

CORNELIO ALBA, PLAINTIFF AND APPELLANT, VS. FORTUNATO ACUÑA AND LAUREANO FRIAL, DEFENDANTS AND APPELLEES.

G.R. No. 31273. August 26, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Cornelio Alba from the order of the Court of First Instance of Capiz dated May 3, 1928, sustaining the demurrers filed against the reamended complaint, and ordering the plaintiff to amend his complaint once more within the period prescribed in the rules, with notice that should he fail to do so, the complaint would be dismissed ipso facto.

In support of his appeal, the appellant assigns the following alleged errors as committed by the trial court in said order, to wit:

"1. The trial court erred in sustaining the demurrer interposed by the defendants.

"2. The trial court erred in issuing the order dismissing this case."

The complaint, to which the demurrer sustained by the trial court was filed, is the reamended complaint of October 11, 1927, which reads as follows:

"Come now the plaintiffs through their undersigned attorneys, and with the permission of this Honorable Court, present the following amended complaint:

"That both the plaintiffs and the defendants are of age and residents of the municipality of Capiz, Province of Capiz, Philippine Islands.

"That the plaintiffs are the father and mother, respectively, of the child Jose Rizal Alba y Aguilung.

"That defendant Dr. Laureano Frial is a practising physician in the municipality of Capiz, Province of Capiz, Philippine Islands.

"That defendant Fortunato Acuña is a practising pharmacist in the municipality of Capiz, Province of Capiz, Philippine Islands, and owner of the drug store called Botica Filipino, established in said municipality of Capiz.

"That on and prior to July 30, 1926, plaintiffs had a son named Jose Rizal Alba y Aguilung, alive and in good health.

"That on and prior to July 30, 1926, the defendants Laureano Frial and Fortunato Acuña were already practising physician and pharmacist, respectively, in the municipality of Capiz, Province of Capiz, Philippine Islands.

"That on the 30th day of July, 1926, said child Jose Rizal Alba y Aguilung was attacked by an illness called diarrhea, and was for that reason submitted to medical treatment by the defendant Dr. Laureano Frial.

"That said defendant Dr. Laureano Frial prescribed a substance to be taken as medicine by the child Jose Rizal Alba y Aguilung, which was prepared in the Botica Filipino, by the defendant Fortunato Acuña.

"That said substance prescribed by defendant Dr. Laureano Frial and prepared by the other defendant, Fortunato Acuña, was administered to the child Jose Rizal Alba from 10 a. m. to 12 a. m, on July 30, 1926, at the rate of one teaspoonful every ten minutes, who, after having taken said substance during said time at the rate of one teaspoonful every ten minutes, instead of improving, became worse, and died the following morning as a result of said substance which he had taken.

"That said substance taken by the child Jose Rizal Alba prescribed by Dr. Laureano Frial and prepared at the Botica Filipina by the other defendant, Fortunato Acuña was a poisonous substance called 'Salicylate of soda' which, taken in quantities as taken by the child Jose Rizal Alba, was more than enough to cause the death of a man, and much more so that of said child Jose Rizal Alba.

"That owing to the death of the boy Jose Rizal Alba, the plaintiffs as father and mother, respectively, of said boy, have suffered damages estimated at twelve thousand pesos, (P12,000) which should be paid to the defendants.

"Wherefore, the plaintiffs respectfully pray this Honorable Court to render judgment sentencing the defendants jointly and severally to pay to the plaintiffs the amount of twelve thousand pesos (P12,000), besides the costs of this trial."

The demurrer interposed by defendant Fortunato Acuiia to the reamended complaint quoted above is based on the contention that the facts alleged therein do not constitute a cause of action against him; and that interposed by the defendant Dr. Laureano Frial to the same reamended complaint is based on the contention that said reamended complaint is founded on the same cause of action, and alleges the same facts alleged in the former amended complaint to which was filed the demurrer sustained by the court, and that said reamended complaint suffers from the same substantial defects as the former amended complaint.

In order to justly and properly decide the procedural question raised in this ca[^]e, it is necessary to ascertain first of all whether the damages claimed in the complaint arose from a felony or misdemeanor, or are the result of acts or omissions when guilt or negligence' not penalized by law has been present, in order to determine whether they come under the provisions of the Penal Code, as provided in article 1092 of the Civil Code, or under the provisions of Chapter II of Title XVI of Book IV of the latter Code, and especially under article 1902 thereof as provided in article 1903 of said Code.

Paragraphs IX and X of the reamended complaint read:

"That said substance prescribed by defendant Dr. Laureano Frial and prepared by the other defendant, Fortunato Acuiia, was administered to the child Jose Rizal Alba from 10 a. m. to 12 a. m, on July 30, 1926, at the rate of one teaspoonful every ten minutes, who, after having taken said substance during said time at the rate of one teaspoonful every ten minutes, instead of improving, became worse, and died the following morning as a result of said substance which he had taken.

"That said substance taken by the child Jose Rizal Alba prescribed by Dr. Laureano Frial and prepared at the Botica Filipina by the other defendant, Fortunato Acuña, was a poisonous substance called 'Salicylate of Soda' which, taken in quantities as taken by the child Jose Rizal Alba, was more than enough to cause the death of a man, and much more so that of said child Jose Rizal Alba,"

If the medicine prescribed by the defendant Dr. Laureano Frial for the boy Jose Rizal Alba was poisonous, and the dose given according to said physician's instructions, was enough to kill not only a child but an adult, the defendant Dr. Laureano Frial acted if not with imprudence, with negligence in prescribing said medicine to be

taken as indicated ; and there being no allegation that he had intended to cause the evil he did cause, such an imprudent or negligent voluntary act, which produced the death of the boy Jose Rizal Alba, and which, had it been intentional, would have constituted the crime of murder, as provided for in articles 568 and 590 of the Penal Code.

The damages claimed in the present civil action having arisen out of a felony or misdemeanor, the case comes under the Penal Code, according to article 1092 of the Civil Code.

Article 17 of the Penal Code of the Philippines reads:

"ART. 17. Every person criminally liable for a felony or misdemeanor is also civilly liable."

Now then, when and how may the civil liability arising from a criminal liability be enforced?

Article 111 of the Law of 1882, known as the Law of Criminal Procedure, whose application is impliedly recognized by section 107 of General Orders, No. 58, as supplementing the provisions of said General Orders, No. 58, provides:

"ART. 111. All actions arising from a felony or misdemeanor may be brought jointly or separately; but the civil action shall not be instituted separately during the pendency of the criminal action until the latter has been, decided by final judgment, * * *

The legal provision quoted above authorizes the joint or separate prosecution of the criminal action and the civil action arising from a felony or misdemeanor, with the sole limitation that during the pendency of the criminal action, the civil action shall not be prosecuted until the former has been decided by final judgment.

Article 112 of said Law of 1882 provides as follows:

"ART. 112. When the criminal action is instituted, the civil action shall be deemed included therein, unless the party injured or prejudiced waives it, or expressly reserves it to be brought after the criminal action has been decided, should it lie.

"If only the civil action arising from one of those crimes which cannot be prosecuted save upon private complaint is instituted, the criminal action shall forthwith be extinguished."

This article speaks of the institution of the criminal action before the civil suit, and of its consequences. The second paragraph thereof states that if only the civil action arising from one of those crimes which cannot be prosecuted save upon private information is instituted, the criminal action shall forthwith be deemed extinguished.

Article 114 of said Law of Criminal Procedure reads as follows:

"ART. 114. Upon the institution of criminal proceedings for a felony or misdemeanor, no civil suit on the same act shall be prosecuted; and should it have been instituted, it shall be suspended, pending final judgment in the criminal case.

"It shall not be necessary for the prosecution of the criminal action that the civil suit arising from the same felony or misdemeanor should have been previously instituted"

In prescribing, that upon the institution of criminal proceedings for a felony or misdemeanor, the suit or civil action that may have been brought upon the same act be suspended pending final judgment in the criminal action, the law again gives us to understand that the suit or civil action may be filed before the criminal action.

The second paragraph of said article 114 quoted above, which states that "it shall not be necessary for the prosecution of the criminal action that the civil suit arising from the same felony or misdemeanor should have been previously instituted," also indicates that the civil action may be filed before the criminal action, but that the

institution of the former is not a prerequisite to the institution of the latter.

The same conclusion clearly follows from the second paragraph of article 117 of the said Law of Criminal Procedure, which states:

"Art 117 * * * * *

"A final judgment of absolution rendered in the civil action shall be no bar to the proper criminal action.

* * * * *

Furthermore, article 123 of the Penal Code provides the following:

"ART. 123. The obligation to make restoration or reparation for damages and indemnification for losses or consequential damages devolves upon the heirs of the person liable.

* * * * *

And article 115 of the aforesaid Law of Criminal Procedure provides the following:

"ART. 115. The criminal action is extinguished by the death of the guilty party; but in such cases the civil action subsists against his heirs or successors in interest, being enforceable civilly only."

If it were indispensable to institute the criminal action before or together with the civil action, and to determine beforehand the guilty party's criminal liability, in case the latter dies before the determination of his criminal liability, the party prejudiced would be unable to obtain indemnity for damages caused by the crime.

As we have seen, in none of the legal provisions cited above relevant to the question of law raised herein is there any definite and categorical prohibition from filing a civil action for indemnity of damages arising from a felony or misdemeanor before the criminal action; on the contrary, it may be gathered from all these provisions taken together that said civil action may be instituted before the criminal action. This court so understood it in holding in the case of *Rakes vs. Atlantic, Gulf and Pacific Co.* (7 Phil., 359), that:

"CIVIL LIABILITY FOR DAMAGES.—In order to enforce the liability of an employer for injuries to his employee, it is not necessary that a criminal action be first prosecuted against the employer or his representative primarily chargeable with the accident. No criminal proceeding having been taken, the civil action may proceed to judgment."

This construction is more congruent with the spirit of the law, equity and justice, and more in harmony with modern progress. Both the French (Code of Criminal Instruction, art. 3, par. 2), and the Porto Rican (*Guzman vs. Vidal*, 19 D. P. R., 841) legislation and jurisprudence have adopted the same meaning.

Considering the present state of our law of civil and criminal procedure, an interpretation contrary to the pertinent provisions of the Law of Criminal Procedure would hardly be just or equitable, and would seriously prejudice parties injured by a felony or misdemeanor.

If the doctrine were laid down that the criminal action for a felony or misdemeanor must be instituted before the civil action for damages arising from the same felonious act, the right of the injured party to indemnity would be a myth, and justice a farce, for the guilty party would be able to dispose of his property or of the article robbed, stolen, or embezzled, pending judgment of condemnation in the criminal case, this court having held the following in the case of *United States vs. Namit* (38 Phil., 926) :

"ATTACHMENT; CIVIL LIABILITY INCIDENT TO CRIME.—In the prosecution of a person accused of murder the heirs of the person slain intervened immediately before the judgment of condemnation was entered

and obtained from the court an order for the attachment of the property of the accused on the ground that he was fraudulently disposing of his property to evade the civil liability to which he would be subject in case of conviction. Held: That the attachment could not be sustained, either under article 589 of the Spanish Law of Criminal Procedure or under sections 424 and 412 of the Code of Civil Procedure."

In view of the foregoing, we are of opinion and so hold, that the civil action for damages arising from a felony or a misdemeanor may be brought before the criminal action for said felony or misdemeanor, but in case the latter is instituted, the former shall be suspended pending final judgment in the criminal action.

Wherefore, the order appealed from is revoked, and it is ordered that the proceeding be remanded to the court of origin so that the demurrers interposed by the respective defendants to the reamended complaint may be overruled, and the latter ordered to answer said reamended complaint within the period prescribed in the rules, with costs against the appellees. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, and Romualdez, JJ., concur.

Johns, J., concurs in the result.

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