

**LUIS TAN, WILLIAM S. TAN, JOAQUIN S. TAN AND VICENTE S. TAN,
PETITIONERS, VS. HON. DAVID G. NITAFAN, PRESIDING JUDGE,
REGIONAL TRIAL COURT, BR. 52, MANILA, AND ROSITA B. LIM, IN...**

G.R. No. 76965. March 11, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Bitter rivalry in the movie theater industry led to the slaying of one of the more prominent citizens of Cagayan de Oro almost twenty (20) years ago. Those charged for the sensational manslaughter were either convicted or acquitted by a military court. But the verdict did not put to rest the wounded feelings spawned by the killing; it merely terminated the criminal prosecution of those already haled to court.

The problem now before us concerns the civil aspect of the case. Petitioners claim that the complaint[1] filed against them in the trial court has already prescribed, hence, should be, as it should have been, dismissed by respondent Judge. On the other hand, private respondents insist that the issue on prescription may no longer be relitigated on the ground that we have already resolved the same in G.R. No. 69418, and that assuming that the same may still be activated, respondent Judge committed no grave abuse of discretion in denying petitioners' motion to dismiss grounded on prescription because private respondents' cause of action for damages is coterminous with the crime of murder on which it is based.[2]

We find no grave abuse of discretion on the part of respondent Judge in denying the motion to dismiss.

Florentino Lim, a scion of the wealthy Limketkai family of Cagayan de Oro City, was shot dead in his office on 25 August 1973. The Constabulary, the NBI and the police conducted a joint investigation of the case. As a result, on 17 April 1975, the brothers Luis, William, Joaquin, Vicente, Alfonso and Eusebio, all surnamed Tan, and Go E Kuan, together with eight (8) others, were charged with murder, and unlawful possession, control and custody of a pistol before Military Commission No. 1.[3] Incidentally, Alfonso, Eusebio and Go E Kuan died even before the instant petition could be filed. Thereafter, William also died.

On 11 June 1976, after trial, Military Commission No. 1 convicted Luis and five (5) of his co-accused[4] for murder, while the gunman was also found guilty of illegal possession of firearm.[5] The other brothers of Luis were simply declared "not guilty" in both cases.[6]

On 11 February 1983, private respondent Rosita B. Lim, together with her minor children, Jennifer, Lysander and Beverlie, all surnamed Limketkai, commenced in the Regional Trial Court of Manila a civil action for damages against all those charged with the slaying of Florentino Lim.[7] The case was raffled to the sala of respondent Judge David G. Nitafan.

On 10 May 1983, instead of filing an answer, the Tan brothers filed a motion to dismiss[8] contending that venue was improperly laid, and that private respondents' cause of action was already barred or extinguished by the acquittal of William, Joaquin, Vicente, Alfonso, Eusebio and Go E Kuan by Military Commission No. 1. But

respondent Judge disagreed and denied petitioners' motion, prompting the latter to elevate the issue to the then Intermediate Appellate Court (now Court of Appeals) by way of certiorari,[9] which likewise rejected their arguments and denied their plea. Then they came to this Court raising the propriety of the denial of their motion to dismiss.[10]

On 23 May 1984, we dismissed the petition. We ruled that the action for damages against the convicted defendants was sanctioned by Art. 33 of the Civil Code which allowed an independent civil action in case of physical injuries, which include death. We further held that the complaint stated a cause of action against those acquitted because the Military Commission did not explain the grounds for their acquittal. After all, it was not under any obligation to do so. Hence, we concluded, it would be premature to dismiss the civil action against them.[11]

Thereafter, petitioners filed their answer to the complaint. Prescription was not one of their affirmative defenses.

On 26 July 1984, Mariano Velez, Jr., a co--defendant of petitioners in Civil Case No. 83-15633, filed a separate motion to dismiss based on prescription and waiver or abandonment of claim by private respondents.[12] Invoking *Escueta v. Fandialan*,[13] Velez argued that the prescriptive period for an independent civil action under Art. 33 of the Civil Code was four (4) years, and since it took private respondents almost ten (10) years to file the instant civil action, prescription had already set in.

On 10 September 1984, with leave of court, petitioners filed an amended answer adopting the grounds of Velez in his motion to dismiss as additional affirmative defenses.

On 18 September 1984, respondent Judge denied Velez' motion to dismiss while noting that petitioners expressly adopted the grounds therein stated. The motion to reconsider the order of denial, which was again joined in by petitioners, was likewise denied.

On 21 December 1984, Velez instituted a petition for certiorari[14] questioning the denial of his motion to dismiss, the second incident to reach this Court stemming from the civil action for damages. Petitioners did not join Velez in the petition. On 25 March 1985, in a minute resolution, the Court dismissed Velez' petition.[15]

On 16 January 1986, at the pre-trial, petitioners asked for time to file a motion to dismiss, which the trial court granted purportedly to consider the "intents and purposes of Section 3 of Rule 20, under which if the Court finds that jurisdiction is lacking x x x or if the admitted facts and proof show that plaintiff has no cause of action x x x the Court may render judgment dismissing the case." [16]

On 28 January 1986, petitioners filed their motion to dismiss, which merely reiterated prescription and lack of cause of action as grounds therefor. On 20 March 1986, respondent Judge denied the motion to dismiss ruling that the grounds upon which the motion was anchored were "already passed upon adversely by this Court (trial court) and such adverse rulings were even affirmed by superior courts x x x"[17] On 29 July 1986, reconsideration of the Order of 20 March 1986 was denied.

On 16 January 1987, or almost six (6) months after such denial, petitioners commenced the present petition for certiorari, the third to emanate from Civil Case No. 83-15633, moored solely on the ground of prescription. After private respondents filed their comment, petitioner Luis Tan through counsel filed his own reply, while William, Joaquin and Vicente, also through counsel, filed jointly a separate reply particularly introducing another issue, i.e., whether a civil action for damages filed under Art. 29 of the Civil Code[18] can still prosper against them considering that their acquittal by Military Commission No. 1 simply declared them "not guilty," hence, without any qualification and not merely based on reasonable doubt. But, this is an issue which was already resolved in G.R. No. 67029.

Meanwhile, on 22 May 1987, pending resolution of the instant petition, a decision in the twin cases of *Olague v. Military Commission No. 34*[19] was promulgated. Therein, through Mr. Justice Emilio A. Gancayco, we ruled that courts martial could not try and exercise jurisdiction over civilians for offenses committed by them for as long as the civil courts were open and functioning, which was the prevailing condition during the period of martial law. Thus, in *Cruz v. Enrile*,[20] penned by then Associate Justice Andres R. Narvasa, now Chief Justice, we nullified the proceedings against non-political detainees who were convicted by courts martial and who were still serving sentence, although they were not immediately released as the Department of Justice was simply directed to file the corresponding informations against them in the civil courts.

Consequently, the Secretary of Justice designated a State Prosecutor to conduct a reinvestigation of Crim. Case No. MC-1-67 and, if warranted, to prosecute the case.[21] The State Prosecutor then, without conducting a reinvestigation, filed two (2) informations, one for illegal possession of firearm,[22] and another for murder,[23] against the fifteen (15) original accused in Crim. Case No. MC-1-67 before the Regional Trial Court of Cagayan de Oro.

On 7 November 1988, the brothers William, Joaquin and Vicente instituted a petition for certiorari as well as for prohibition before this Court[24] asserting that the refile of the two (2) informations against them constituted double jeopardy as they were already acquitted by Military Commission No. 1.

On 18 October 1990, through Mme. Justice Carolina Griño-Aquino, this Court sustained the position of William, Joaquin and Vicente in G.R. Nos. 85481-82 and ordered their discharge from the information in Crim. Case No. 88-825, ruling that the refile of the informations against the three (3) brothers who had been acquitted by the military court long before the promulgation of the *Olague* decision would place them in double jeopardy.[25]

With the quashal of the information for murder, private respondents were left with no recourse but to pursue Civil Case No. 83-15633 pending in the RTC of Manila. Unfortunately, this case has been hibernating therein for ten (10) years, the delay being attributable mainly to the tactical maneuvers of petitioners herein, who are defendants therein.

This petition for certiorari must fail. For, prescription may be effectively pleaded in a motion to dismiss only if the complaint shows on its face that the action had already prescribed at the time it was filed.[26] But this is not the situation here. On the contrary, the applicable prescriptive period in this case is, at most, dubitable. While petitioners contend that it is four (4) years hence the cause of action of private respondents already prescribed, the trial court ruled that it was coterminous with the crime so that, in this case where the accused were charged with murder, the prescriptive period for the offense being twenty (20) years, the action had not yet prescribed it having been instituted less than ten (10) years from the time the cause of action accrued.

Be that as it may, in G.R. No. 69418 we already affirmed the ruling of the trial court that prescription had not yet set in, albeit in a minute resolution. But, it is axiomatic that when a minute resolution denies or dismisses a petition for lack of merit, the challenged decision or order, together with its findings of fact and legal conclusions, are deemed sustained.[27] Correspondingly, the impression that no legal rule was enunciated in G.R. No. 69418,[28] as espoused by petitioners, is wrong and must be corrected. The resolution in G.R. No. 69418 having already attained finality, it becomes the "law of the case" as to the issue of prescription, which simply means that if an appellate court has passed upon a legal question and remanded the cause to the court below for further proceedings, the legal question thus determined by the appellate court will not be differently determined on a subsequent appeal given the same case and substantially the same facts.[29] The law of the case, as applied to a former decision of an appellate court, merely expresses the practice of the courts in refusing to reopen what has been decided. Such a rule is necessary to enable an appellate court to perform its duties satisfactorily and

efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any, and every subsequent appeal.[30] Thus, the matter on prescription in the case before us is already a settled issue, now long dead to be revived. Corollary thereto, the issue of whether a cause of action exists against petitioners who were acquitted was already adjudicated in G.R. No. 67029, hence, is now the law of the case, at least insofar as that issue is concerned.

Petitioners may not have been nominal parties in G.R. No. 69418, for which reason they claim that *res judicata* does not lie against them by reason thereof, they nevertheless took active part in the proceedings before the trial court that led to the denial of Velez' motion to dismiss by joining him in pleading prescription as a valid ground for dismissal of the complaint for damages, having adopted not only the grounds[31] in his motion but those in his motion for reconsideration as well.[32]

In retrospect, petitioners joined movant Velez in his twin motions, one to dismiss, and the other, for reconsideration, which were both denied by respondent Judge. We subsequently sustained the denial of both motions. However, petitioners herein did not join Velez in elevating both orders of denial to the appellate court. Consequently, as regards petitioners, that early the issue of prescription was already resolved against them. They can no longer revive that same issue in this petition as our Resolution in G.R. No. 69418 is already the law of the case. Indeed, it was only because of the inordinate reverence of respondent Judge to what he perceived to be the "intent and purposes" of Sec. 3, Rule 20, of the Rules of Court, hovering nevertheless on grave abuse of discretion, that the issue of prescription was resuscitated.

Perforce, the finality of our denial of Velez' motion to dismiss, which relied heavily on prescription, must also apply to petitioners who have joined cause with Velez on the same issue. Consequently, they are now precluded from contesting the validity of that denial even on the pretext that what is being questioned in the instant petition is the denial of their motion to dismiss of 28 January 1986,[33] and not the previous motion of Velez. After all, petitioners are raising under the same factual backdrop the very issue of prescription as Velez did in G.R. No. 69418. The less familiar concept or less terminological usage of *res judicata* as a rule on conclusiveness of judgment refers to the situation where the judgment in the prior action operates as an estoppel only as to the matters actually determined therein or which were necessarily included therein.[34] And prescription was one of the grounds raised in G.R. No. 69418. Courts frown upon litigants reiterating identical motions in the hope that they would entertain a possible change of opinion in the future.[35]

Petitioners' motion to dismiss made at the pre-trial stage did not contain any new allegation on lack of jurisdiction or lack of cause of action, which are the only grounds allowed for such a motion. On the other hand, all the grounds raised by petitioners were mere reiterations of issues already settled by the trial court and affirmed in G.R. Nos. 67029 and 69418. Consequently, the only recourse open to the Court is to dismiss the petition. A contrary ruling of respondent Judge would have, instead, easily subjected him to certiorari on grave abuse of discretion for gross disobedience to settled pronouncements of this Court.

WHEREFORE, there being no grave abuse of discretion committed by respondent Judge, this Petition for Certiorari is DISMISSED. The Regional Trial Court of Manila, Branch 52, or whichever branch of the same court this case may now be assigned, is directed to proceed with the proper disposition of Civil Case No. 83-15633 with the least possible delay. This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Romero, Nocon, Melo, Puno, and Kapunan, JJ., concur.
Davide, Jr., J., joins J. Quiason in his concurring opinion.
Quiason and Vitug JJ., concurring opinion.

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- [1] Docketed as Civil Case No. 83-15633 of the Regional Trial Court of Manila.
- [2] This is a Petition for Certiorari of the 20 March 1986 Order (Annex “C”, Petition) of the Regional Trial Court of Manila, Br. 52, denying petitioners’ motion to dismiss as well as the 29 July 1986 Order (Annex “E”, Petition) denying reconsideration. This case was transferred to ponente from the Third Division on 13 May 1992.
- [3] Docketed as Crim. Case No. MC-1-67.
- [4] Marciano Benemerito, Ang Tiat Chuan, Mariano Velez, Jr., Antonio Ocasiones and Leopoldo Nicolas.
- [5] Marciano Benemerito.
- [6] A military tribunal, unlike a regular court of justice, is not required to make a detailed finding of fact and conclusion of law; nor does it possess jurisdiction to award civil damages.
- [7] The case was raffled to the sala of respondent Judge David G. Nitafan, RTC, Br. 52, Manila.
- [8] Annex “C”, Petition, p. 2.
- [9] Docketed as AC-G.R. SP No. 01583.
- [10] Docketed as G.R. No. 67029.
- [11] Tan v. Intermediate Appellate Court, G.R. No. 67029, 24 May 1984, Second Division, Minute Resolution.
- [12] Annex “2”, Comment.
- [13] No. L-39675, 29 November 1974, 61 SCRA 279.
- [14] Docketed as G.R. No. 69418.
- [15] Annex “5”, Comment; Rollo, p. 82.
- [16] See Note 6, p. 1.
- [17] Referring to then Intermediate Appellate Court in AC-G.R. SP No. 01583 and the Supreme Court in G.R. Nos. 67029 and 69418; See Note 7, p. 7.
- [18] Art. 29 provides: “When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious x x x If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.”
- [19] G.R. Nos. 54558 and 69882, 22 May 1987, 150 SCRA 144.
- [20] G.R. No. 75983, 15 April 1988, 160 SCRA 700.
- [21] Tan v. Barrios, G.R. Nos. 85481-82, 18 October 1990, 190 SCRA 686.
- [22] Docketed as Crim. Case No. 88-824.
- [23] Docketed as Crim. Case No. 88-825.

[24] Docketed as G.R. Nos. 85481-82.

[25] See Note 19.

[26] *Francisco v. Robles*, 94 Phil 1035 (1954).

[27] *Borromeo v. Court of Appeals*, G.R. No. 82273, 1 June 1990, 186 SCRA 1.

[28] *Rollo*, pp. 93-94.

[29] *Allen v. Michigan Bell Tel. Co.*, 61 Mich App 62, 232 NW 2d 302, and *Hinds v. McNair*, 413 NE 2d 606, cited in *Black's Law Dictionary*, Sixth Ed., pp. 886-887.

[30] *Ramos v. Intermediate Appellate Court*, G.R. No. 72686, 8 March 1989, 171 SCRA 93.

[31] Annex "3", Comment, p. 3.

[32] Annex "4", Comment, p. 1.

[33] Annex "B," Petition.

[34] *Calalang v. Register of Deeds of Quezon City*, G.R. No. 76265, 22 April 1992, 208 SCRA 215.

[35] *Medran v. Court of Appeals*, 83 Phil 165 (1949).

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CONCURRING OPINION

QUIASON, J.:

I concur with the ponencia of Justice Josue N. Bellosillo that respondent Judge did not commit any grave abuse of discretion in denying the motion to dismiss of petitioners in Civil Case No. 83-15633 of the Regional Trial Court, Manila.

The motion to dismiss was based on the grounds that the civil action for damages arising from the murder of Florentino Lim filed on February 11, 1983, more than nine years after the incident, had prescribed.

Previously, Mariano Velez, Jr., a co-defendant of petitioners, filed a motion to dismiss also on the grounds of prescription. Petitioners, after amending their answers to include prescription as a defense, adopted Velez' motion. When respondent Judge denied the motion to dismiss, Velez filed with us a petition for certiorari (G.R. No. 69418). We dismissed the petition in a minute resolution dated March 25, 1985. Respondent Judge, therefore, cannot be faulted for denying the motion to dismiss filed by petitioners, considering our minute resolution in G.R. No. 69418.

Be it noted, however, that our resolution in G.R. No. 69418 never made any finding that the civil action filed against petitioners had prescribed. The resolution merely conformed to the procedural rules: (a) that an order denying a motion to dismiss is interlocutory and unappealable; and (b) that certiorari does not lie against such order of denial in the absence of clear abuse of discretion. Petitioners can still appeal from the order denying the motion to dismiss but only when they appeal from the decision on the merits of the case.

I would have ended my discourse with the foregoing observations were it not for the thesis of Justice Jose C. Vitug in his concurring opinion that the action in Civil Case No. 83-015633 has not yet prescribed. I do not agree with his stance.

The petition raises a novel question: When does the civil action for damages arising from murder, which is filed independently of the criminal action, prescribe?

It is a pity that the Court did not delve into the merits of the petition but preferred to resolve it on procedural points.

I have made a study of the legal problem and I have come to the conclusion that the action in Civil Case No. 83--15633 has prescribed.

The Civil Code of the Philippines specifies the sources of obligation, thus:

- (1) Law;
- (2) Contract;
- (3) Quasi-Contracts;
- (4) Acts or omissions punishable by law; and
- (5) Quasi-delicts (Art. 1157).

The Civil Code also specifically provides that:

- (A) The prescription of action based on obligations created by law [1] and contracts [2] is ten years (Art. 1144);
- (B) The prescription of actions based on quasi-contract [3] prescribes in six years (Art. 1145); and
- (C) The prescription of civil actions based on quasi--delict [5] prescribes in four years (Art. 1146).

Except for civil actions based upon defamation (Art. 1147), the Civil Code of the Philippines does not specifically provide for a prescriptive period for obligations arising from delict [4]. However there is the catch-all provision of Article 1149, which provides that:

"All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues."

The conclusion is irresistible that the civil action in Civil Case No. 83-15633 prescribed in five years.

Certainly, the prescriptive period cannot be ten-years. To justify a ten-year prescriptive period, one has to show that the obligation falls within the purview of Article 1144, the only provision in the entire Civil Code which specifies a ten-year prescriptive period.

The civil action cannot be considered as "an obligation created by law" under Article 1159 because the Civil Code itself has specified a separate category for obligations arising from delict and that is in item 4 of Article 1157 or "Acts or omissions punishable by law".

Escueta v. Fadialan, 61 SCRA 275 [1974] provided the lodestar to guide us in arriving at a safe harbor for our views. In said case, we ruled that the prescriptive period for a civil action for damages arising from physical injuries is four years under Article 1146 of the Civil Code of the Philippines, being an injury to the rights of plaintiff. The victim of the criminal act was the plaintiff himself; hence he instituted the action to recover damages for an injury to his own rights. It is markworthy that we did not classify the action for damages arising from physical injuries as one based on an "obligation created by law".

The provisions of Article 33 of the Civil Code of the Philippines are irrelevant to the issue and should not be brought into play. Said article merely provides a rule of procedure and cannot be the source of an obligation,

much less prescribe a law on prescriptions.

Article 33 was adopted as an exception to the general rules in criminal procedure that the criminal and civil actions arising from the same offense may be instituted separately but after the criminal action has been commenced, the civil action cannot be instituted until final judgment has been rendered in the criminal action (1940 Rules of Court, Rule 107, Sec. 1 [b]), and that after a criminal action has been commenced, no civil action arising from the same offense can be prosecuted and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered (1940 Rules of Court, Rule 107, Sec. 1 [c]).

The substantive law provision that "every person criminally liable for a felony is also civilly liable therefor" (Revised Penal Code, Art. 100) assumes that both the criminal and civil liabilities are filed within the prescriptive period for each action.

The civil liability arises from the commission or omission of the acts punished by law and not from the prior conviction of the accused.

The civil liability of the accused and consequently the indemnity, which he may be sentenced to pay to the offended party, cannot be regarded as part of the penalty provided for the offense charged (*U.S. v. Heary*, 25 Phil. 600). The indemnity for damages in a criminal action, being purely civil in nature, is independent of the penalties imposed for the criminal act (*Quiming v. De la Rosa*, 67 Phil. 40 O.G. 1st. Supp. (No. 3) p. 85, 67 Phil. 406).

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CONCURRING OPINION

VITUG, J.:

I concur. I also maintain that the civil action, subject matter of the petition, has, in any event, been timely instituted.

The Civil Code provisions on prescriptive periods are encompassing except only when there are special laws, or provisions thereof, that exact their own periods of limitations. Here, of course, I speak of civil obligations regardless of their source - by law, contracts, quasi-contracts, delicts or quasi-delicts. So evidently jealous and uncompromising is the Civil Code on this matter that it has emphasized, in its Article 1149, that "(a)ll other action whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues."

It would seem to me that between the prescriptive periods under the Civil Code for bringing a civil action, on the one hand, and the prescription of felonies under the Revised Penal Code, on the other hand, there is, as regards civil liability aspects, hardly any choice, I submit, but to accept the preponderance of the Civil Code on the issue. I would see it to be a disturbing development to attempt an equation of one with the other, let alone to apply one by legal implication absent the other. Whereas, the statute of limitations on felonies is, by and large, made to depend on the gravity of the offense and the penalty imposed, the prescriptive periods under the Civil Code, upon the other hand, have been structured to weigh in so many other varied factors as, to cite a few, the nature of the action, the status of the parties, the subject matter involved, the aspect of the issue, the right that is violated, the manner of breach, the degree of liability and the extent of injury or damage, all calculated to ensure with reason the timely invocation of rights and of defenses in civil litigations.

Looking at the instant petition, is the Civil Code devoid of any specific period of prescription to cover the case? I propose to answer it in the negative.

Firstly, we have Article 1144 of the Civil Code, which provides for a 10-year statutory limitation on actions upon obligations created by law. A perfect example is the civil liability that the law attaches to the commission of felonies under the Revised Penal Code when it categorically expresses that a person liable for a felony is likewise civilly liable (Art. 100). This Code thus gives correlatively a civil right of action in favor of an aggrieved party or, in proper cases, of his successors in interest but, take note, only when the offending party is made liable for the felony.

Secondly, we have Article 1146 of the same Civil Code, expressing a four-year prescriptive limitation in two instances: (1) "(u)pon an injury to the right of the plaintiff," referring more accurately than not to a violation of rights personal or proprietary to the plaintiff, which incidentally is not the situation at hand, and (2) "(u)pon a quasi-delict." Let me elaborate a little on the latter.

The Civil Code on quasi-delicts, among other things, provides:

"Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

"Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant."

"Art. 2178. The provisions of articles 1172 to 1174 are also applicable to a quasi-delict."

Based on the above statutory provisions, a quasi-delict would then be an extra-contractual relation that the law ordains whenever one, by act or omission, causes damage to another, there being fault or negligence. The concept covers, said the Supreme Court in *Elcano vs. Hill* (77 SCRA 98), not only acts not punishable by law but also those punishable whether intentional and voluntary or negligent. Somehow, this broad and sweeping statement has unfortunately given rise to a number of misconceptions. Subsequent unqualified pronouncements, particularly to the effect that where negligence is punishable under the Penal Code the responsibility for quasi-delict is separate and distinct from the civil liability arising from the felony (Art. 2177, Civil Code; *Joseph vs. Bautista*, G.R. L-41423, 23 February 1989; *Bermudez vs. Hon. Herrera*, L-32055, 26 February 1988; *Andamo vs. IAC*, G.R. 74761, 6 Nov. 1990; *Gula vs. Dianala*, L-40308, 28 September 1984), have, it seems, compounded the matter even further.

The broad concept of quasi-delict has evidently been purposely structured in order to render actionable any wrongful act or omission, causing damage to another, that would not otherwise be actionable under any of the other stated sources of obligation - law, contracts, quasi-contracts and delicts - and thus ensure that appropriate relief can be sought. It has not been intended, however, that quasi-delict should predominate over such other sources of obligations where, in fact, the applicability of such other sources is clearly on hand; otherwise, the specific distinctions in law - substantive and procedural - in the governance of these various kinds of obligations could very well be reduced to great insignificance.

The Report of the Code Commission is enlightening.

"A question of nomenclature confronted the Commission. After a careful deliberation, it was agreed to use the terms 'quasi-delict' for those obligations which do not arise from law, contracts, quasi-contracts, or criminal offenses. They are known in Spanish legal treatises as 'culpa aquiliana', 'culpa-extra-contractual' or

'cuasi-delitos'. The phrase 'culpa-extra-contractual' or its translation 'extra-contractual fault' was eliminated because it did not exclude quasi-contractual or penal obligations. 'Aquiliana fault' might have been selected, but it was thought inadvisable to refer to so ancient a law as the 'lex Aquilia'. So 'quasi-delicts' was chosen, which more nearly corresponds to the Roman Law classification of obligations and is in harmony with the nature of this kind of liability.

"The Commission also, thought of the possibility of adopting the word 'tort' from Anglo-American law. But 'tort' under that system is much broader than the Spanish-Philippine concept of obligations arising from non-contractual negligence." "Tort in Anglo-American jurisdiction includes not only negligence, but also intentional criminal acts such as assault and battery, false imprisonment and deceit. In the general plan of the Philippine legal system, intentional and malicious acts are governed by the Penal Code, although certain exceptions are made in the Project x x x."

Prescinding from the rule that "(o)bligations arising from contracts have the force of law between the contracting parties x x x" (Article 1159, Civil Code), the existence of a contract will ordinarily bar an intrusion of specific provisions of law but, of course, only to the extent that the latter would be opposed to the specific areas validly and adequately covered by contractual stipulations. The provisions on quasi-delict would ordinarily then be inapplicable to a breach of contract. In matters, however, not provided for by the parties themselves, the deficiency undisputably can be governed by the general provisions of the Civil Code. That there is a contractual relation between parties will not thereby necessarily militate against the application of the rules on quasi-delict which, at times, can indeed be the very act or omission that breaches the agreement. In such exceptional instances, the principles laid down for quasi-delicts can also govern (see *Singson vs. Bank of P. I.*, 23 SCRA 1117; *Air France vs. Carrasco*, 18 SCRA 115; *Philippine Air Lines vs. Court of Appeals*, 106 SCRA 143).

The same principle applies to acts or omissions punishable by law. When such law likewise prescribes specifically a civil liability on the offender, such as that found in the Revised Penal Code (Article 100 - Article 113, inclusive), the obligation is thereby deemed to have arisen from "delict" within the meaning of Article 1157 of the Civil Code in defining the sources of obligation, and in relation to Article 1144 thereof, the prescriptive period would be ten years. In the absence, however, of any declaration of civil liability in the law penalizing an act or omission, like in certain special laws or, in the case of felonies under the Revised Penal Code, when an accused is acquitted of the felony for which he is charged because of a failure to prove his guilt beyond reasonable doubt, a civil liability may still be warranted, not or no longer, however, on the basis of delict (since none can still be said to exist) but, as a rule and only if the facts warrant, on quasi-delict as being itself a source of obligation under paragraph (5) of Article 1157 of the Civil Code, but, in this latter case, the prescriptive period would be four years conformably with Art. 1146 of the said Code.

Does it mean then, that the aggrieved party should await a conviction for the felonious act if he desires to base his action on delict? Not necessarily. The complainant may, as a matter of alternative choice, either allow the civil case to be taken up together with the criminal case or institute a separate civil action on the basis of quasi-delict under what correctly is its broad concept. There being no conviction, however, the applicable prescriptive period would be four years. There are specific instances, however, when the conviction of the offender for a felony would not be required in order to enable an aggrieved party to sue on the basis of delict. Examples of such cases are those so declared by the Civil Code as defamation, fraud and physical injuries (Article 33, Civil Code), including for obvious reasons the more serious offenses of murder and homicide, where a mere preponderance of evidence would also suffice to warrant the imposition of civil liability. In these instances, where the civil liability is declared even without the need for conviction of the offender, Article 1144 of the Civil Code providing for a 10-year statutory limitation can then govern.

In resume', I submit, as follows:

General Proposition - The Civil Code on civil actions is a complete law on prescriptive periods, and these periods apply except when provided otherwise by special laws.

Specific Propositions ?

(a) Absent any period specifically set out by the Civil Code on particular causes of action, the 5-year statutory limitation prescribed in Article 1149 of the Civil Code applies.

"Article 1149. All other actions whose period are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues."

(b) In the case of felonies (acts or omissions punishable by the Revised Penal Code) -

(1) The Civil liability prescribes in ten years if the offender is found to be liable for the offense. Article 100 of the Revised Penal Code renders the offender civilly liable only when he, in effect, is found guilty. Such civil liability, being an obligation explicitly created by law, Article 1144 of the Civil Code, prescribing a 10-year prescriptive period, would apply.

"Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment.

Exceptionally, civil liability may arise even without the accused being found guilty of the felony. A good example, apropos the instant case, is Article 33 of the Civil Code.

"Article 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 may proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

Obviously the term "physical injuries" includes cases when, as a result of those injuries, the victim dies. In the above instances, the civil liability, being an obligation created by law (that does not require the offender to be convicted), the prescriptive period would be ten years (Art. 1144, Civil Code, supra).

(2) When, in general (e.g., those not falling under Article 33 of the Civil Code), an accused is acquitted of a felony, it may still be possible, subject to the provisions of Article 29 of the Civil Code, for the complainant to file a civil action for damages, based, not on "delict," but on quasi-delict, which is another source of obligation under Article 1157 (5) of the Civil Code. Here, however, the prescriptive period would be four years.

"Article 1146. The following actions must be instituted within four years:

- (1) Upon an injury to the rights of the plaintiff;
- (2) Upon a quasi-delict."

Accordingly, the civil action in the case at bench against the petitioners, who were all indicted for murder, being one of the exceptional cases covered by Article 33 of the Civil Code, must be held to have been filed seasonably, i.e., within the prescriptive period of ten years under Article 1144 of the Civil Code.

I, therefore, vote to DISMISS the petition also on the above grounds.

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