

SALVADOR L. BUDLONG, IN HIS CAPACITY AS ACTING THIRD ASSISTANT CITY FISCAL, CITY OF TAGBILARAN, PETITIONER, VS. HONORABLE AQUILES T. APALISOK, IN HIS CAPACITY AS ACTING CITY JUD...

G.R. No. 60151. June 24, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for certiorari asks for the setting aside of the orders dated February 11, 1982 and February 19, 1982 issued by the respondent City Court of Tagbilaran City in Criminal Case No. 1838.

In his capacity as Acting Third Assistant City Fiscal of Tagbilaran, the petitioner filed an information before the respondent court charging private respondent Camilo Puyon y Galagar with the crime of serious physical injuries through reckless imprudence. The case was docketed as Criminal Case No. 1838.

During the scheduled arraignment, on February 4, 1982, the accused pleaded guilty to the crime charged. Immediately after the plea the respondent judge rendered judgment in open court and sentenced the accused to suffer thirty (30) days of imprisonment and to pay the costs. No civil liability was imposed. At this same hearing, the accused manifested his intention to avail of the provisions of Presidential Decree No. 968, the Probation Law, as amended. Acting on the manifestation, the respondent court gave the counsel of the accused five (5) days within which to file the petition for probation. In the meantime, the accused by recognizance was entrusted to the custody of a police officer of the Tagbilaran City Integrated National Police.

On February 5, 1982, the petitioner filed an Ex-Parte Motion To Set Case For Hearing for the reception of evidence to prove the civil liability of the accused. (Rollo, Annex "C", Petition, p. 10)

On February 11, 1982, the respondent court issued an order denying the aforesaid motion. The order stated:

"An ex-parte motion to set the above entitled case for hearing having been filed by Acting Asst. City Fiscal Salvador Budlong, and the Court finding said motion to be filed out of time considering that the accused has already filed an application for Probation, the Court hereby denies said motion and considers the case as closed and terminated.. (Rollo, p. 11)

On February 18, 1982, the petitioner filed a motion for reconsideration of the February 11, 1982 order.

On February 19, 1982, the respondent court issued an order denying the aforesaid motion for reconsideration. The order stated:

"A motion for reconsideration of the Court's Order dated 11 February 1982 having been filed by Asst. City Fiscal Salvador Budlong, the Court hereby denies said motion on the ground that under Sec. 4 of P.D. No. 1257, amending P.D. No. 968, the Court after it shall have convicted and sentenced a defendant and upon his application for probation suspend (sic) the execution of said sentence and place the defendant on probation. The prosecution should have asked leave to prove the civil liability of the defendant right before it rendered its

judgment not after for by doing so, would in effect nullify the Order of suspension of the sentence and would defeat the very purpose of the Probation Law." (Rollo, p. 16)

The Acting Third Assistant City Fiscal decided to file this petition.

On April 14, 1982, we issued a resolution which reads:

"G.R. No. 60151 [formerly UDK-5358] (Salvador L. Budlong, etc. vs. Hon. Aquiles T. Apalisok, etc., et al.).—Let this case be DOCKETED in this Court. After deliberating on the petition filed in this case by the petitioner fiscal, the Court Resolved: (a) to CONSIDER the People of the Philippines as impleaded in this case; and (b) without giving due course thereto to require the private respondent and the Solicitor General to COMMENT thereon (not to file a motion to dismiss) within ten (10) days from notice hereof."

The Solicitor General filed his comment as directed. The private respondent, however, decided not to file any comment. In a manifestation dated October 8, 1982, the counsel for accused Camilo Puyo Y Galagar stated that the private respondent was submitting the matter to the sound discretion of this Court without any comments. In the light of this manifestation, we have given due course to the petition.

The petitioner contends:

"a. THAT, RESPONDENT JUDGE, GRAVELY ERRED IN HOLDING THAT THE EX-PARTE MOTION TO SET CASE FOR HEARING WAS FILED OUT OF TIME CONSIDERING THAT THE ACCUSED HAS ALREADY FILED AN APPLICATION FOR PROBATION.

"b. THAT, RESPONDENT JUDGE AGAIN GRAVELY ERRED IN DENYING THE MOTION FOR RECONSIDERATION ON THE GROUND THAT UNDER SECTION 1 OF PRESIDENTIAL DECREE NO. 1257, AMENDING SECTION 4 OF PRESIDENTIAL DECREE NO. 968, THE COURT AFTER IT SHALL HAVE CONVICTED AND SENTENCED A DEFENDANT AND UPON HIS APPLICATION FOR PROBATION SUSPENDS THE EXECUTION OF SAID SENTENCE AND PLACE THE DEFENDANT ON PROBATION.

"c. THAT, RESPONDENT JUDGE LIKEWISE ERRED AND GRAVELY ABUSED HIS DISCRETION WHEN IN THE SAME ORDER (ANNEX 'F') DENYING THE MOTION FOR RECONSIDERATION HE OPINED AND HELD THAT 'THE PROSECUTION SHOULD HAVE ASKED LEAVE TO PROVE THE CIVIL LIABILITY OF THE DEFENDANT BEFORE IT RENDERED ITS JUDGMENT NOT AFTER FOR BY DOING SO WOULD IN EFFECT NULLIFY THE ORDER OF SUSPENSION OF THE SENTENCE AND WOULD DEFEAT THE VERY PURPOSE OF THE PROBATION LAW."

The petition is meritorious.

Considering the circumstances of the instant case, the February 11, 1982 order of the respondent court denying the motion for hearing on the civil liability of the accused was improper.

Probation is defined by Section 3 of Presidential Decree No. 968, the Probation Law as "a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer."

The "conviction and sentence" clause of the statutory definition clearly signifies that probation affects only the criminal aspect of the case.

During the regional seminars on the Probation Law conducted for judges, fiscals, and leaders of the bar, one of the lecturers stated:

". . . The court convicts and sentences the defendant but the execution of the sentence, whether it imposes a

term of imprisonment or a fine only, (Sec. 4, PD 968) is suspended (Sec. 4, PD 968) and the defendant is released on probation. Probation implies that during a period of time fixed by the court the defendant is provided with individualized community-based treatment including conditions he is required by the court to fulfill for his correction and rehabilitation which might be less probable if he were to serve a prison sentence, and for this purpose is placed under the actual supervision and visitation of a probation officer. (Preamble, Secs. 2, 4, 10, 13 and 14, PD 968) If the defendant violates any of the conditions of his probation, the court may revoke his probation and order him to serve the sentence originally imposed. (Sec. 15, PD 968) Upon the other hand, if he fulfills the terms and conditions of his probation, he shall be discharged by the court after the period of probation, whereupon the case against him shall be deemed terminated. His final discharge shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted. (Sec. 16, PD 968) However, he shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him. [Art. 113, Revised Penal Code]. (Cecilio C. Pe "Petition, Investigation, and Grant or Denial of Probation: Their Legal Effects" published in 5 Journal of the Integrated Bar of the Philippines No. 5, pp. 372-376.)

The extinction and survival of civil liability are governed by Chapter Three, Title Five, Book One of the Revised Penal Code as follows:

ART. 112. Extinction of civil liability.— Civil liability established in articles 100, 101, 102, and 103 of this Code shall be extinguished in the same manner as other obligations, in accordance with the provisions of the Civil Law.

ART. 113. Obligation to satisfy civil liability.— Except in case of extinction of his civil liability as provided in the next preceding article, the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of sentence, or any other reason.

In *Veloso v. Carmona* (77 SCRA 450) we had a situation similar to the present case where the accused pleaded guilty during the arraignment. The judge rendered a decision in open court and convicted the accused of slight physical injuries, sentencing him to pay a fine of P25.00 and to suffer public censure but with no adjudication regarding civil liability. We stated:

.....

"It may further be observed that respondent Judge should have made a finding as to the civil liability of the accused considering the allegation in the complaint that the offended party suffered 'contusion with abrasions on the left cheek and left axillary fold, which injuries will require medical treatment from 7 to 9 days barring complication."

and warned and admonished the Judge to be more careful in the performance of his duties in the future.

In *Morta, Sr. v. Alvizo, Jr.* (101 SCRA 221) another judge was similarly admonished for the following error:

"We hold that Judge Alvizo overlooked the elementary rule that every person criminally liable for a felony is also civilly liable. When a criminal action is instituted, the civil action for the civil liability arising from the offense is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately (Art. 100, Revised Penal Code and Sec. 1, Rule 111, Rules of Court).

"After Magayones had pleaded guilty, Judge Alvizo should have set the case for hearing for the reception of the offended party's evidence on the civil liability (*Veloso vs. Carmona*, Adm. Matter No. 502-MJ, June 30, 1977, 77 SCRA 450).

"It was alleged in the criminal complaint that the victim suffered injuries which would require medical attendance for a period of seven to ten days and incapacitate him for performing his customary labor for the same period. According to Fidel Morta, Sr., his son, the aggrieved party, had to be hospitalized for the treatment of his injuries.

"The civil liability may be claimed in the criminal action even if there is no specific allegation of damages in the complaint or information (Roa vs. de la Cruz, 107 Phil. 8; People and Manuel vs. Coloma, 105 Phil. 1287; People vs. Celorico, 67 Phil. 185; People vs. Ursua, 60 Phil. 252)

If under Article 113 of the Revised Penal Code, the obligation to satisfy civil liability continues notwithstanding service of sentence or non-service due to amnesty, pardon, commutation of sentence, or any other reason we fail to see what led the respondent judge to rule that an application for probation should have an opposite effect insofar as determination of civil liability is concerned. It could not have been delay because the motion was filed on the day after the judgment of conviction was rendered in open court right after the plea of guilty and the manifestation that the accused was applying for probation.

It bears repeating that "an offense as a general rule causes two (2) classes of injuries — the first is the social injury produced by the criminal act which is sought to be repaired thru the imposition of the corresponding penalty and the second is the personal injury caused to the victim of the crime which injury is sought to be compensated thru indemnity, which is civil in nature." (Ramos v. Gonong, 72 SCRA 559). As early as 1913, this Court in *U.S. v. Heery* (25 Phil. 600) made it clear that the civil liability of the accused is not part of the penalty for the crime committed. It is personal to the victim. Hence, extinguishing such civil liability in the manner followed by the respondent judge who summarily denied the motion and declared the case "closed and terminated" constitutes a violation of the victim's basic constitutional guaranty of due process.

The general rule is that "when a criminal action is instituted, the civil action for the civil liability arising from the offense is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately." (Article 100, Revised Penal Code and Section 1, Rule 111, Rules of Court) In the instant case, the civil action was more than impliedly instituted because the information specifically alleged that there were physical injuries inflicted on the victim which would require medical attendance for a period of forty (40) days and would incapacitate the victim from performing his customary labor for the same period of time to the damage and prejudice of the latter and that the same would be "in the amount to be proved during the trial of the case." (Information, Annex "A" to petition, Rollo, p. 8).

Section 1 of Presidential Decree No. 1257 amending Section 4 of Presidential Decree No. 968, the Probation Law of 1976, provides:

"SECTION 1. Section 4 of Presidential Decree No. 968, otherwise known as the Probation Law of 1976, is hereby amended to read as follows:

""SEC. 4. Grant of Probation.—Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant but before he begins to serve his sentence and upon his application, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

"The prosecuting officer concerned shall be notified by the court of the filing of the application for probation and he may submit his comment on such application within ten days from receipt of the notification.

"Probation may be granted whether the sentence imposes a term of imprisonment or a fine with subsidiary imprisonment in case of insolvency. An application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application

shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal. In the latter case, however, if the application is filed on or after the date of the judgment of the appellate court, said application shall be acted upon by the trial court on the basis of the judgment of the appellate court.

"An order granting or denying probation shall not be appealable."

The above provision of the Probation Law clearly provides only for the suspension of the sentence imposed on the accused by virtue of his application for probation. It has absolutely no bearing on civil liability. There is no legal basis for the respondent court's conclusion that a hearing to prove the civil liability of the accused under the circumstances of the case, ". . . would in effect nullify the order of suspension of the sentence and would defeat the very purpose of the Probation Law." The civil action for the civil liability is separate and distinct from the criminal action. (*People and Manuel vs. Coloma*, 105 Phil. 1287; *Roa vs. De la Cruz*, 107 Phil. 8; *People vs. Sendaydiego*, 81 SCRA 120).

As for the respondent court's conclusion that the motion to set for hearing the civil liability of the accused, if granted ". . . would defeat the very purpose of the Probation Law," we agree with the Solicitor General's observation:

"As regards the trial court's pronouncement that said motion, if granted, would defeat the very purpose of the Probation Law, suffice it to state that this reasoning is both specious and devoid of merit. Nowhere in the Probation Law may the respondent judge's conclusion find source. To be specific, Section 2 of PD 968 bears restating.

"Sec. 2. Purpose.—This Decree shall be interpreted so as to:

"(a) promote the correction and rehabilitation of an offender by providing him with individualized treatment.

"(b) provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and

"(c) prevent the commission of offenses.'

"The admission of evidence on civil liability, in this case, will not certainly defeat the end and purpose of the probation law. Its denial would, on the other hand, violate the complainant's right to due process." (*Rollo*, pp. 42-43)

In his keynote address during the 1977 Regional Seminars on Probation delivered at the Philippine International Convention Center, President Ferdinand E. Marcos stated:

"A year ago, on July 24, 1976, we restored human dignity to those who may have lost it by legal prescription, by enacting the privilege of probation to adult offenders. This is the decree that we are now studying, 'The Probation Law of 1976.' So by these steps, we placed ourselves on the side of the liberal thinkers in penology and in law, as well as the humanists in their compassionate attitude not only to prisoners and offenders but to man at large.

"We broke away from the archaic institutional corrections system founded on the blind concepts of retribution and punishment. In their place, we introduced humanitarian concern for the first offender, to distinguish the crime from the offender, and to save him from the corrosive effects of imprisonment and the stigma of incarceration.

"All of us subscribe to the philosophy of probation, of rehabilitation, and of compassion. We go along to a certain extent with the philosophy which is embodied in all of these steps that the community to a certain extent is responsible for crime and its causation, that individuals can change and deserve a second chance, and that it is for the greater good of society that offenders not be summarily eliminated from productive life but

brought back to its fold in the quickest and least traumatic way possible."

At the same time, the President warned against the multiple probation system or the "revolving door process" whereby repeaters or recidivists and dangerous offenders manage to enter the probation system. The President added:

"... Another weakness is the indiscriminate grant of probation whatever be the crime, whatever be the past criminal record of the offender, and whatever be the penalty, short of life term and capital sentence. This non-selectivity of offense, penalty and disregard of prior record permit undue risks which we in the Philippines cannot afford to take in favor of the rehabilitation of the offender without tilting the balance against the community at the other end of the probation continuum."

.....

"... The common cause of misunderstanding and lack of coordination among the five pillars of the criminal justice system in other countries is their failure to involve the judges, the prosecutors, and the practitioners in the orientation seminars and conferences on probation as a law and as a system."

The instant case provides another weakness—continued incomprehension by some of its implementors.

Probation has been with us for six (6) years but the statutory concept and objectives, the selection criteria, and its many other aspects, and the prescription for its success appear to elude some judges charged with its implementation.

WHEREFORE, the instant petition is GRANTED. The respondent court's orders dated February 11, 1982 and February 19, 1982 respectively are hereby SET ASIDE. The respondent court is ordered to set hearings on the civil liability of the accused.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Relova, JJ., concur.

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