

CARMEN L. MADEJA, PETITIONER, VS. HON. FELIX T. CARO AND EVA ARELLANO-JAPZON, RESPONDENTS.

G.R. No. 51183. December 21, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In Criminal Case No. 75-88 of the defunct Court of First Instance of Eastern Samar, DR. EVA A. JAFZON is accused of homicide through reckless imprudence for the death of Cleto Madeja after an appendectomy. The complaining witness is the widow of the deceased, Carmen L. Madeja. The information states that: "The offended party Carmen L. Madeja reserving her right to file a separate civil action for damages." (Rollo, p. 36.)

The criminal case still pending, Carmen L. Madeja sued Dr. Eva A. Japzon for damages in Civil Case No. 141 of the same court. She alleged that her husband died because of the gross negligence of Dr. Japzon. The respondent judge granted the defendant's motion to dismiss which motion invoked Section 3 (a) of Rule III of the Rules of Court which reads:

"Sec. 3. Other civil actions arising from offenses. - In all cases not included in the preceding section the following rules shall be observed:

(a) Criminal and civil actions arising from the same offense may be instituted separately, but after the criminal action has been commenced the civil action can not be instituted until final judgment has been rendered in the criminal action." x x x

According to the respondent judge, "under the foregoing Sec. 3(a), Rule III, New Rules of Court, the instant civil action may be instituted only after final judgment has been rendered in the criminal action." (Rollo, p. 33.)

The instant petition which seeks to set aside the order of the respondent judge granting the defendant's motion to dismiss Civil Case No. 141 is highly impressed with merit.

Section 2, Rule III of the Rules of Court in relation to Article 33 of the Civil Code is the applicable provision. The two enactments are quoted hereinbelow:

"Sec. 2. Independent civil action. - In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence." (Rule III, Rules of Court.)

"Art. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence." (Civil Code.)

There are at least two things about Art. 33 of the Civil Code which are worth noting, namely:

1. The civil action for damages which it allows to be instituted is ex-delicto. This is manifest from the provision which uses the expressions "criminal action" and "criminal prosecution." This conclusion is supported by the comment of the Code Commission, thus:

"The underlying purpose of the principle under consideration is to allow the citizen to enforce his rights in a private action brought by him, regardless of the action of the State attorney. It is not conducive to civic spirit and to individual self-reliance and initiative to habituate the citizens to depend upon the government for the vindication of their own private rights. It is true that in many of the cases referred to in the provision cited, a criminal prosecution is proper, but it should be remembered that while the State is the complainant in the criminal case, the injured individual is the one most concerned because it is he who has suffered directly. He should be permitted to demand reparation for the wrong which peculiarly affects him. " (Report, p. 46.)

And Tolentino says:

"The general rule is that when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party reserves his right to institute it separately; and after a criminal action has been commenced, no civil action arising from the same offense can be prosecuted. The present articles creates an exception to this rule when the offense is defamation, fraud, or physical injuries. In these cases, a civil action may be filed independently of the criminal action, even if there has been no reservation made by the injured party; the law itself in this article makes such reservation; but the claimant is not given the right to determine whether the civil action should be scheduled or suspended until the criminal action has been terminated. The result of the civil action is thus independent of the result of the criminal action." (I Civil Code, p. 144. [1974].)

2. The term "physical injuries" is used in a generic sense. It is not the crime of physical injuries defined in the Revised Penal Code. It includes not only physical injuries but consummated, frustrated and attempted homicide.

"The Article in question uses the words 'defamation', 'fraud' and 'physical injuries.' Defamation and fraud are used in their ordinary sense because there are no specific provisions in the Revised Penal Code using these terms as means of offenses defined therein, so that these two terms defamation and fraud must have been used not to impart to them any technical meaning in the laws of the Philippines, but in their generic sense. With this apparent circumstance in mind, it is evident that the terms physical injuries' could not have been used in its specific sense as a crime defined in the Revised Penal Code, for it is difficult to believe that the Code Commission would have used terms in the same article - some in their general and another in its technical sense. In other words, the term 'physical injuries' should be understood to mean bodily injury, not the crime of physical injuries, because the terms used with the latter are general terms. In any case the Code Commission recommended that the civil action for physical injuries be similar to the civil action for assault and battery in American Law, and this recommendation must have been accepted by the Legislature when it approved the article intact as recommended. If the intent has been to establish a civil action for the bodily harm received by the complainant similar to the civil action for assault and battery, as the Code Commission states, the civil action should lie whether the offense committed is that of physical injuries, or frustrated homicide, or attempted homicide, or even death." (Carandang vs. Santiago, 97 Phil. 94, 96-97 [1955].)

Corpus vs. Paje, L-26737, July 31, 1969, 28 SCRA 1062, which states that reckless imprudence or criminal negligence is not included in Article 33 of the Civil Code is not authoritative. Of eleven justices only nine took part in the decision and four of them merely concurred in the result.

In the light of the foregoing, it is apparent that the civil action against Dr. Japzon may proceed independently of the criminal action against her.

WHEREFORE, the petition is hereby granted; the order dismissing Civil Case No. 141 is hereby set aside; no special pronouncement as to costs.

SO ORDERED.

Makasiar (Chairman), Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.
Aquino, J., see concurrence.

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CONCURRING OPINION**AQUINO, J.:**

I concur. Death due to a negligent act may be a delict or quasi-delict. It may create a civil action based on article 100 of the Penal Code or an action based on culpa aquiliana under article 2176 of the Civil Code. These alternatives are assumed in article 2177 of the Civil Code "but the plaintiff cannot recover twice for the same act or omission of the defendant" (Barredo vs. Garcia, 73 Phil. 607 and Sudario vs. Acro Taxi and Yuson, 86 Phil. 1. See Formento vs. CA, L-26442, August 29, 1969, 29 SCRA 437).

The term "physical injuries" in article 33 of the Civil Code includes death and may give rise to an independent civil action (Dyogi vs. Yatco, 100 Phil. 1095).

The rule in Corpus vs. Paje, L-26737, July 31, 1969, 28 SCRA 1062, that reckless imprudence is not included in article 33 of the Civil Code, is not authoritative doctrine because it was concurred in by only five Justices. Four Justices concurred in the result.

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