Supreme Court E-Library

FIRST DIVISION

[G.R. No. 71914. January 29, 1986]

ZENAIDA CRUZ REYES, *petitioner, vs.* **HON. JUDGE ALICIA SEMPIO-DIY, 'Vacation' Judge of RTC, BRANCH 170, Malabon, Metro Manila, and SPS. CRISTINA MALICSI and DANILO MALICSI,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; INDEPENDENT CIVIL ACTIONS; RULE AND EXCEPTION; *ROA VS. DELA CRUZ* (107 Phil. 8) CITED.**— In *Roa vs. dela Cruz*, 107 Phil. 8, the Court said: "There is no question that in defamation cases (such as the present) as in cases of fraud and physical injuries, a civil action for damages entirely separate and distinct from the criminal action may be brought by the injured party, and such action shall proceed independently of the criminal prosecution and shall require only a preponderance of evidence (Art. 33, New Civil Code). In such cases, the injured party used not make a reservation in the criminal case for the filing of the civil action for damages, for the Civil Code already grants or reserves to him that right, so that his failure to reserve such right in the criminal case does not bar him from filing a separate civil action for damages (*Mendoza v. Arrieta*, 91 SCRA 113; *Garcia v. Flerido*, 52 SCRA 420). This is true even if Sec. 2 of Rule 111 of the former Rules of Criminal Procedure in the Revised Rules of Court (the rule applicable herein) required a reservation in the criminal case, because the Civil Code does not require such reservation, and the Rules of Court, being merely procedural, can not amend the Civil Code which is substantive in nature (*Mendoza v. Arrieta* and *Garcia v. Flerido, supra*). There is, however, an exception to the above rule; namely, when the offended party actually intervenes in the criminal action by appearing therein through a private prosecutor for the purpose of recovering indemnity for damages, he is deemed to have waived his right to file a separate civil action for damages if he failed to make a reservation therefor; thus, if the court did not enter a judgment for civil liability against the accused in the criminal case because the

Supreme Court E-Library

offended party failed to submit evidence of damages therein and he did not file any motion for reconsideration or did not appeal from said judgment, the judgment becomes res judicata, and an independent civil action under Art. 33 of the New Civil Code cannot be brought by said offended party anymore (*Roa v. de la Cruz,* 107 Phil. 8; *Azucena v. Potenciano,* 5 SCRA 468)."

2. **ID.; ID.; ID.; ID.; ID.; DISTINGUISHED FROM *MENESES VS. LUAT* (12 SCRA 454).**— In the case of *Meneses vs. Luat* (12 SCRA 454), the Court said: "The issue now before us is whether or not the rule laid down in the Roa case should govern this one. We are of the opinion that there is a demonstrable material difference between the circumstances of the two cases. In the first not only was the offended party represented by a private prosecutor in the criminal action but the action went through trial on the merits. In fact it was the private prosecutor who actually handled the case. He therefore had sufficient opportunity to claim and prove damages, for which purpose alone, according to the decision of this Court, has active intervention was allowed. For if that had not been the purpose, or if the offended party had reserved the right to file a separate civil action, such intervention would not have been justified "In the instant case the criminal action against defendant Luat did not proceed to trial, as he pleaded guilty upon arraignment. The mere appearance of private counsel in representation of the offended party did not constitute such active intervention as could only import an intention to press a claim for damages in the same action. It is as reasonable to indulge the possibility that the private prosecutors appeared precisely to be able to make a seasonable reservation of the right to file a separate civil action which, even if unnecessary at the time would nevertheless have been the prudent and practical thing to do for the purpose of better protecting the interest of their clients. But as matters turned out, the accused pleaded guilty upon arraignment and was immediately sentenced. Thereafter there was no chance to enter such a reservation in the record. "We do not believe that plaintiffs' substantive right to claim damages should necessarily be foreclosed by the fact ù at best equivocal as to its purpose ù that private prosecutors entered their appearance at the very inception of the proceeding, which was then cut short at that stage. It cannot he said with any reasonable certainty that plaintiffs had thereby committed themselves to

Supreme Court E-Library

the submission of their action for damages in that action. The rule laid down in *Roa vs. De la Cruz, supra*, does not govern this case. The ends of justice will be better served if plaintiffs are given their day in court."

APPEARANCES OF COUNSEL

Leodegario A. Barayang, Sr. for petitioner.

DECISION

PATAJO, *J.*:

This is a direct appeal on a question of law from a resolution of the Regional Trial Court of Malabon, Metro Manila dated July 30, 1985 dismissing upon motion of the defendant Civil Case No. 357-MN.

In Criminal Case No. 23633 of the Metropolitan Trial Court of Navotas, Metro Manila, Cristina Malicsi was charged with the crime of intriguing against honor. The aggrieved party therein was Zenaida Cruz Reyes, the herein petitioner. In said case Zenaida Cruz Reyes was represented by a private prosecutor, Atty. Barayang. The accused pleaded guilty to the information and was sentenced by the Court to a fine of P50.00. Because of her plea of guilty, the aggrieved party was unable to present evidence to prove damages against the accused. Neither was she able to make a reservation of her right to file a separate civil action for damages. Instead, she filed a new action against Cristina Malicsi and her husband with the Regional Trial Court for damages arising from the defamatory words uttered against her by Cristina Malicsi which was the subject of the information filed against the latter for intriguing against honor. Said case is Civil Case No. 357-MN.

At the pre-trial plaintiff admitted that she was represented by a private prosecutor in the criminal case against defendant Cristina Malicsi and in said case she did not reserve the right to file a separate action for damages. She further admitted that the appearance of said private prosecutor was for the purpose

Supreme Court E-Library

of proving damages against the accused. After said admission made by plaintiff, the parties agreed the have the Court rule on the question of whether or not plaintiff by her being represented by a private prosecutor in the criminal case and her failing to make a/reservation in said caso to file a separate actoon was barred from filiog a separate civil actoon for damages against the accused Cristina Malocsi.

On said issue, the Court *a quo* ruled in favor of the defendants, rolying principally upon *Roa vs. dela Cruz*, 107 Phil. 8, and dismissed the case. It said:

"There is no question that io defamation cases (such as the present) as in coses of fraud and physicol injurhes, a civil actoon for damages entirely/separate and distinct from the criminal action may be brought by the injured party, and such action shall proceed independently of the criminal prosecution and shall require only a preponderance of evidence (Art. 33, New Civil Code). In such cases, the injured party used not make a reservation in the criminal case for the filing of the civil action for damages, for the Civil Code already grants or reserves to him that right, so that his failure to reserve such right in the criminal case does not bar him from filing a separate civil action for damages (*Mendoza v. Arrieta*, 91 SCRA 113; *Garcia v. Flerido*, 52 SCRA 420). This is true even if Sec. 2 of Rule 111 of the former Rules of Criminal Procedure in the Revised Rules of Court (the rule applicable herein) required a reservation in the criminal case, because the Civil Code does not require such reservation, and the Rules of Court, being merely procedural, can not amend the Civil Code which is substantive in nature (*Mendoza v. Arrieta* and *Garcia v. Flerido, supra*).

There is, however, an exception to the above rule; namely, when the offended party actually intervenes in the criminal action by appearing therein through a private prosecutor for the purpose of recovering indemnity for damages, he is deemed to have waived his right to file a separate civil action for damages if he failed to make a reservation therefor; thus, if the court did not enter a judgment for civil liability against the accused in the criminal case because the offended party failed to submit evidence of damages therein and he did not file any motion for reconsideration or did not appeal from said judgment, the judgment becomes *res judicata*, and an independent civil action under Art. 33 of the New Civil Code cannot be brought

Supreme Court E-Library

by said offended party anymore (*Roa v. de la Cruz*, 107 Phil. 8; *Azucena v. Potenciano*, 5 SCRA 468)."

We, however, believe that there are demonstrable material differences between the facts in the *Roa* case and the present case which would make the decision in the *Roa* case inapplicable in the present case as precedent. In the *Roa* case there was a full-blown hearing where a private prosecutor participated actively and there could, therefore, be no question that the aggrieved party's participation through the private prosecutor in said case clearly indicated her intention to have her claim for damages litigated in the criminal action against the accused. It was only after the trial of the case on the merits that a decision was rendered finding the accused guilty of slight slander and sentencing her to pay a fine of ₱50.00 but making no award of damages in favor of the aggrieved party. The reason for the Court's not making any award of damages is because of the failure of the aggrieved party to submit evidence to support her claim for damages. The Court said that by such failure she had only herself or her counsel to blame. Neither did she file a motion for reconsideration of the decision of the Court nor appeal therefrom to rectify the Court's failure to award damages in her favor. The decision of the Court had, therefore, become final and any action to be filed by her for damages arising from the same criminal act of the accused would already be barred on ground of *res judicata*.

In the present case, however, while it is true that petitioner, the aggrieved party in the criminal case against private respondent Cristina Malicsi for the crime of intriguing against honor, was represented by a private prosecutor for the purpose of proving damages, the unexpected plea of guilt by the accused and her being sentenced immediately to a fine of P50.00 prevented petitioner from proving her claim for damages and making a reservation to file a separate civil action. More in point, therefore, is the case of *Meneses vs. Luat*, 12 SCRA 454, and it is the ruling in the said case rather than the Roa case which is controlling in the present case. Like in the present case in the *Meneses* case the aggrieved party was also represented by a private prosecutor, but the case did not proceed to trial as the

Supreme Court E-Library

accused upon arraignment pleaded guilty. Distinguishing said case from *Roa vs. dela Cruz*, the Court said:

"The issue now before us is whether or not the rule laid down in the Roa case should govern this one. We are of the opinion that there is a demonstrable material difference between the circumstances of the two cases. In the first not only was the offended party represented by a private prosecutor in the criminal action but the action went through trial on the merits. In fact it was the private prosecutor who actually handled the case. He therefore had sufficient opportunity to claim and prove damages, for which purpose alone, according to the decision of this Court, has active intervention was allowed. For if that had not been the purpose, or if the offended party had reserved the right to file a separate civil action, such intervention would not have been justified.

"In the instant case the criminal action against defendant Luat did not proceed to trial, as he pleaded guilty upon arraignment. The mere appearance of private counsel in representation of the offended party did not constitute such active intervention as could only import an intention to press a claim for damages in the same action. It is as reasonable to indulge the possibility that the private prosecutors appeared precisely to be able to make a seasonable reservation of the right to file a separate civil action which, even if unnecessary at the time would nevertheless have been the prudent and practical thing to do for the purpose of better protecting the interest of their clients. But as matters turned out, the accused pleaded guilty upon arraignment and was immediately sentenced. Thereafter there was no chance to enter such a reservation in the record.

"We do not believe that plaintiffs' substantive right to claim damages should necessarily be foreclosed by the fact — at best equivocal as to its purpose — that private prosecutors entered their appearance at the very inception of the proceeding, which was then cut short at that stage. It cannot be said with any reasonable certainty that plaintiffs had thereby committed themselves to the submission of their action for damages in that action. The rule laid down in *Roa vs. De la Cruz, supra*, does not govern this case. The ends of justice will be better served if plaintiffs are given their day in court." (pp. 457-458)

Upon authority, therefore, of *Meneses vs. Luat*, We find and so hold that the mere appearance of a private prosecutor in the criminal case against the herein private respondents did not

Supreme Court E-Library

necessarily constitute such intervention on the part of the aggrieved party as could only import an intention on her part to press her claim for damages in said criminal case and a waiver of her right to file a separate civil action for damages. Because the accused had pleaded guilty upon arraignment and was immediately sentenced, there was no chance for the aggrieved party to present evidence in support of her claim for damages and to enter a reservation in the record to file a separate civil action.

Moreover, the failure of petitioner to make a reservation to file a separate civil action did not foreclose her right to file said separate complaint for damages. Under Article 33 of the Civil Code there is no requirement that as a condition to the filing of a separate civil action for damages a reservation to file said civil action be first made in the criminal case and such reservation is not necessary, the provision of Rule 111, Section 2 notwithstanding. *Mendoza vs. Arrieta*, 91 SCRA 113, where this Court, quoting from *Garcia vs. Flerido*, 52 SCRA 420, said:

"x x x Hence, 'the proviso in Section 2 of Rule 111 with reference to x x x Articles 32, 33 and 34 of the Civil Code is contrary to the letter and spirit of the said articles, for these articles were drafted x x x and are intended to constitute as exceptions to the general rule stated in what is now Section 1 of Rule 111. The proviso, which is procedural, may also be regarded as an unauthorized amendment of substantive law, Articles 32, 33 and 34 of the Civil Code, which do not provide for the reservation required in the proviso.'"

IN VIEW OF THE FOREGOING, judgment is hereby rendered GRANTING the petition and ordering respondent Court to proceed with the hearing of Civil Case No. 357-MN, with costs against private respondents.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., and *Dela Fuente, JJ.,* concur.