

**YAKULT PHILIPPINES AND LARRY SALVADO, PETITIONER, VS.
COURT OF APPEALS, WENCESLAO M. POLO, IN HIS CAPACITY AS
PRESIDING JUDGE OF BR. 19 OF THE RTC OF MANILA, AND ROY
CAMASO, RES...**

G.R. No. 91856. October 05, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Can a civil action instituted after the criminal action was filed prosper even if there was no reservation to file a separate civil action? This is the issue in this petition.

On December 24, 1982, a five-year old boy, Roy Camaso, while standing on the sidewalk of M. de la Fuente Street, Sampaloc, Manila, was sideswiped by a Yamaha motorcycle owned by Yakult Philippines and driven by its employee, Larry Salvado.

Salvado was charged with the crime of reckless imprudence resulting to slight physical injuries in an information that was filed on January 6, 1983 with the then City Court of Manila, docketed as Criminal Case No. 027184. On October 19, 1984 a complaint for damages was filed by Roy Camaso represented by his father, David Camaso, against Yakult Philippines and Larry Salvado in the Regional Trial Court of Manila docketed as Civil Case No. 84-27317.

In due course a decision was rendered in the civil case on May 26, 1989 ordering defendants to pay jointly and severally the plaintiff the sum of P13,006.30 for actual expenses for medical services and hospital bills; P3,000.00 attorney's fees and the costs of the suit. Although said defendants appealed the judgment, they nevertheless filed a petition for certiorari in the Court of Appeals challenging the jurisdiction of the trial court over said civil case.

Petitioners' thesis is that the civil action for damages for injuries arising from alleged criminal negligence of Salvado, being without malice, cannot be filed independently of the criminal action under Article 33 of the Civil Code. Further, it is contended that under Section 1, Rule 111 of the 1985 Rules on Criminal Procedure such a separate civil action may not be filed unless reservation thereof is expressly made.

In a decision dated November 3, 1989, the Court of Appeals dismissed the petition.[1] A motion for reconsideration thereof filed by petitioners was denied on January 30, 1990. Hence this petition.

The petition is devoid of merit.

Section 1, Rule 111 of the 1985 Rules of Criminal Procedure provides as follows:

"SECTION 1. Institution of criminal and civil actions. - When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others.

The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

In no case may the offended party recover damages twice for the same act or omission of the accused.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate or exemplary damages, the filing fees for such civil action as provided in these Rules shall constitute a first lien on the judgment except in an award for actual damages.

In cases wherein the amount of damages, other than actual, is alleged in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial. (1a)"

Although the incident in question and the actions arising therefrom were instituted before the promulgation of the 1985 Rules of Criminal Procedure, its provisions which are procedural may apply retrospectively to the present case.[2]

Under the aforecited provisions of the rule, the civil action for the recovery of civil liability is impliedly instituted with the criminal action unless the offended party waives the civil action, reserves his right to institute it separately or institutes the civil action prior to the criminal action.

Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

It is also provided that the reservation of the right to institute the separate civil action shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

In this case, the offended party has not waived the civil action, nor reserved the right to institute it separately. Neither has the offended party instituted the civil action prior to the criminal action. However, the civil action in this case was filed in court before the presentation of the evidence for the prosecution in the criminal action of which the judge presiding on the criminal case was duly informed, so that in the disposition of the criminal action no damages was awarded.

The civil liability sought arising from the act or omission of the accused in this case is a quasi delict as defined under Article 2176 of the Civil Code as follows:

"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."

The aforecited revised rule requiring such previous reservation also covers quasi-delict as defined under Article 2176 of the Civil Code arising from the same act or omission of the accused.

Although the separate civil action filed in this case was without previous reservation in the criminal case, nevertheless since it was instituted before the prosecution presented evidence in the criminal action, and the judge handling the criminal case was informed thereof, then the actual filing of the civil action is even far better than a

compliance with the requirement of an express reservation that should be made by the offended party before the prosecution presents its evidence.

The purpose of this rule requiring reservation is to prevent the offended party from recovering damages twice for the same act or omission.

Thus, the Court finds and so holds that the trial court had jurisdiction over the separate civil action brought before it.

WHEREFORE, the petition is DENIED. The questioned decision of the Court of Appeals dated November 3, 1989 and its resolution dated January 30, 1990 are hereby AFFIRMED.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., and Paras, J., on leave.

[1] Justice Luis L. Victor was the ponente concurred in by Justices Ricardo L. Pronove, Jr. and Felipe B. Kalalo.

[2] *People vs. Sumilang*, 77 Phil. 764 (1946).

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