Articles 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 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 filing thereof in court for trial.

Petitioners expressly made a reservation of their right to file a separate civil action as a result of the crime committed by Sibayan. On account of this reservation, the municipal circuit trial court, in its decision convicting Sibayan, did not make any pronouncement as to the latter's civil liability.

Predicating their claim on the judgment of conviction and their reservation to file a separate civil action made in the criminal case, petitioners filed a complaint for damages against Sibayan, Viron Transit and its President/Chairman. Petitioners assert that by the institution of the complaint, they seek to recover private respondents' civil liability arising from crime. Unfortunately, based on its misreading of the allegations in the complaint, the trial court dismissed the same, declaring that petitioners' cause of action was based on quasi delict and should have been brought within four (4) years from the time the cause of action accrued, i.e., from the time of the accident.

A reading of the complaint reveals that the allegations therein are consistent with petitioners' claim that the action was brought to recover civil liability arising from crime. Although there are allegations of negligence on the part

of Sibayan and Viron Transit, such does not necessarily mean that petitioners were pursuing a cause of action based on quasi delict, considering that at the time of the filing of the complaint, the cause of action ex quasi delicto had already prescribed. Besides, in cases of negligence, the offended party has the choice between an action to enforce civil liability arising from crime under the Revised Penal Code and an action for quasi delict under the Civil Code.

An act or omission causing damage to another may give rise to two separate civil liabilities on the part of the offender, i.e., (1) civil liability ex delicto, under Article 100 of the Revised Penal Code; and (2) independent civil liabilities, such as those (a) not arising from an act or omission complained of as a felony, e.g., culpa contractual or obligations arising from law under Article 31 of the Civil Code, intentional torts under Articles 32 and 34, and culpa aquiliana under Article 2176 of the Civil Code; or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action under Article 33 of the Civil Code.[15] Either of these liabilities may be enforced against the offender subject to the caveat under Article 2177 of the Civil Code that the plaintiff cannot recover damages twice for the same act or omission of the defendant and the similar proscription against double recovery under the Rules above-quoted.

At the time of the filing of the complaint for damages in this case, the cause of action ex quasi delicto had already prescribed. Nonetheless, petitioners can pursue the remaining avenue opened for them by their reservation, i.e., the surviving cause of action ex delicto. This is so because the prescription of the action ex quasi delicto does not operate as a bar to an action to enforce the civil liability arising from crime especially as the latter action had been expressly reserved.

The case of *Mendoza v. La Mallorca Bus Company*[16] was decided upon a similar set of facts. Therein, the driver of La Mallorca Bus Company was charged with reckless imprudence resulting to damage to property. The plaintiff made an express reservation for the filing of a separate civil action. The driver was convicted which conviction was affirmed by this Court. Later, plaintiff filed a separate civil action for damages based on quasi delict which was ordered dismissed by the trial court upon finding that the action was instituted more than six (6) years from the date of the accident and thus, had already prescribed. Subsequently, plaintiff instituted another action, this time based on the subsidiary liability of the bus company. The trial court dismissed the action holding that the dismissal of the earlier civil case operated as a bar to the filing of the action to enforce the bus company's subsidiary liability.

We held that the dismissal of the action based on culpa aquiliana is not a bar to the enforcement of the subsidiary liability of the employer. Once there is a conviction for a felony, final in character, the employer becomes subsidiarily liable if the commission of the crime was in the discharge of the duties of the employees. This is so because Article 103 of the Revised Penal Code operates with controlling force to obviate the possibility of the aggrieved party being deprived of indemnity even after the rendition of a final judgment convicting the employee.

Seen in this light, the trial court should not have dismissed the complaint on the ground of prescription, but instead allowed the complaint for damages ex delicto to be prosecuted on the merits, considering petitioners' allegations in their complaint, opposition to the motion to dismiss[17] and motion for reconsideration[18] of the order of dismissal, insisting that the action was to recover civil liability arising from crime.

This does not offend the policy that the reservation or institution of a separate civil action waives the other civil actions. The rationale behind this rule is the avoidance of multiple suits between the same litigants arising out of the same act or omission of the offender.[19] However, since the stale action for damages based on quasi delict should be considered waived, there is no more occasion for petitioners to file multiple suits against private respondents as the only recourse available to them is to pursue damages ex delicto. This interpretation is also

consistent with the bar against double recovery for obvious reasons.

Now the procedural issue. Admittedly, petitioners should have appealed the order of dismissal of the trial court instead of filing a petition for certiorari with the Court of Appeals. Such procedural misstep, however, should be exempted from the strict application of the rules in order to promote their fundamental objective of securing substantial justice.[20] We are loathe to deprive petitioners of the indemnity to which they are entitled by law and by a final judgment of conviction based solely on a technicality. It is our duty to prevent such an injustice.[21]

WHEREFORE, judgment is hereby rendered SETTING ASIDE the resolutions of the Court of Appeals dated September 10, 2001 and January 9, 2002, respectively dismissing the present action and denying petitioners' motion for reconsideration, as well as the orders of the lower court dated February 26, 2001 and July 16, 2001. Let the case be REMANDED to the trial court for further proceedings.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 25-45.

[2] Id. at 57-63.

[3] RTC Records, pp. 1-5.

[4] Id. at 20-32.

[5] Id. at 54-56, Order dated February 26, 2001.

[6] Id. at 57-66.

[7] Id. at 79-82.

[8] CA Records, pp. 60-61, Resolution dated September 10, 2001 penned by Associate Justice Teodoro P. Regino and concurred in by Associate Justices Delilah Vidallon-Magtolis and Jose L. Sabio, Jr.

[9] Id. at 77-78, Resolution dated January 9, 2002.

[10] Rollo, pp. 207-240.

[11] Id. at 289-314.

[12] Id. at 315-321.

[13] Art. 100.

[14] Art. 104, Revised Penal Code.

[15] Cancio v. Isip, G.R. No. 133978, November 12, 2002, 391 SCRA 393.

[16] No. L-26407, March 31, 1978, 82 SCRA 243.

[17] RTC Records, pp. 37-41.

[18] Id. at 57-60.

[19] Rafael Reyes Trucking Corporation v. People, 386 Phil 41 (2000).

[20] *Ramiscal v. Sandiganbayan*, G.R. No. 140576-99, December 13, 2004, 446 SCRA 166.

[21] *Diana v. Batangas Transportation Co.*, 93 Phil. 391 (1953).

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