

## SECOND DIVISION

[ G.R. NO. 151452, August 29, 2005 ]

**SPS. ANTONIO C. SANTOS AND ESPERANZA C. SANTOS, NORA BARNALO, BELINDA LUMACTAD, MARIENELA DY, NIKKA SANTOS AND LEONARDO FERRER, PETITIONERS, VS. HON. NORMANDIE B. PIZARDO, AS PRESIDING JUDGE, RTC OF QUEZON CITY, BRANCH 101, DIONISIO M SIBAYAN, AND VIRON TRANSPORTATION COMPANY, INC., REPRESENTED BY VIRGILIO Q. RONDARIS, PRESIDENT/CHAIRMAN, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

In this *Petition for Review on Certiorari*<sup>[1]</sup> dated March 1, 2002, petitioners assail the *Resolutions* of the Court of Appeals dated September 10, 2001 and January 9, 2002, respectively dismissing their petition for certiorari and denying their motion for reconsideration, arising from the dismissal of their complaint to recover civil indemnity for the death and physical injuries of their kin.

The following facts are matters of record.

In an Information dated April 25, 1994, Dionisio M. Sibayan (Sibayan) was charged with Reckless Imprudence Resulting to Multiple Homicide and Multiple Physical Injuries in connection with a vehicle collision between a southbound Viron Transit bus driven by Sibayan and a northbound Lite Ace Van, which claimed the lives of the van's driver and three (3) of its passengers, including a two-month old baby, and caused physical injuries to five (5) of the van's passengers. After trial, Sibayan was convicted and sentenced to suffer the penalty of imprisonment for two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. However, as there was a reservation to file a separate civil action, no pronouncement of civil liability was made by the municipal circuit trial court in its decision promulgated on December 17, 1998.<sup>[2]</sup>

On October 20, 2000, petitioners filed a complaint for damages against Sibayan, Viron Transit and its President/Chairman, Virgilio Q. Rondaris, with the Regional Trial Court of Quezon City, pursuant to their reservation to file a separate civil action.<sup>[3]</sup> They cited therein the judgment convicting Sibayan.

Viron Transit moved to dismiss the complaint on the grounds of improper service of summons, prescription and laches, and defective certification of non-forum shopping. It also sought the dropping of Virgilio Q. Rondaris as defendant in view of the separate personality of Viron Transit from its officers.<sup>[4]</sup>

Petitioners opposed the motion to dismiss contending, among others, that the right to file a separate action in this case prescribes in ten (10) years reckoned from the

finality of the judgment in the criminal action. As there was no appeal of the decision convicting Sibayan, the complaint which was filed barely two (2) years thence was clearly filed within the prescriptive period.

The trial court dismissed the complaint on the principal ground that the cause of action had already prescribed. According to the trial court, actions based on *quasi delict*, as it construed petitioners' cause of action to be, prescribe four (4) years from the accrual of the cause of action. Hence, notwithstanding the fact that petitioners reserved the right to file a separate civil action, the complaint ought to be dismissed on the ground of prescription.<sup>[5]</sup>

Improper service of summons was likewise cited as a ground for dismissal of the complaint as summons was served through a certain Jessica Ubalde of the legal department without mentioning her designation or position.

Petitioners filed a motion for reconsideration pointing out yet again that the complaint is not based on *quasi delict* but on the final judgment of conviction in the criminal case which prescribes ten (10) years from the finality of the judgment.<sup>[6]</sup> The trial court denied petitioners' motion for reconsideration reiterating that petitioners' cause of action was based on *quasi delict* and had prescribed under Article 1146 of the Civil Code because the complaint was filed more than four (4) years after the vehicular accident.<sup>[7]</sup> As regards the improper service of summons, the trial court reconsidered its ruling that the complaint ought to be dismissed on this ground.

Petitioners filed a petition for certiorari with the Court of Appeals which dismissed the same for error in the choice or mode of appeal.<sup>[8]</sup> The appellate court also denied petitioners' motion for reconsideration reasoning that even if the respondent trial court judge committed grave abuse of discretion in issuing the order of dismissal, *certiorari* is still not the permissible remedy as appeal was available to petitioners and they failed to allege that the petition was brought within the recognized exceptions for the allowance of certiorari in lieu of appeal.<sup>[9]</sup>

In this petition, petitioners argue that a rigid application of the rule that certiorari cannot be a substitute for appeal will result in a judicial rejection of an existing obligation arising from the criminal liability of private respondents. Petitioners insist that the liability sought to be enforced in the complaint arose ex delicto and is not based on *quasi delict*. The trial court allegedly committed grave abuse of discretion when it insisted that the cause of action invoked by petitioners is based on *quasi delict* and concluded that the action had prescribed. Since the action is based on the criminal liability of private respondents, the cause of action accrued from the finality of the judgment of conviction.

Assuming that their petition with the appellate court was procedurally flawed, petitioners implore the Court to exempt this case from the rigid operation of the rules as they allegedly have a legitimate grievance to vindicate, *i.e.*, damages for the deaths and physical injuries caused by private respondents for which no civil liability had been adjudged by reason of their reservation of the right to file a separate civil action.

In their *Comment*<sup>[10]</sup> dated June 13, 2002, private respondents insist that the

dismissal of the complaint on the ground of prescription was in order. They point out that the averments in the complaint make out a cause of action for *quasi delict* under Articles 2176 and 2180 of the Civil Code. As such, the prescriptive period of four (4) years should be reckoned from the time the accident took place.

Viron Transit also alleges that its subsidiary liability cannot be enforced since Sibayan was not ordered to pay damages in the criminal case. It is Viron Transit's contention that the subsidiary liability of the employer contemplated in Article 103 of the Revised Penal Code presupposes a situation where the civil aspect of the case was instituted in the criminal case and no reservation to file a separate civil case was made.

Private respondents likewise allege that the recourse to the Court of Appeals via certiorari was improper as petitioners should have appealed the adverse order of the trial court. Moreover, they point out several other procedural lapses allegedly committed by petitioners, such as lack of certification against forum-shopping; lack of duplicate original or certified true copy of the assailed order of the trial court; and non-indication of the full names and addresses of petitioners in the petition.

Petitioners filed a *Reply*<sup>[11]</sup> dated September 14, 2002, while private respondents filed a *Rejoinder*<sup>[12]</sup> dated October 14, 2002, both in reiteration of their arguments.

We grant the petition.

Our Revised Penal Code provides that every person criminally liable for a felony is also civilly liable.<sup>[13]</sup> Such civil liability may consist of restitution, reparation of the damage caused and indemnification of consequential damages.<sup>[14]</sup> When a criminal action is instituted, the civil liability arising from the offense is impliedly instituted with the criminal action, subject to three notable exceptions: *first*, when the injured party expressly waives the right to recover damages from the accused; *second*, when the offended party reserves his right to have the civil damages determined in a separate action in order to take full control and direction of the prosecution of his cause; and *third*, when the injured party actually exercises the right to maintain a private suit against the offender by instituting a civil action prior to the filing of the criminal case.

Notably, it was the 1985 Rules on Criminal Procedure, as amended in 1988, which governed the institution of the criminal action, as well as the reservation of the right to file a separate civil action. Section 1, Rule 111 thereof states:

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