

THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. THE MANILA ELECTRIC COMPANY, DEFENDANT AND APPELLANT.*G.R. No. 29356. December 29, 1928*

Ponente: MALCOLM, J.

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The Manila Electric Company appeals from a judgment of the Court of First Instance of Manila which condemns it to pay to the City of Manila the sum of P1,788.27, with legal interest from September 10, 1927, and with costs. While the case in its superficial aspects has appeared to be a simple one, in its fundamentals the cause suggests important questions which possibly the parties have not entirely grasped. By way of preliminary statement, it also remains to be said that the numerous deliberations of the court on the case have disclosed conflicting views which it is difficult to reconcile. The present decision, therefore, will aim to present as best it may, the principles for which a majority of the court stand, leaving it to the individual member to dissent or otherwise explain his vote as to him seems fit and proper.

On June 8, 1925, in the City of Manila, there occurred a collision between a street car of the Manila Electric Company, of which Sixto Eustaquio was the motorman, and a truck belonging to the City of Manila. As a result of the collision, the truck was damaged in the sum of P1,788.27. Sixto Eustaquio was prosecuted for the crime of damage to property and slight injuries through reckless imprudence. He was convicted by final judgment, and was sentenced to pay a fine of P900, to indemnify the offended party, the City of Manila, in the sum of P1,788.27, with subsidiary imprisonment in case of insolvency, and to pay the costs. Not being able to collect the indemnity from the accused, the City of Manila began an action to obtain payment from the Manila Electric Company. An allegation of the complaint was "That the defendant Manila Electric Company as master of the said agent and servant, Sixto Eustaquio, by virtue of its relations with the latter and by express provisions of law, is subsidiarily liable to the herein plaintiff for the sum of P1,788.27, representing the damages caused by its agent and servant, the said Sixto Eustaquio, in the discharge of his duties as motorman of the defendant's electric car." The principal special defense set up in the answer to the complaint was that the defendant had used all the diligence of a good father of a family to prevent the damage suffered by plaintiff. At the trial, the parties agreed on certain stipulations and admissions. The Assistant City Fiscal also offered to present two witnesses, but the trial judge thought this unnecessary and so took judicial cognizance of the decision and the record in the criminal case which convicted the motorman, all against the protest of counsel for the Manila Electric Company who noted his exceptions. The adverse judgment is now contested on the ground that the trial court committed two errors, the first in admitting in evidence the documents marked Exhibits A, B, C, D, E and F, constituting the record in the case of the People of the Philippine Islands vs. Sixto Eustaquio; and the second in not absolving the appellant from the complaint.

I. The first error plainly has merit. As a general rule, a record in a criminal action cannot be admitted in evidence in a civil action except by way of inducement or to show a collateral fact. The very obvious reason is that the parties and the issues in a criminal action and a civil action are not the same. It is rudimentary that due process must be followed in the trial of all causes. No man or entity may be condemned without a day in court. (Almeida

Chantangco and Lete vs. Abaroa [1910], 218 U. S., 476; 40 Phil., 1056; Ed. A. Keller & Co. vs. Ellerman & Bucknall Steamship Co. [1918], 38 Phil., 514.)

It needs to be repeated that the Manila Electric Company was not a party at the trial of the criminal case. There is extant in the record no indication that the Manila Electric Company had any control over the proceedings in the criminal case. All that the record in the criminal case showed was that the "abogado defensor" (Attorney for the defense) was Antonio Carrascoso. All that the record in the civil case showed was "Comparecieron: * * * Por la entidad demandada The Manila Electric Co., los abogados seno res Antonio T. Carrascoso, jr., y Guillermo Cabrera" (Appearances: * * * For the defendant Manila Electric Company attorneys Antonip T. Carrascoso, jr., and Guillermo Cabrera). By a coincidence, Attorney Carrascoso was both counsel for the defendant in the criminal action and for the defendant in the civil action. But there is lacking any proof showing that the Manila Electric Company supplied the lawyer for the accused in the criminal action and so is concluded by the judgment there rendered. (By way of parenthesis, it may be said further that the statements just made are offered to meet the argument advanced during our discussion to the effect that the court should treat the interests of the Manila Electric Company as involved in both litigations and should thus consider the company as a real party without right now to protest against the judgment.)

It is our ruling that prejudicial error was committed in the admission by the trial court of Exhibits A to F, but that since the plaintiff made the proper offer to present its witnesses, the case should be remanded for a new trial.

II. It has been suggested that having passed on the first error that would be sufficient. Theoretically, that is true. Practically, it is a fallacious argument. A new trial left unguided would immediately raise questions which would need to be passed upon eventually by this court. Also if the customary defense in civil actions for damages is to be held sufficient, the new trial would be fruitless and the appeal might just as well be dismissed now as later, in view of the stipulations appearing in the record.

We desire to pay our respects to the second error assigned and to the point of whether or not a case of this character should be governed by the provisions of the Penal Code or by the provisions of the Civil Code.

The Penal Code authorizes the imposition of subsidiary liability in default of the persons criminally liable. Article 20 of the Penal Code provides that this subsidiary liability shall "apply to masters, teachers, persons, and corporations engaged in any kind of industry for felonies and misdemeanors committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties" It is under this provision that the City of Manila is attempting to collect damages from the Manila Electric Company. If the Philippines still lay beneath the dominion of Spain, the pronouncement of primary and subsidiary liability would be taken much as a matter of course. (See decisions of the Supreme Court of Spain of October 10, 1884, January 3, 1887, June 15, 1889, March 6, 1897, December 14, 1894, February 19, 1902; 2 ViadaCodigo Penal Comentado, 5th ed., pp. 487-495; 1 HidalgoCodigo Penal, pp. 331-334; 1 GroizardCodigo Penal, pp. 736-738; Opinion of the Fiscal of the Supreme Court of Justice of Spain of January 17, 1865, 22. Revista de Legislacion, y Jurisprudencia, p. 412; Codigo Penal of Spain of 1928, art. 78.) The Penal Code then takes cognizance of the Civil Code when in article 133 it is provided: "Civil liability arising from felonies or misdemeanors shall be extinguished in the same manner as other obligations, in accordance with the rules of civil law."

In connection with the Penal Code, there must be taken into view 'certain provisions of the Civil Code. Book IV, Title XVI, Chapter II, of the Civil Code concerns obligations which arise from fault or negligence. It is provided in Article 1903 that the obligation imposed for the damage to another caused by fault or negligence is enforceable against those persons for whom another is responsible. But it is added that "The liability imposed by this article shall cease in case the persons subject thereto prove that they exercised all the diligence of a good father of a

family to prevent the damage." Found prior to these articles of the Civil Code in the Chapter of Title I, Book IV, pertaining to general provisions of obligations, are articles 1092 and 1093. The first provides: "Civil obligations arising¹ from crimes or misdemeanors shall be governed by the provisions of the Penal Code." The last mentioned 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 boofc."—that is among others to the provisions of article 1903 above-mentioned.

Manresa, speaking of article 1092 of the Civil Code, offers the following comment:

"The Penal Code treats of this matter, first, in Chapter II, Title 2, of Book I, determining therein who are civilly liable for crimes or misdemeanors and in what manner, and stating in Title 4 of the same Book the extent and purposes of said obligations. Said Book I ends with article 136, which makes express reference to the civil legislation, which reference, as may be seen, is also made in other provisions.

"In those mutual references of one legislation to another, there is no doubt as to the application of one or the other, nor can they be criticized, since they are well grounded.

"The Civil Code refers to the Penal Code as the rule applicable in the first place, since the latter determines and punishes the acts giving rise to said obligations, or creates said obligations, thereby determining their existence and is, therefore, for that reason of preferential application. But, then, as the Penal Code is concerned with, and is interested only in determining how the civil obligation it creates comes into existence and develops under the influence of the illicit character of the act from which it arises and in the guilt of the subject of said obligation, as a consequence of said illicit character, it lays down only those rules inspired by those motives; and once the connection of that obligation with the criminal liability is established in its provisions, with the consequences that may be inferred from the fact that the former is based on the latter; and after an effort has been made, within the sphere of that civil responsibility, toward making the indemnification coextensive with the effects of the crime, and a special necessity, which is characteristic of punishment and is the subject matter of the Penal Code, has been shown in the provisions regulating said liability, the Penal Code, could not, without going beyond its one sphere, give all the rules relative to said obligations, nor did it have any necessity for doing so, because once the peculiar nature of said obligations is saved by its provisions, the essence thereof common to the other obligations must, as in the latter, be denned by the civil law, which will thus become an important source, although suppletory, of those derived from crime.

"The peculiar rules of the Penal Code, as may be seen, are inspired by those motives which, as we have stated, might make them necessary for said Code to establish, as distinguished from the criterion of the civil law with regard to obligations in general. Thus, the fundamental declaration of article 18 gives the connection of civil obligation with criminal liability and explains the origin of the former: article 19 solves the doubt which that connection, among certain liabilities, may create, and determining its limits in the nature and consequences of the act, it mentions those which are of a civil nature, basing the civil liability upon principles of justice, and rather upon casualty than upon liability of a criminal character. The intention to make indemnification proportionate to the nature and effects of the act, from which the obligation arises, inspires the provisions contained in articles 121 to 124, both inclusive; the necessity to distinguish, in order to give the consequences which the crime may produce within the sphere of civil law, whether or not the persons thereby bound are guilty, prevails in article 128 and partly in article 122; article 125 gives the essential difference between the civil obligation and the personal criminal liability, and dissipates a doubt which, due to the tatter's intransmissibility, might arise as to the former by reason of its accessory character in connection with the other, and by the intimate connection between both which the crime or misdemeanor creates and the criminal law declares; the influence of the severity on the punishment is noted in articles 20 and 21, even though the latter coincide with the criterion followed in analogous cases by the Civil Code, and already deviating from the latter's criterion by reason of that severity founded on the illicit origin of the obligations which it declares, it provides for the latter a necessary solidarity in article 127; and abandoning also the criterion of the civil law in

article 126, it establishes within that solidarity, not the presumption of equal division which the latter provides in such a case, but a prudent division which may, and generally must be, unequal, in order that the influence of the different participation in the crime or misdemeanor which is the origin of the former may also reach the Civil obligation.

"In all other respects, and even in some of those same features, either by the express reference of the articles which provide for them, or by the latter's influence, the civil obligation shall be subject to the Civil Code, which even in some of those peculiar rules has supposed a modification in so far as it does not establish the benefit of exemption to the extent needed for support, as provided for in the Penal Code.

"While the Civil Code, in its article 1092, simply makes reference to the Penal Code, yet, it is beyond doubt that by this reference it means those rules of a general nature which regulate the civil liability arising from the particular crimes or misdemeanors therein mentioned, and that, in connection therewith, they shall have the preferential application which this article recognizes in favor of the Penal Code." (8 ManresaCodigo Civil Español, 3d ed., pp. 28-32.)

The case of *Rakes vs. Atlantic, Gulf and Pacific Co.* ([1907], 7 Phil., 359), is one of the widest known authorities on the subject of damages. But that was strictly a civil action not predicated on or related to a criminal action. It was said: "Inasmuch as no criminal proceeding had been instituted, growing out of the accident in question, the provisions of the Penal Code cannot affect this action. This construction renders it unnecessary to finally determine here whether this subsidiary civil liability in penal actions has survived the laws that fully regulated it or has been abrogated by the American civil and criminal procedure now in force in the Philippines." That such subsidiary civil liability in penal actions has not been abrogated by later laws, seems fairly well established. Section 107 of the Code of Criminal Procedure recognizes the rights of persons injured by the offense to take part in the prosecution of the offense and to recover damages. It is there provided that "the court upon conviction of the accused may enter judgment against him for the damages occasioned by his wrongful act." Authoritative decisions have also leaned in the direction of taking it for granted that civil liability could be fixed in the criminal action. While the law of criminal procedure is silent on the subject of subsidiary liability, so far as we can see, there could exist no good reason for not permitting the action to be carried forward to the second stage and there to fix subsidiary liability.

With this preliminary point out of the way, there is no escaping the conclusion that the provisions of the Penal Code govern. The Penal Code in easily understandable language authorizes the determination of subsidiary liability. The Civil Code negatives its application by providing that civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code. The conviction of the motorman was a misdemeanor falling under article 604 of the Penal Code. The act of the motorman was not a wrongful or negligent act or omission not punishable by law. Accordingly, the civil obligation connected up with the Penal Code and not with article 1903 of the Civil Code. In other words, the Penal Code affirms its jurisdiction while the Civil Code negatives its jurisdiction. This is a case of criminal negligence out of which civil liability arises and not a case of civil negligence.

The decision of the United States Supreme Court in the case of *Almeida Chantangco and Lete vs. Abaroa*, supra, should be read in connection both with the discussion of the first assignment of error and the question now before us. In that decision, Mr. Justice Lurton, delivering the opinion of the court, said:

"The case is, however, one which we conceive must be governed by the local law of the Philippine Islands, and the single question to which we need address ourselves is as to whether that law was rightly applied by the local tribunals.

"Article 1902 of the Civil Code in force in the Philippine Islands reads thus: 'A person who, by an act or

omission, causes damage to another when there is fault or negligence, shall be obliged to repair the damage so done.' By articles 1092 and 1093 of the same Code provision is made for the enforcement of civil liability, varying in character according to the origin of the liability. Thus, article 1092 provides that civil obligations arising from crimes and misdemeanors shall be governed by the provisions of the Penal Code. On the other hand, article 1093 provides that 'those arising from acts or omissions, in which fault or negligence, not punished by law, occurs, shall be subject to the provisions of chapter second of title sixteen of this book.' The action here involved corner directly under article 1092, above set out, and is not an action arising from 'fault or negligence, not punished by law.' The complaint alleges that the act of burning was 'malicious and unlawful' and not that it was the result of any 'fault or negligence.' This was the construction placed upon the complaint by both the courts below, and is a construction not challenged here. It follows that we must turn to the Penal Code to discover when a civil action arises out of a crime or misdemeanor, and the procedure of the enforcement of such civil liability. Article 17 of the Penal Code reads as follows: 'Every person criminally liable for a crime or misdemeanor is also civilly liable.' May this civil liability be enforced without a prior legal determination of the fact of the defendant's guilt of crime? Does civil liability exist at all if the defendant has been found not guilty of the acts out of which the civil liability arises? The opinion of the court below was that a judgment of conviction was essential to an action for indemnification under the applicable local law. To this conclusion we assent, upon the following considerations:

"First, by the positive legislation of the Philippine Codes, civil and criminal, a distinction is drawn 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.

"Second, the plain inference from article 17, above set out, is that civil liability springs out of and is dependent upon facts which, if true, would constitute a crime or misdemeanor.

"Third, the Philippine Code of Procedure plainly contemplates that the civil liability of the defendant shall be ascertained and declared in the criminal proceedings.

"Thus, section 742 of the Code of Criminal Procedure, after requiring that, in a criminal proceeding, all of the minor or incidental offenses included in the principal crime shall be decided, adds: 'All questions relating to the civil liability which may have been the subject-matter of the charge shall be decided in the sentence.'

"The foregoing considerations eliminate any question of the effect of such a judgment of acquittal under the principles of the common law and require an affirmance of the judgment of the court below as properly based upon the applicable substantive law of the Philippine Islands, which has not been superseded by legislation since the establishment of the present Philippine Government."

The facts here are distinguishable from those in *Chaves and Garcia vs. Manila Electric Railroad and Light Company* ([1915], 31 Phil., 47). In the cited case, while the motorman was prosecuted and convicted, his sentence included no imposition of civil liability. So the court correctly held, although without discussion, that the employer was not liable in damages resulting from the criminal negligence of his employee, when he has exercised the care of a good father of a family in selecting said employee.

In the later decision of this court in *Francisco vs. Onrubia* ([1924], 46 Phi., 327), the court gave attention to a similar question. Speaking through Mr. Justice Villamor, the court reached the following conclusions:

"Article 1902 of the Civil Code 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, because if the fault or negligence is punished by 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. 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."

Our deduction, therefore, is that the case relates to the Penal Code and not to the Civil Code. Indeed, as pointed out by the trial judge, any different ruling would permit the master to escape scot-free by simply alleging and proving that the master had exercised all diligence in the selection and training of its servants to prevent the damage. That would be a good defense to a strictly civil action, but might or might not be to a civil action either a part of or predicated on conviction for a crime or misdemeanor. (By way of parenthesis, it may be said further that the statements here made are offered to meet the argument advanced during our deliberations to the effect that article 1092 of the Civil Code should be disregarded and codal articles 1093 and 1903 applied.)

In accordance with the foregoing, the judgment appealed from will be set aside, and the record remanded to the lower court for a new trial. Without special finding as to costs in this instance, it will be so ordered.

Avanceña, C. J., Street, Villamor, Romualdez, and Villa-Real, JJ., concur.

CONCURRING

JOHNSON, J.:

In this jurisdiction the rule is, that all liabilities, civil and criminal, resulting from crimes and misdemeanors, shall be decided in the same case. No such rule exists in the United States. To avoid a multiplicity of actions, therefore, all persons who are civilly and criminally liable as a result of crimes and misdemeanors, should be cited to appear for the purpose of making their defense. All such persons are proper parties. There is no reason in law why there should be more than one action to settle both the criminal and civil liabilities.

CONCURRING

JOHNS, J.:

I concur in the result on the first assignment of error and at this time decline to express any opinion as to the second.

DISSENTING

OSTRAND, J.:

Judgment set aside, and record remanded for new trial.

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