

LUCIO FRANCISCO, PLAINTIFF AND APPELLANT, VS. CRISPULO ONRUBIA, DEFENDANT AND APPELLEE.

G.R. No. 22063. September 30, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The plaintiff prays for judgment against the defendant, sentencing him to pay the sum of (P4,500 as damages for the death of his son Anselmo Francisco, with the costs of the action. It is alleged as the cause of action that on or about November 25, 1922, in the City of Manila, P. I., the said defendant, being the chauffeur and person in charge of automobile No. 6674, drove and operated said automobile on Calle Azcarraga in a careless and negligent manner and in violation of the traffic regulation, causing it to run at an unusual speed, thereby overrunning on said Calle Azcarraga a child 9 years old by the name of Anselmo Francisco, as a result of which, the said Anselmo Francisco received wounds on several parts of his body, which caused his death almost instantaneously; that the aforesaid child Anselmo Francisco is a son of the herein plaintiff, was living under his custody, and assisted him in his work and labor, and was, also rendering not less valuable services to his mother; and that by reason of the death of the aforesaid child Anselmo Francisco, caused by the defendant, the herein plaintiff, as well as his wife, was deprived of the services that said child was rendering up to the date of his death, and of those he may render in the future, which must be considered as doubly important, thus having suffered damages in the sum of four thousand five hundred pesos (P4,500).

The defendant filed a general and specific denial of the facts alleged in the complaint, and as a special defense, alleged:

"1. That prior to the date of the complaint, said defendant was prosecuted in this same court for homicide through reckless imprudence, criminal case No. 24994, 'The People of the Philippine Islands vs. Crispulo Onrubia y Julian upon the same facts that are now alleged as a cause of action of the complaint, as evidenced by a copy of the information presented in that action, which is attached hereto and made a part hereof marked Exhibit 1.

"2. That the information mentioned in the preceding paragraph was presented upon a complaint and at the instance of the herein plaintiff and of the heirs of the deceased Anselmo Francisco, none of whom has reserved the right to bring later such civil action as may arise from the facts set forth in the information, nor stated, or indicated in any manner his desire not to be understood as bringing the proper civil action together with said criminal case.

"3. That after the proper proceedings, and the court having full jurisdiction over the subject-matter and the person of the defendant, accused therein, a judgment of acquittal was rendered, a copy of which is attached hereto and made a part hereof as Exhibit 2, holding that the said accused did not drive the automobile he was operating at an exaggerated or unreasonable speed, was not responsible for any imprudence, fault, carelessness or negligence whatsoever, and did not violate any regulation in connection with said death."

At the trial of this case, the attorney for the defendant proposed a stipulation of facts, which was accepted by the

attorney for the plaintiff and is as follows:

"(a) That prior to the date of the complaint said defendant was prosecuted in this same court for homicide thru reckless imprudence, criminal case No. 24994, entitled "The People of the Philippine Islands vs. Crispulo Onrubia y Julian upon the same facts now alleged as the cause of action of the plaintiff's complaint, a copy of the information therein filed being attached to the answer as Exhibit 1.

"(b) That the information mentioned in the preceding paragraph was presented upon a complaint and at the instance of the herein plaintiff and the heirs of the deceased Anselmo Francisco.

"(c) That after the proper proceedings, and the court having full jurisdiction over the subject-matter and the person of the defendant, accused therein, a judgment of acquittal was rendered, a copy of which is attached to the answer as Exhibit 2."

Upon the facts agreed upon by the parties, the trial judge rendered judgment, dismissing the case without costs, on the ground that, the defendant having been acquitted in the criminal case for not having been guilty of any fault, negligence, or carelessness, no judgment can be rendered against him for the damages arising from the same facts.

This is the judgment sought by the appellant to be reversed.

This court has oftentimes discussed the procedure prescribed by the Spanish Law of Criminal Procedure for determining the civil liability arising from a crime. In the case of Springer vs. Odlin (3 Phil., 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."

In Rakes vs. Atlantic Gulf and Pacific Company (7 Phil., 359), it was held:

"According to article 112, the penal action once started, the civil remedy should be sought therewith, unless it had been waived by the party injured or been expressly reserved by him for civil proceedings for the future. If the civil action alone was prosecuted, arising out of a crime that could be enforced only on private complaint, the penal action thereunder should be extinguished."

In the case of United States vs. Guy-Sayco (13 Phil., 292), this court, construing articles 17, 121 and 122 of the Penal Code, held:

"In deciding a cause, the civil responsibility incurred by the accused, consequent upon his criminal liability, must be declared, because every person criminally responsible for a crime or misdemeanor is also civilly liable, and the courts are obliged to fix the amount of indemnity for damages in the terms prescribed for the reparation of damage caused by the crime. (Arts. 17, 121 and 122, Penal Code.)"

The same doctrine is maintained in United States vs. Bernardo (19 Phil., 265).

There is no doubt that under the criminal procedure now in force in this jurisdiction, he who alleges having been prejudiced by the commission of a crime or fault may bring a civil action independently from the criminal; but once the criminal action is instituted, the civil is deemed also to have been brought, unless the person injured or prejudiced has waived the same or made an express reservation for bringing the same after the termination of the criminal case, should he have any right thereto. (Art. 122 of the Law of Criminal Procedure.) And the civil action reserved by the party injured will be allowed after the termination of the criminal proceeding only when he has a

right thereto, that is to say, when the judgment rendered is one of conviction, or, in case the accused is acquitted, the complaint is based on some other fact or ground different from the criminal act. But an action based on the same facts that were the subject-matter of the criminal case cannot be maintained when by a final judgment it was declared that the fact from which the civil action could have arisen did not exist, according to article 116 of the said Law of Criminal Procedure, which provides that the extinction of the penal action does not carry with it the extinction of the civil one, unless the extinction is caused by a declaration in a final judgment that the fact upon which the civil action could have arisen did not exist. And this logically follows from the provision of article 17 of the Penal Code: "Every person criminally liable for a felony or misdemeanor is also civilly liable." That is to say, if the criminal liability carries with it the civil one, the exemption from criminal liability implies exemption from civil liability.

The supreme court of Spain in a judgment rendered January 3, 1887, laid down this doctrine: "In order to establish the civil liability in a criminal case, it is necessary that the same spring from, or be a consequence of, the criminal liability; and, therefore, if the defendant is acquitted of a crime, a judgment, sentencing him to pay a determinate indemnity by reason of the same crime, violates this article." (The article cited is art. 17 of the Penal Code.)

In another judgment rendered December 20, 1882, that high court says: "That a person not criminally liable for a crime or misdemeanor, cannot be civilly liable, under the provision of article 18 of the Penal Code (17 of the Philippine) and the trial court not having held so has violated said articles 18 and 21 and committed the error of law mentioned in article 849, case No. 4, of the Revised Compilation."

In a relatively recent judgment, namely, of February 25, 1891, the same supreme court held: "That a judgment acquitting the defendants on the ground that neither the crime charged, nor the guilt of the accused, was proven decides all the points of the prosecution and the defense, and their criminal liability not having been established, it is impossible to make any finding of civil liability which is accessory to the criminal."

The question raised in this appeal is the same as that put in issue and decided in the case of Almeida Chan Tanco vs. Abaroa (8 Phil., 178). In that case, the act complained of in the civil action brought by the plaintiffs was the same one imputed by one of them to the defendant, to wit, that of having set fire to, or burnt, a store with the goods therein contained, which belonged to them, and which was the subject of a criminal prosecution for the crime of incendiarism against the said defendant Abaroa, although the latter was acquitted by a judgment of the trial court, affirmed by this court, for lack of sufficient evidence to show his participation in the criminal act. This court in a decision rendered per curiam, held:

"The full and complete acquittal of an accused necessarily implies his innocence of, and freedom from responsibility for, the crime of which he was accused. (Rule 51 of the Provisional Law for the application of the Penal Code.)

"The judgment which fully acquits the accused persons, settles in an explicit manner all the points in question, not only in the accusation but those of the defense, in accordance with the established jurisprudence of the supreme tribunal of Spain, the provisions of article 742 of the Law of Criminal Procedure of 1882, and article 839 of the Compilation.

"Those persons not criminally responsible for an offense or misdemeanor cannot be made civilly responsible, (art. 17 of the Penal Code); from which precept it is a logical consequence that exemption from criminal responsibility carries with it exemption from civil responsibility. (Decisions of the supreme court of Spain, January 3, 1877, and December 20, 1882.)

"The accused once found by the court not to have been the author of an offense and being acquitted of the

accusation, under no condition can he be made civilly responsible for the harm caused and for the damages and losses suffered by reason of the criminal act."

In that decision this court says: "It is not possible to conceive, if it is not permitted to find against an accused acquitted of civil responsibility in a criminal case, how he can be held responsible for the same in a civil case in the absence of any law authorizing the same, and this is an inexplicable counter-course.

"It cannot be conceived legally that an act of setting fire executed intentionally is not constitutive of the crime of arson, and that its author, without being found personally responsible according to the penal law, is to be only civilly responsible therefor."

That case was brought by a writ of error to the Supreme Court of the United States, which, in affirming the judgment appealed from (218 U. S., 476; 54 L. ed., 1116; 40 Phil., 1056), laid the following doctrine:

"A civil action for indemnification for the damages resulting from the malicious or unlawful burning of a storehouse and its contents may not be maintained in the Philippine courts, where there has been a judgment of acquittal against the same defendant for the same malicious and unlawful burning, in view of the positive legislation in the Philippine codes, civil and criminal, drawing a distinction between a civil liability which results from the mere negligence of the defendant, and a liability for the civil consequences of a crime by which another has sustained loss or injury, and of the plain inference from article 17 of the Penal Code, that civil liability springs out of and is dependent upon facts which, if true, would constitute a crime or misdemeanor, and of the provisions of Code of Criminal Procedure sections 108, 112, 742, which plainly contemplate that the civil liability of the defendant shall be ascertained and declared in the criminal proceedings."

In *Wise & Co. vs. Larion* (45 Phil., 314), the same doctrine was maintained:

"While it is true that a civil action may be maintained by an employer to recover money misappropriated by his employee without the prior institution of a criminal proceeding, nevertheless if a criminal prosecution based upon the same misappropriation is in fact instituted against the employee and he is acquitted, such acquittal operates as a bar to any subsequent civil action."

Thus it is seen that the constant jurisprudence of this court upheld by the Supreme Court of the United States, sustains and supports the judgment appealed from. But the appellant insists that under article 1902 of the Civil Code, he has the right to institute this action, notwithstanding the judgment of acquittal rendered in the criminal case against the defendant upon the same cause of action. We are of the opinion, and so hold, that said article 1902 has no application in the instant case, first, because said article presupposes the existence of fault or negligence upon which the action is based, and second, it refers to a fault or negligence not punishable by law.

Article 1902, says:

"Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done."

This statutory provision, however, must be understood as subordinated to article 1093 of the same code, which provides:

"Those arising from wrongful or negligent acts or omissions not punishable by law shall be subject to the provisions of chapter second of title sixteen of this book."

Article 1902 is found precisely in chapter 2, title 16, book 4, of the Civil Code, so that in order that said article 1902 may be applied, it is necessary that the negligence or fault in question be not punished by law. And this is so because if the fault or negligence is punished by the law, it ceases to be the quasi crime of negligence having

purely civil effects, and becomes a crime or misdemeanor, according to the gravity of the penalty imposed by the law, and in that case it comes within the purview of article 1092 of the Civil Code, which provides:

"Civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code."

Under the facts set forth in the complaint, if there was any fault or negligence on the part of the defendant, it must necessarily be a fault punishable by law (arts. 568, 590 and 604 of the Penal Code), for through said fault he caused the death of the plaintiff's son. Homicide through reckless imprudence is punished as a crime, and therefore the provisions applicable would be those of the Penal Code and the Law of Criminal Procedure above cited.

For all of the foregoing the judgment appealed from must be, as is hereby, affirmed with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Avanceña, and Ostrand, JJ., concur.

CONCURRING OPINION

ROMUALDEZ, J.:

I, concur in the result. I believe, however, that this case is different from *Almeida Chan Tanco vs. Abarao*. There malice or illegality was alleged and the action was based on article 1092 of the Civil Code: whereas in the instant case no malice is alleged, nor is the action based on article 1092 of the Civil Code, but on article 1093 thereof.

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