

PAZ T. BERNARDO, SUBSTITUTED BY HEIRS, MAPALAD G. BERNARDO, EMILIE B. KO, MARILOU B. VALDEZ, EDWIN T. BERNARDO AND GERVY B. SANTOS, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, R...

G.R. No. 182210. October 05, 2015

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BRION, J.:*

We resolve the Petition for Review on Certiorari filed by accused petitioner Paz T. Bernardo (Bernardo) under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) August 31, 2007 decision[1] and the March 14, 2008 resolution[2] in CA-G.R. CR 28721, entitled "People of the Philippines v. Paz T. Bernardo." The appellate court affirmed the decision of the Regional Trial Court (RTC), Branch 56, Makati City, finding Bernardo guilty beyond reasonable doubt of five (5) counts of violation of Batas Pambansa Blg. 22 (B.P. 22).

The Factual Antecedents

In June 1991, Bernardo obtained a loan from the private complainant Carmencita C. Bumanglag (Bumanglag) in the amount of P460,000.00 payable on or before its maturity on November 30, 1991. That loan was evidenced by a promissory note[3] Bernardo and her husband had executed, whereby the couple solidarity bound themselves to pay the loan with corresponding interest at 12% per annum payable upon default.[4] As additional security, Bernardo gave Bumanglag the owner's duplicate copy of Transfer Certificate of Title No. (T-1034) 151841.

Prior to the loan's maturity, Bernardo took back the title from Bumanglag to use as a collateral in another transaction. In place of the title, Bernardo issued to Bumanglag the following five (5) Far East Bank and Trust Company (FEBTC) checks,[5] posted on different dates in June 1992, covering the loan's aggregate amount:

Check No.

Amount

Date

FEBTC No. 391033

Php 100,000.00

June 1, 1992

FEBTC No. 391034

Php 100,000.00

June 8, 1992

FEBTC No. 391035

Php 100,000.00

June 15, 1992

FEBTC No. 391036

Php 100,000.00

June 22, 1992

FEBTC No. 391037

Php 60,000.00

June 29, 1992

In September 1992, Bumanglag deposited these checks to Bernardo's account but they were dishonored; the reason given was "Account Closed." Bumanglag thus sent Bernardo a notice informing her of the dishonor of the checks. The demand went unheeded, prompting Bumanglag to initiate a criminal complaint against Bernardo with the Office of the City Prosecutor of Makati for five (5) counts of violation of B.P. 22.

After the requisite preliminary investigation, the Office of the City Prosecutor of Makati City found probable cause to indict Bernardo for the offenses charged. Bernardo entered a not guilty plea on arraignment.

The prosecution rested its case on September 21, 1994. Bernardo took the witness stand only on May 9, 1996, to present her defense evidence.

In her testimony, Bernardo argued that she could not be held liable for violation of B.P. 22 because the questioned checks were presented beyond the 90-day period provided under the law. She also denied having received any notice of dishonor, which she insisted was essential to prove the material element of knowledge of insufficiency of funds.

In any case, she maintained that the checks were never meant to be presented as she had always paid her loans in cash, which she claimed to have done in the aggregate amount of P717,000.00. According to Bernardo, although Bumanglag returned to her the title to the property after payment, Bumanglag never bothered to issue her receipts. Bumanglag did not return the checks either.

Following Bernardo's cross-examination, the RTC reset the hearing for redirect examination to September 4, 1996.[6] That hearing, however, was again reset to April 3, 1997, in view of the absence of Bernardo's counsel. When Bernardo and her counsel again failed to appear during the April 3, 1997 hearing, and in view of the numerous previous postponements the defense had asked for, the RTC considered her right to present additional evidence waived.

Bernardo moved for reconsideration but the RTC denied her motion. The RTC, however, gave her ten (10) days within which to submit her formal offer of evidence, which she failed to do. As a result, the RTC declared that Bernardo had waived her right to submit her formal offer of evidence.

RTC Ruling

On May 28, 2003, the RTC issued its ruling finding Bernardo guilty of five counts of violation of B.P. 22.[7] The RTC held that Bernardo failed to substantiate her claim of payment. The RTC further ruled that it is not the nonpayment of the obligation but the issuance of a worthless check that B.P. 22 punishes.

The RTC sentenced Bernardo to one (1) year imprisonment for each count of the offense charged and ordered her to indemnify Bumanglag the amount of P460,000.00, plus 12% interest and 5% penalty charges, from December 1, 1991, until full payment.[8]

CA Ruling

On appeal, the CA affirmed Bernardo's conviction but deleted the penalty of imprisonment and in lieu thereof, imposed a P460,000.00 fine.[9] The CA also retained the civil indemnity of P460,000.00 that the lower court imposed, plus 12% interest from the time of the institution of the criminal charges until full payment.[10]

In denying Bernardo's appeal, the CA noted that Bernardo failed to adduce sufficient evidence of payment. The CA further held that the 90-day period within which to present a check under B.P. 22 is not an element of the crime.

The CA also did not recognize any merit in Bernardo's claim that she had been denied due process, in view of the RTC's order waiving her right to present additional evidence.[11] To the CA, Bernardo had sufficient opportunity to present her defense but did not avail of these opportunities. Instead, she and her counsel moved for postponement at least nine (9) times, not to mention their subsequent failure to appear four (4) times despite due notice of the scheduled hearings. These developments led the RTC to consider Bernardo's right to present additional evidence waived.[12]

Bernardo moved for reconsideration but the CA denied her motion;[13] hence, the present petition.[14]

The Petition and Comment

Bernardo insists in her present petition[15] that the CA erred in finding that she had been accorded due process; she was denied the full opportunity to present her defense and was thus deprived of the chance to prove her innocence of the crime charged.

She likewise avers that the CA erred in affirming her criminal and civil liabilities because the prosecution failed to prove her knowledge of insufficiency of funds. According to Bernardo, there was no violation of B.P. 22 because the checks were presented beyond the mandatory 90-day period. Moreover, Bernardo claimed that these subject checks were issued without consideration as she had already paid the loan.

The Office of the Solicitor General (OSG) posits in its Comment that Bernardo was given the opportunity to present her defense evidence.[16] Citing *Wong v. CA*,[17] the OSG further points out that the 90-day period provided in the law is not an element of the offense;[18] it is simply one of the conditions to establish a prima facie presumption of knowledge of lack of funds.[19]

The OSG also claims that Bumanglag failed to substantiate her claim that she had settled the obligation.[20] In any event, the OSG asserted B.P. 22 penalizes the act of making and issuing a worthless check, not the nonpayment of the obligation.[21]

Subsequent Developments

On March 14, 2011, Bernardo's counsel informed the Court of the petitioner's death on February 3, 2011, and provided, as well, the names of her heirs (her widower, Mapalad Bernardo, and children: Emilie B. Ko, Marilou B. Valdez, Edwin T. Bernardo, and Gervy B. Santos), and their address (26 Magdiwang St., Real Village 2, Tandang Sora, Quezon City). In due course, in our March 7, 2012 Resolution,[22] we required Bernardo's heirs to appear as substitutes for the deceased Bernardo in the present petition for purposes of Bernardo's civil liability.

Bernardo's heirs moved to reconsider our March 7, 2012 resolution. They argued that Bernardo's death extinguished her civil liability. In the alternative, they contended that any civil liability should be settled in a separate civil case.

We denied the heirs' motion in our June 27, 2012 resolution. We explained that Bernardo's civil liability survived her death as it is based on contract. Moreover, we observed that it would be costly, burdensome, and

time-consuming to dismiss the present case and require the Bumanglags to file a separate civil action.

The Court's Ruling

We deny the petition for lack of merit. Preliminary Matters

Classes of Civil Liabilities

An act or omission causing damage to another may give rise to several distinct civil liabilities on the part of the offender.[23] If the conduct constitutes a felony, the accused may be held civilly liable under Article 100 of the Revised Penal Code (ex delicto).[24] This particular civil liability due the offended party is rooted on facts that constitute a crime.[25] Otherwise stated, civil liability arises from the offense charged.[26] It is not required that the accused be convicted to be entitled to civil liability based on delict. As long as the facts constituting the offense charged are established by preponderance of evidence, civil liability may be awarded.[27] Moreover, the civil liability based on delict is deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action.[28]

The same act or omission, however, may also give rise to independent civil liabilities based on other sources of obligation. 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 (b) contracts; (c) quasi-contracts, and (d) quasi-delicts. Among these are the civil liabilities for intentional torts under Articles 32[29] and 34[30] of the Civil Code and for quasi-delicts under Article 2176 of Civil Code.[31] For conduct constituting defamation, fraud, and physical injuries, the Civil Code likewise grants the offended party the right to institute a civil action independently of the criminal action under Article-33 of the Civil Code.

Thus, it is entirely possible for one to be free from civil liability directly arising from a violation of the penal law and to still be liable civilly based on contract or by laws other than the criminal law.[32] Such civil actions may proceed independently of the criminal proceedings and regardless of the result of the criminal action,[33] subject however, to the caveat that the offended party cannot recover damages twice for the same act or omission.[34]

Bernardo's civil liability may be

enforced in the present case despite

her death.

As a general rule, the death of an accused pending appeal extinguishes her criminal liability and the corresponding civil liability based solely on the offense (delict). The death amounts to an acquittal of the accused based on the constitutionally mandated presumption of innocence in her favor, which can be overcome only by a finding of guilt - something that death prevents the court from making.[35] In a sense, death absolves the accused from any earthly responsibility arising from the offense — a divine act that no human court can reverse, qualify, much less disregard.[36] The intervention of death of the accused in any case is an injunction by fate itself so that no criminal liability and the corresponding civil liability arising from the offense should be imposed on him.[37]

The independent civil liabilities, however, survive death and an action for recovery therefore may be generally pursued but only by filing a separate civil action and subject to Section 1, Rule 111 of the Rules on Criminal Procedure as amended.[38] This separate civil action may be enforced against the estate of the accused.[39]

In B.P. 22 cases, the criminal action shall be deemed to include the corresponding civil actions. Instead of instituting two separate cases, only a single suit is filed and tried.[40] This rule was enacted to help declog court dockets, which had been packed with B.P. 22 because creditors used the courts as collectors. As we observed in

Hyatt v. Asia Dynamic Electrix Corp.: [41]

Because ordinarily no filing fee is charged in criminal cases for actual damages, the payee uses the intimidating effect of a criminal charge to collect his credit gratis and sometimes, upon being paid, the trial court is not even informed thereof. The inclusion of the civil action in the criminal case is expected to significantly lower the number of cases filed before the courts for collection based on dishonored checks. It is also expected to expedite the disposition of these cases. Instead of instituting two separate cases, one for criminal and another for civil, only a single suit shall be filed and tried. It should be stressed that the policy laid down by the Rules is to discourage the separate filing of the civil action.

As a necessary consequence of this special rule, the civil liabilities arising from the issuance of a worthless check are deemed instituted in a case for violation of B.P. 22; the death of Bernardo did not automatically extinguish the action. The independent civil liability based on contract, which was deemed instituted in the criminal action for B.P. 22, may still be enforced against her estate in the present case. We thus rule on the present action to determine Bumanglag's civil liability.

Substantive Aspect

Bernardo was not denied due process.

We meticulously went over the entire record, and confirmed that Bernardo had not at all been deprived of her day in court. She was afforded ample opportunity to present evidence in her defense but she did not give this case the serious attention it deserved. For good reason - i.e., the repeated absences of Bernardo and her counsel - the trial court eventually considered her right to present defense evidence waived.

To be sure, the postponement of the trial of a case to allow the presentation of evidence is a matter that lies with the discretion of the trial court; but it is a discretion that must be exercised wisely, considering the peculiar circumstances of each case and with a view to doing substantial justice.[42] In the present case, the records show that the RTC took all the steps necessary to safeguard Bernardo's rights and to accord her the opportunity to present whatever evidence she had in her defense.

In particular, the prosecution formally rested its case on September 21, 1994. Bernardo, through counsel, thereupon moved for leave to file a demurrer to evidence prompting the RTC to reset the hearing for initial presentation of defense evidence to December 15 and 20, 1994.[43] Bernardo filed her demurrer to evidence on November 10, 1994,[44] after previously requesting the RTC for a 10-day extension.

The pendency of the demurrer to evidence prompted several resettings until the RTC finally denied it on March 30, 1995.[45] The RTC then set the initial presentation of defense evidence on April 11, 18, and 25, 1995,[46] but these were reset to May 9, 18, and 25, 1995,[47] at the motion of Bernardo's counsel who expressed his desire to seek relief from the CA for the denial of the demurrer.

Despite the RTC's accommodation, Bernardo's counsel failed to appear during the May 9, 1995 hearing as he was busy attending to the canvassing of votes in Quezon City.[48] Eventually, the initial presentation of defense evidence was reset to July 20, 1995, and August 3, 1995.[49]

Notably, during the July 20, 1995 hearing, Bernardo's counsel again moved for another resetting as he was not prepared to conduct a direct examination.[50] Despite this flimsy ground, the RTC granted the request and allowed Bernardo to testify on August 3, 1995.

Bernardo and her counsel, however, failed to appear during the August 3, 1995 hearing despite due notice, prompting the RTC to waive their right to present defense evidence.[51] Bernardo moved for reconsideration and the RTC granted her motion in the interest of substantial justice.[52] Thus, the hearing for the presentation of

defense evidence was reset to November 28, 1995.[53]

Bernardo and her counsel again failed to appear during the November 28, 1995 hearing, despite due notice, prompting the RTC again to consider that Bernardo had waived her right to present defense evidence.[54]

Bernardo again moved for reconsideration on the ground that it was the first time she and her counsel were absent at the same time.[55] Despite this hollow excuse, the RTC granted the motion in the spirit of compassionate justice and gave Bernardo the final opportunity to present her defense evidence.[56] The parties mutually agreed to set the hearing for initial presentation of defense evidence on April 18, 1996.[57]

Bernardo again failed to appear during the scheduled April 18, 1996 hearing.⁵⁸ Although Bernardo did not offer any excuse for this absence,[59] RTC exercised compassion and permitted Bernardo to testify, as she did in fact testify, on May 9, 1996,[60] - one (1) year and eight (8) months after the prosecution had rested its case. At the conclusion of the cross-examination, the parties mutually agreed to adjourn the hearing for September 4, 1996, for redirect examination.[61]

Bernardo's counsel, however, failed to appear during the scheduled September 4, 1996 hearing, prompting the RTC to consider her failure as a waiver on her part to present additional evidence.[62] Bernardo moved for reconsideration; she claimed that her counsel had to attend another hearing in a different sala. Why Bernardo's counsel accepted another engagement on the same day, which was in conflict with the RTC's hearing dates, was never properly explained. Nonetheless, the RTC granted the motion to give her the last chance to complete the presentation of evidence on April 3, 17, and 22, 1997.[63]

Despite the RTC's warning, Bernardo and her counsel again failed to appear at the April 3, 1997 hearing.[64] Instead, they filed a motion to reset because Bernardo's counsel was to attend a wedding in the United States of America.[65] This time, the RTC, mindful that there should be a limit to postponements, ordered the case submitted for decision sans the presentation of evidence from the defense.[66]

Under these facts, the RTC was clearly driven by Bernardo and her counsel's repeated failure, without justifiable reason, to appear at the scheduled hearing dates.[67] The order considering Bernardo's right to present evidence waived, followed as a necessary and unavoidable consequence. As we held in *People v. Angco*:^[68]

His failure to appear with counsel of his choice at the hearing of the case, notwithstanding repeated postponements and warnings that failure to so appear would be deemed a waiver to present evidence in his defense, and that the case would be deemed submitted for judgment upon the evidence presented by the prosecution, was sufficient legal justification for the trial court to proceed and render judgment upon the evidence before it.

The records show that the RTC leniently granted repeated continuances to safeguard Bernardo's rights as an accused. But Bernardo obviously did not recognize the need for expeditious handling of her case and was already trifling with judicial process.[69]

Bernardo failed to adduce sufficient evidence of payment; thus she is civilly liable.

Bernardo's death pending appeal converted the present action to purely an enforcement of the civil liability incurred. In particular, the focal issue in the present petition is no longer Bernardo's criminal liability for violation of B.P. 22 but her civil liability, which is principally based on contract and the corresponding damage Bumanglag suffered due to Bernardo's failure to pay. Under these circumstances, Bernardo's B.P. 22 defense (that the checks were presented beyond the 90-day period and that she never received a notice of dishonor) were no longer

relevant.

Jurisprudence tells us that one who pleads payment carries the burden of proving it.[70] Indeed, once the existence of an indebtedness is established by evidence, the burden of showing with legal certainty that the obligation has been discharged by payment rests with the debtor.[71] After the debtor introduces evidence of payment, the burden of going forward with the evidence - as distinct from the general burden of proof - again shifts to the creditor, who then labors under a duty to produce evidence to show nonpayment.[72]

In the present case, the existence of the obligation to pay has sufficiently been established through the promissory note[73] and the checks[74] submitted in evidence. Notably, Bernardo even confirmed due execution of these instruments during her testimony. During the offer of Bernardo's testimony, her counsel stated:

ATTY. MIRAVITE:

With the court's permission. Your Honor, we are presenting the witness for the following purposes: to x x x show that she borrowed money from [Bumanglag] x x x and that in 1991 her total obligation reached Php460,000.000; x x x that all the checks issued by the accused were only as proof of her obligation to the private complainant x x x.[75] [emphasis supplied]

In the course of Bernardo's testimony, she even confirmed the issuance of the checks and promissory note. In particular, she stated:

ATTY. MIRAVITE:

Q: I am showing to you this promissory note marked as Exhibit H for the prosecution and Exhibit 2 for the defense. There appears a signature over the name Paz T. Bernardo at the middle portion thereof, do you know whose signature is that?

A: It is mine sir.

x x x x

Q: This document, Madame Witness, mentions of your loan obligations of Php 460,000.00. Can you tell us, Madame Witness, what is covered by this promissory note?

x x x x

A: The promissory note covers the principal loan, plus interest and penalties, sir.

Q: So, are you saying that this promissory note of Php 460,000.00 was your total obligation as of June 1991 and includes all other charges?

A: Yes, sir.

x x x x

Q: Madam Witness, can you remember when you issued the checks subject of these cases?

A: It was on June 20, 1991, sir.[76]

Bernardo's principal defense rests on the supposition that she had settled the obligation, which settlement led Bumanglag to return to her the title to the property.[77] A meticulous review, of the records, however, firmly dissuades us from believing Bernardo's bare allegation.

At the outset, the handwritten note[78] evidencing that transaction, which was submitted by the prosecution in evidence, states that:

10/28/91

Received original copy of Title No. T-151841 in the name of Mapalad Bernardo for loan purposes to pay Mrs. Carmencita Bumanglag

Sgd

Paz T. Bernardo

10/28/91

The document evidencing this transaction strongly suggests that she asked for the title from Bumanglag to obtain another loan whose proceeds she would use to pay Bumanglag. Notably, the defense even admitted the genuineness of Bernardo's signature in this document.[79] When Bernardo therefore failed to fulfill her promise to pay, Bumanglag had to request for checks to secure the obligation, which checks were eventually dishonored upon presentment.

Under the circumstances, we find that Bernardo's claim of payment was nothing more than an allegation unsupported by adequate proof. If indeed there had been payment, she should have redeemed or taken back the checks and the promissory note, in the ordinary course of business.[80] Instead, the checks and the promissory note remained in the possession of Bumanglag, who had to demand the satisfaction of Bernardo's obligation when the checks became due and were subsequently dishonored by the drawee bank. Bumanglag's possession of the promissory note, coupled with the dishonored checks, strongly buttresses her claim that Bernardo's obligation had not been extinguished.[81]

We thus find that the weight of evidence preponderates in favor of Bumanglag's position that Bernardo has not yet settled her obligation.[82]

WHEREFORE, premises considered, the August 31, 2007 decision of the Court of Appeals in CA-G.R. CR No. 28721 is **AFFIRMED** with **MODIFICATION**. The heirs of Paz T. Bernardo are ordered to pay the amount of P460,000.00, with interest at 12% per annum from the time of the institution of criminal charges in court.

The total amount adjudged shall earn interest at the rate of 6% per annum on the balance and interest due, from the finality of this Decision until fully paid.

The fine in the amount of P460,000.00 is **DELETED**.

SO ORDERED.

Peralta,[**] Del Castillo, Leonen, and Jardeleza,[***] JJ., concur.

[*] Designated as Acting Chairperson, per Special Order No. 2222 dated September 29, 2015.

[**] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 2223 dated September 29, 2015.

[***] Designated as Acting Member in lieu of Associate Justice Jose C. Mendoza, per Special Order No. 2246 dated October 5, 2015.

[1] Rollo, pp. 42-57. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Marina L. Buzon and Mariflor P. Punzalan Castillo.

[2] Id. at 58-60.

[3] RTC Record, p. 122.

[4] Rollo, pp. 44-45.

[5] Id. at 43.

[6] RTC Record, p. 470.

[7] CA Records, pp. 95-99.

[8] Id.

[9] Rollo, pp. 42-56.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id. at 7-41.

[15] Id. at 9-68.

[16] Id. at 84-86.

[17] 403 Phil. 830 (2001).

[18] Rollo, p. 96.

[19] Id.

[20] Id. at 101.

[21] Id.

[22] Id. at 216.

[23] Herrera, Remedial Law, Vol. IV, 2007 Ed., p. 218.

[24] Art. 100. Civil liability of a person guilty of felony. — Every person criminally liable for a felony is also civilly liable.

[25] The Revised Penal Code by Aquino, Vol. I, p. 711 (1976 ed.).

[26] See Section 1, Rule 111, Revised Rules on Criminal Procedure.

[27] *Nay a v. Abraham and People of the Philippines*, 446 Phil. 484 ((2003) *PNB v. Catipon*, 98 Phil 286 (1956). See also Rule 111, Section 2. When separate civil action is suspended. — After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine

the witnesses presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly.

During the pendency of the criminal action, the running of the period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled, (n)

The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. (2a) [emphasis supplied]

[28] Section 1, Rule 111, Revised Rules of Criminal Procedure.

[29] Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

- (1) Freedom of religion;
- (2) Freedom of speech;
- (3) Freedom to write for the press or to maintain a periodical publication;
- (4) Freedom from arbitrary or illegal detention;
- (5) Freedom of suffrage;
- (6) The right against deprivation of property without due process of law;
- (7) The right to a just compensation when private property is taken for public use;
- (8) The right to the equal protection of the laws;
- (9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
- (10) The liberty of abode and of changing the same;
- (11) The privacy of communication and correspondence;
- (12) The right to become a member of associations or societies for purposes not contrary to law;
- (13) The right to take part in a peaceable assembly to petition the government for redress of grievances;
- (14) The right to be free from involuntary servitude in any form;
- (15) The right of the accused against excessive bail;
- (16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
- (17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
- (18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
- (19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated. The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

[30] Art. 34. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.

[31] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter

[32] *People v. Sendaydiego*, 171 Phil. 114 (1978).

[33] Article 31, Civil Code.

[34] Article 2177, Civil Code. See also *Jarantilla v. Court of Appeals, et al.*, 253 Phil. 425 (1989).

[35] *Supra* note 32, concurring opinion of Justice Barredo, pp 142-143.

[36] *Id.*

[37] *Id.*

[38] Section 4, Rule 111 of the Revised Rules of Criminal Procedure.

[39] *Id.*

[40] Section 1(b), Rule III of the Revised Rules of Criminal Procedure.

[41] 503 Phil. 411(2005).

[42] *People v. Almendras*, 449 Phil. 587 (2003).

[43] RTC Records, p. 145.

[44] *Id.* at 150-159.

[45] *Id.* at 201.

[46] *Id.* at 208.

[47] *Id.* at 205.

[48] *Id.* at 208.

[49] *Id.* at 320.

[50] *Id.* at 348.

[51] *Id.* at 356.

[52] *Id.* at 389.

[53] *Id.*

[54] *Id.* at 390.

[55] *Id.* at 395-399.

[56] *Id.* at 420.

- [57] Id. at 451.
- [58] Id. at 455.
- [59] Id.
- [60] Id. at 898-948.
- [61] Id. at 1045.
- [62] Id. at 472.
- [63] Id. at 512.
- [64] Id. at 516.
- [65] Id.
- [66] Id.
- [67] *People v. Dichoso*, 185 Phil. 678-679 (1980).
- [68] 103 Phil. 33, 34 (1958).
- [69] *Supra* note 67.
- [70] *Vitarich Corporation v. Losin*, G.R. No. 181560, November, 15, 2010, 634 SCRA 611.
- [71] *Spouses Deo Agner and Maricon Agner v. BPI Family Savings Bank, Inc.*, G.R. No. 182963, June 3, 2013, 697 SCRA 89, 97.
- [72] *Jimenez v. NLRC*, 326 Phil. 89-90 (1996).
- [73] RTC Records, p. 122.
- [74] Id. at 117-121.
- [75] Id. at 901; TSN, March 9, 1996, p. 4.
- [76] Id. at 906-914; TSN, May 9, 1996, pp 9-17.
- [77] Id. at 937; TSN, May 9, 1996, p. 40.
- [78] RTC Records, p. 123.
- [79] Id. at 849; TSN, March 1, 1994, p. 16.
- [80] *Arceo v. People*, 527 Phil. 531 (2006).
- [81] Id.
- [82] RTC Records, pp. 850-852; TSN, March 1, 1994, pp. 17-19.

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