

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JUAN MORENO, DEFENDANT AND APPELLANT.

G. R. No. 41086. September 27, 1937

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The appellant was charged with the crime of homicide through reckless imprudence in the Court of First Instance of Bulacan. He was found guilty and sentenced to one year and one day of prision correccional, to indemnify the heirs of the deceased in the sum of P1,000, with the corresponding subsidiary imprisonment in case of insolvency.

In this instance, the widow of the deceased filed a petition for the attachment of the property of the appellant alleging that he is about to dispose, if he has not already disposed of his property, with intent to defraud his creditors and, particularly so, in case the appealed judgment is affirmed, the heirs of the deceased will be unable to collect any of the indemnity awarded them.

In the case of *United States vs. Namit* (38 Phil., 926), this court held that the remedy of attachment which was available under the Spanish system of criminal procedure was abrogated upon the adoption of General Orders! No. 58, and was not perpetuated by the reservation contained in section 107 of this law. This ruling has been followed from the time this decision was rendered in 1918 and had been adopted even prior thereto, from the time General Orders, No. 58 went into effect, and this court sees no reason to alter it.

General Orders, No. 58, which is the law of criminal procedure in force, contains no provision relative to attachment of the property of an accused in a criminal case.

We cannot resort to the former criminal procedure on the ground that it made the attachment of the property of the accused depend upon the result of the summary, a procedure which is not now in effect. Therefore we have no basis for determining whether attachment lies or not.

We cannot resort to the law of civil procedure now in force, simply because it is for civil cases. Furthermore, it would be impracticable in a criminal action. Section 427 of the Code of Civil Procedure provides that before the order of attachment is made the party applying for it must execute to the defendant an obligation in an amount to be fixed¹ by the judge, or justice of the peace issuing it, with sufficient surety for an amount not exceeding that claimed by the plaintiff. In this case there is no basis for fixing the bond inasmuch as the information neither contains nor states the amount of the appellant's civil liability. It is true that under the circumstances in which the petition for attachment has been filed, judgment had already been entered against the appellant fixing his civil liability at P1,000. However, this does not solve the difficulty inasmuch as under the terms by which the order of attachment is granted by the law of civil procedure, should such attachment lie in a criminal action, the same might be issued at any stage of the proceedings and not only after judgment is rendered in the first instance.

On the other hand, according to section 489 of the Code of Civil Procedure, if the judgment rendered is favorable to the defendant, he may have judgment against the plaintiff for the damages he may have sustained by reason of

the attachment, after summary hearing in the same action on due notice. Should the appellant be acquitted in this instance, he would be unable to enforce his right to claim damages as the judgment to this effect should be entered in the first instance and may be reviewed on appeal by this court. On the other hand, as a summary hearing of the matter would be necessary before due notice, it is now too late to enter into this proceeding inasmuch as it should also be conducted in the first instance. It cannot be said that this inconvenience would be obviated by remanding the case to the lower court for the corresponding hearing, on the ground that this would require another judgment by the lower court which would likewise be appealable to this court, thus giving rise to a confusion of proceedings in a criminal action.

Furthermore, the offended party in a criminal case may bring a civil action independently before the criminal action is instituted, or after the latter has been instituted, he may reserve his right to bring a civil action independently thereof if he desires to avail himself of the remedies afforded by the law of civil procedure. If he does not do so and prefers to include his civil action in the criminal action brought by the Government, he should accept all the protection afforded by the criminal procedure and nothing more. He cannot bring to the criminal action the means which might have been used in the civil action which he has abandoned.

For these considerations, the petition is denied. So ordered.

Street, Hull, Vickers, Imperial, Butte, and Diaz, JJ., concur.

MALCOLM,, J., with whom concur ABAD SANTOS and GODDARD, JJ., dissenting:

The question suggested by the record in the present case and necessarily involved in every criminal case in which the offended party is awarded a civil indemnity concerns the question of what, if any, remedy is available to the offended party to enforce the civil indemnity.

The Revised Penal Code, like its predecessor the Spanish Penal Code, provides that every person criminally liable for a felony is also civilly liable (Book I, Title 5). The Code of Criminal Procedure recognizes the same rights of the person injured by the offense in section 107 which provides that "The privileges now secured by law to the person 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 shall not be held to be abridged by the provisions of this order; but such person may appear and shall be heard either individually or by attorney at all stages of the case, and the court upon conviction of the accused may enter judgment against him for the damages occasioned by his wrongful act. * * *" This being the law, and this of course being conceded, what then is the remedy available to the injured party who secures damages of a civil nature in the criminal case? As I understand the decision of this court, there is no remedy available. In the case of *United States vs. Namit* ([1918], 38 Phil., 926), this court held, on facts quite similar to those in the present case, that an attachment could not be sustained under article 589 of the Spanish Law of Criminal Procedure. In *Orbeta w, Sotto* ([1933], 58 Phil., 505), it was held that articles 112 and 114 of the Spanish Law of Criminal Procedure are applicable, and that the injured party could not bring a civil action based on the same acts for the value of the identical property that forms the basis of the criminal prosecution. In *United States vs. Namit*, supra, it was further held that the attachment could not be sustained under sections 424 and 412 of the Code of Civil Procedure. Consolidating these holdings, we thus find that an attachment could not be had under one provision of the Spanish Law of Criminal Procedure, although other provisions of the same Spanish Law of Criminal Procedure are in force, that an attachment could not be had under sections 424 and 412 of the Code of Civil Procedure, and that the injured party could not bring a civil action based on the same acts that form the bases of the criminal prosecution and secure a writ of attachment to make it effective.

The present decision follows the case of *United! States vs. Namit*, supra, but makes no mention of the case of

Orbeta vs. Sotto, supra. The opinion now expressed would accordingly be that an attachment could not be sued out either under the Spanish Law of Criminal Procedure or under the present Code of Civil Procedure. It is now suggested that the offended party in a criminal case could institute an action independently before the initiation of the criminal case or after it was started could reserve his right to an independent civil action if he desired to make use of the provisions of the Code of Civil Procedure, but that if this was not done, civil remedies would not be available. Whether this doctrine is in accordance with that announced in Orbeta vs. Sotto, supra, is not discussed.

It seems illogical to me to even suppose that when two codes, the Revised Penal Code and the Code of Criminal Procedure, go out of their way to assimilate the civil action with the criminal action, all the remedies which have to do with civil actions are not available to enforce the same. It is not necessary that each Code contain in itself all of the provisions which make it effective. Every day the provisions of one Code are made use of to make effective the provisions of another Code. When, therefore, the Revised Penal Code and the Code of Criminal Procedure expressly authorize the inclusion of the civil action in the criminal action, and this is done, every right which pertains to the civil action follows the civil action as a matter of course. If the civil action had been brought independently, no one would question the right of an attachment to issue. What difference is there between the civil action brought independently and the civil action tried according to law with the criminal side of the case?

I am not particular as to what Code is made applicable, whether the Spanish Code of Criminal Procedure or the present Code of Civil Procedure. I can see how an argument can be made predicated on the opening paragraph of the Code of Criminal Procedure which amended the Code of Criminal Procedure then in force, and which in section 107 recognized the privileges there secured by law to the person claiming to be injured. I think, however, that it would be preferable to hold that the law of Criminal Procedure of Spain was necessarily abrogated upon the promulgation of General Orders, No. 58. This being true, I would make use of whatever provisions are found in the Code of Civil Procedure to afford protection to civil rights.

Returning for a moment to the facts of the present case, we have the heirs of the deceased, consisting of a widow and her children, authorized to receive the customary P1,000 because of the murder of the husband and father. The accused is now disposing of his property to thwart this judgment. As I understand the opinion of the majority, the offended parties stand helpless and must see this property disappear without any way available for them to stop it being done. I do not think that this was the purpose of the law, but on the contrary am of the opinion that the offended parties having been awarded a civil judgment, have the right to enforce and protect that judgment by the remedies found in the Code of Civil Procedure.

I regret to have to disagree with the opinion of the majority, but under the circumstances I am compelled to do so and to register my dissent to the denial of the motion presented on behalf of the offended parties.

DISSENTING

VILLA-REAL, J.,

I concur in the dissenting opinion of Justice Malcolm and I wish to add further that as this court has held in numerous decisions that article 112 of the Spanish Law of Criminal Procedure of 1870, which provides that "if the criminal action alone is instituted it shall be understood that the civil action is also availed of unless the injured or offended party has renounced it or has expressly reserved his right to bring it after the criminal action is terminated, if it should lie," is in force, I do not see any reason why the complementary legal provision contained in article 589 of said law which provides that "when the summary discloses indications of criminality against a

person, the judge shall order him to file a bond in an amount sufficient to secure the pecuniary liabilities which might finally be properly declared, directing in said order the attachment of property sufficient to cover said disabilities in case he does not file the bond," should be repealed, when there is no law either expressly or impliedly repealing it. Although it was held in the case of *United States vs. Namit* (38 Phil., 926), that "the remedy of attachment which was available under the Spanish system of criminal procedure was abrogated upon the adoption of General Orders, No. 58, and was not perpetuated by the reservation contained in section 107 of this law," however, when in the course of time it is discovered that such doctrine is prejudicial to the ignorant victims of the crime and to their families who, for lack of counsel's advice and through ignorance, fail to request the reservation of the civil action upon the institution of the criminal action by the prosecuting attorney, I do not see why, for the sake of equity and justice, the doctrine should not be changed by declaring, in force the complementary legal provision which the Spanish legislator, ever mindful of the welfare of such victims and their families, deemed necessary to enact. If a law may be amended or repealed when it proves to be self-defeating, there is no reason why a judicial rule may not be reformed when it produces the same effect. The same Anglo-Saxon law which has a fanatical reverence for the rule of stare decisis admits that previous doctrines may be ignored when a continuation of their observance may cause grievous wrong.

In volume 15, page 956, of the *Encyclopaedia of American Jurisprudence* entitled *Corpus Juris*, the American law on this matter is summarized as follows:

"RULE NOT APPLIED TO PERPETUATE ERROR.—The rule of stare decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the court, and previous decisions should not be followed to the extent that grievous wrong may be the result. Accordingly, the courts will not adhere to a doctrine which, although established by previous decisions, they are convinced is erroneous, unless it has become so well established that it may fairly be considered to have become a rule of property. However, an established rule will not be departed from except in case of grave necessity, and on the fullest conviction that the law has been settled wrongly, and that less injury will result from overruling than from following the earlier decisions. But where the occasion requires the review of a rule of law not so well settled by authority as to preclude such examination, a state court of last resort will review it."

It may be alleged that under the criminal procedure in force, summary is unknown. Summary is "the stage of the proceedings in a criminal case which has not yet reached the plenary"; and plenary is "the stage in which the case is set for trial for the ratification of the witnesses at the summary and admission of other new ones, and for the arraignment of the defendant and other proceedings preparatory to judgment * * * and according to the law of May 24, 1870, the plenary begins with the arraignment and the presentation, exhibition, discussion and appreciation of the evidence." According to said definitions, the summary is equivalent in our criminal procedure to the preliminary investigation conducted by the fiscal to convince himself that there is sufficient evidence to justify the filing of charges with the competent court. Therefore, by analogy, after the fiscal has filed an information, the judge who is competent to try the case may order the alleged accused to file a bond sufficient to secure the pecuniary liabilities which may finally be declared proper, directing therein the attachment of property sufficient to cover said liabilities if he does not file a bond. In this manner the rights of the poor victims of crimes and those of their families would be protected and they would not be so entirely helpless, as they are now, when they are without means to engage the services of counsel to advise them and asked for them the reservation of the right to prosecute the civil action, as the majority desire.

In my humble opinion, the doctrine laid down in the above cited case of *Namit* should be changed and either the widow of the deceased in the case at bar should be granted the order of attachment sued out by her or the accused should be required to file a bond.

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