

THIRD DIVISION

[G.R. No. 145391, August 26, 2002]

**AVELINO CASUPANAN AND ROBERTO CAPITULO, PETITIONERS,
VS. MARIO LLAVORE LAROYA, RESPONDENT.**

DECISION

CARPIO, J.:

This is a petition for review on certiorari to set aside the Resolution^[1] dated December 28, 1999 dismissing the petition for certiorari and the Resolution^[2] dated August 24, 2000 denying the motion for reconsideration, both issued by the Regional Trial Court of Capas, Tarlac, Branch 66, in Special Civil Action No. 17-C (99).

The Facts

Two vehicles, one driven by respondent Mario Llavore Laroya ("Laroya" for brevity) and the other owned by petitioner Roberto Capitulo ("Capitulo" for brevity) and driven by petitioner Avelino Casupanan ("Casupanan" for brevity), figured in an accident. As a result, two cases were filed with the Municipal Circuit Trial Court ("MCTC" for brevity) of Capas, Tarlac. Laroya filed a criminal case against Casupanan for reckless imprudence resulting in damage to property, docketed as Criminal Case No. 002-99. On the other hand, Casupanan and Capitulo filed a civil case against Laroya for *quasi-delict*, docketed as Civil Case No. 2089.

When the civil case was filed, the criminal case was then at its preliminary investigation stage. Laroya, defendant in the civil case, filed a motion to dismiss the civil case on the ground of forum-shopping considering the pendency of the criminal case. The MCTC granted the motion in the Order of March 26, 1999 and dismissed the civil case.

On Motion for Reconsideration, Casupanan and Capitulo insisted that the civil case is a separate civil action which can proceed independently of the criminal case. The MCTC denied the motion for reconsideration in the Order of May 7, 1999. Casupanan and Capitulo filed a petition for certiorari under Rule 65 before the Regional Trial Court ("Capas RTC" for brevity) of Capas, Tarlac, Branch 66,^[3] assailing the MCTC's Order of dismissal.

The Trial Court's Ruling

The Capas RTC rendered judgment on December 28, 1999 dismissing the petition for certiorari for lack of merit. The Capas RTC ruled that the order of dismissal issued by the MCTC is a final order which disposes of the case and therefore the proper remedy should have been an appeal. The Capas RTC further held that a special civil action for certiorari is not a substitute for a lost appeal. Finally, the

Capas RTC declared that even on the premise that the MCTC erred in dismissing the civil case, such error is a pure error of judgment and not an abuse of discretion.

Casupanan and Capitulo filed a Motion for Reconsideration but the Capas RTC denied the same in the Resolution of August 24, 2000.

Hence, this petition.

The Issue

The petition premises the legal issue in this wise:

"In a certain vehicular accident involving two parties, each one of them may think and believe that the accident was caused by the fault of the other. x x x [T]he first party, believing himself to be the aggrieved party, opted to file a criminal case for reckless imprudence against the second party. On the other hand, the second party, together with his operator, believing themselves to be the real aggrieved parties, opted in turn to file a civil case for *quasi-delict* against the first party who is the very private complainant in the criminal case."^[4]

Thus, the issue raised is whether an accused in a pending criminal case for reckless imprudence can validly file, simultaneously and independently, a separate civil action for *quasi-delict* against the private complainant in the criminal case.

The Court's Ruling

Casupanan and Capitulo assert that Civil Case No. 2089, which the MCTC dismissed on the ground of forum-shopping, constitutes a counterclaim in the criminal case. Casupanan and Capitulo argue that if the accused in a criminal case has a counterclaim against the private complainant, he may file the counterclaim in a separate civil action at the proper time. They contend that an action on *quasi-delict* is different from an action resulting from the crime of reckless imprudence, and an accused in a criminal case can be an aggrieved party in a civil case arising from the same incident. They maintain that under Articles 31 and 2176 of the Civil Code, the civil case can proceed independently of the criminal action. Finally, they point out that Casupanan was not the only one who filed the independent civil action based on *quasi-delict* but also Capitulo, the owner-operator of the vehicle, who was not a party in the criminal case.

In his Comment, Laroya claims that the petition is fatally defective as it does not state the real antecedents. Laroya further alleges that Casupanan and Capitulo forfeited their right to question the order of dismissal when they failed to avail of the proper remedy of appeal. Laroya argues that there is no question of law to be resolved as the order of dismissal is already final and a petition for certiorari is not a substitute for a lapsed appeal.

In their Reply, Casupanan and Capitulo contend that the petition raises the legal question of whether there is forum-shopping since they filed only one action - the independent civil action for *quasi-delict* against Laroya.

Nature of the Order of Dismissal

The MCTC dismissed the civil action for *quasi-delict* on the ground of forum-shopping under Supreme Court Administrative Circular No. 04-94. The MCTC did not

state in its order of dismissal^[5] that the dismissal was with prejudice. Under the Administrative Circular, the order of dismissal is without prejudice to refiling the complaint, unless the order of dismissal expressly states it is with prejudice.^[6] Absent a declaration that the dismissal is with prejudice, the same is deemed without prejudice. Thus, the MCTC's dismissal, being silent on the matter, is a dismissal without prejudice.

Section 1 of Rule 41^[7] provides that an order dismissing an action without prejudice is not appealable. The remedy of the aggrieved party is to file a special civil action under Rule 65. Section 1 of Rule 41 expressly states that "where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65." Clearly, the Capas RTC's order dismissing the petition for certiorari, on the ground that the proper remedy is an ordinary appeal, is erroneous.

Forum-Shopping

The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, to secure a favorable judgment.^[8] Forum-shopping is present when in the two or more cases pending, there is identity of parties, rights of action and reliefs sought.^[9] However, there is no forum-shopping in the instant case because the law and the rules expressly allow the filing of a separate civil action which can proceed independently of the criminal action.

Laroya filed the criminal case for reckless imprudence resulting in damage to property based on the Revised Penal Code while Casupanan and Capitulo filed the civil action for damages based on Article 2176 of the Civil Code. Although these two actions arose from the same act or omission, they have different causes of action. The criminal case is based on culpa criminal punishable under the Revised Penal Code while the civil case is based on culpa aquiliana actionable under Articles 2176 and 2177 of the Civil Code. These articles on culpa aquiliana read:

"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."

Any aggrieved person can invoke these articles provided he proves, by preponderance of evidence, that he has suffered damage because of the fault or negligence of another. Either the private complainant or the accused can file a separate civil action under these articles. There is nothing in the law or rules that state only the private complainant in a criminal case may invoke these articles.

Moreover, paragraph 6, Section 1, Rule 111 of the 2000 Rules on Criminal Procedure ("2000 Rules" for brevity) expressly requires the accused to litigate his counterclaim in a separate civil action, to wit:

"SECTION 1. Institution of criminal and civil actions. – (a) x x x.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action."
(Emphasis supplied)

Since the present Rules require the accused in a criminal action to file his counterclaim in a separate civil action, there can be no forum-shopping if the accused files such separate civil action.

Filing of a separate civil action

Section 1, Rule 111 of the 1985 Rules on Criminal Procedure ("1985 Rules" for brevity), as amended in 1988, allowed the filing of a separate civil action independently of the criminal action provided the offended party reserved the right to file such civil action. Unless the offended party reserved the civil action before the presentation of the evidence for the prosecution, all civil actions arising from the same act or omission were deemed "impliedly instituted" in the criminal case. These civil actions referred to the recovery of civil liability *ex-delicto*, the recovery of damages for *quasi-delict*, and the recovery of damages for violation of Articles 32, 33 and 34 of the Civil Code on Human Relations.

Thus, to file a separate and independent civil action for *quasi-delict* under the 1985 Rules, the offended party had to reserve in the criminal action the right to bring such action. Otherwise, such civil action was deemed "impliedly instituted" in the criminal action. Section 1, Rule 111 of the 1985 Rules provided 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 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.

x x x." (Emphasis supplied)

Section 1, Rule 111 of the 1985 Rules was amended on December 1, 2000 and now provides as follows:

"SECTION 1. Institution of criminal and civil actions. – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

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

x x x

(b) x x x

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this rule governing consolidation of the civil and criminal actions." (Emphasis supplied)

Under Section 1 of the present Rule 111, what is "deemed instituted" with the criminal action is only the action to recover civil liability arising from the crime or ex-delicto. All the other civil actions under Articles 32, 33, 34 and 2176 of the Civil Code are no longer "deemed instituted," and may be filed separately and prosecuted independently even without any reservation in the criminal action. The failure to make a reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on these articles of the Civil Code. The prescriptive period on the civil actions based on these articles of the Civil Code continues to run even with the filing of the criminal action. Verily, the civil actions based on these articles of the Civil Code are separate, distinct and independent of the civil action "deemed instituted" in the criminal action.^[10]

Under the present Rule 111, the offended party is still given the option to file a separate civil action to recover civil liability ex-delicto by reserving such right in the criminal action before the prosecution presents its evidence. Also, the offended party is deemed to make such reservation if he files a separate civil action before filing the criminal action. If the civil action to recover civil liability ex-delicto is filed separately but its trial has not yet commenced, the civil action may be consolidated with the criminal action. The consolidation under this Rule does not apply to separate civil actions arising from the same act or omission filed under Articles 32, 33, 34 and 2176 of the Civil Code.^[11]

Suspension of the Separate Civil Action

Under Section 2, Rule 111 of the amended 1985 Rules, a separate civil action, if reserved in the criminal action, could not be filed until after final judgment was rendered in the criminal action. If the separate civil action was filed before the commencement of the criminal action, the civil action, if still pending, was suspended upon the filing of the criminal action until final judgment was rendered in the criminal action. This rule applied only to the separate civil action filed to recover liability ex-delicto. The rule did not apply to independent civil actions based on