Notes and Comments:

"Effect Of Acquittal On Civil Liability Arising From Crime"

Under our present laws, exemption from criminal liability does not necessarily mean exemption from civil liability. However, it may be advisable for a more comprehensive treatment of the subject, to lay down the difference between the so-called "old rule" and "present rule." The old rule is said to have been expressed in the following terms: "....if the criminal liability carries with it the civil one, the exemption from criminal liability implies exemption from civil liability." [1] And the present rule is said to be contained in Rule 107, Sec. 1, par. (d) of the Rules of Court, and Art. 29 of the Civil Code.[2]

The criticisms to the old rule are well known.[3] It is to be noted, however, that in those decisions exempting the accused from

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[1] Francisco v. Onrubia, 46 Phil. 327. See also Almeida v. Abaroa, 8 Phil. 178; Iribar v. Millat, 5 Phil. 362; Wise & Co. v. Larion, 45 Phil. 314.

[2] (d) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment, that the fact from which the civil might arise did not exist. x x x" (Rule 107, Sec. 1)

Art. 29: "When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond a 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.

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."

[3] "This is one of those cases where confused thinking leads to unfortunate and deplorable consequences. Such reasoning fails to draw a clear line of demarcation, between criminal liability and civil responsibility, and to determine the logical result of the distinction. The two liabilities are separate and distinct from each other. One affects the social order and the other, private rights. One is for the punishment or correction of the offender while the other is for reparation of damages suffered by the aggrieved party. It is just and proper that, for the purpose of the imprisonment of or fine upon the accused, the offense should be proved beyond reasonable doubt. But for the purpose of indemnifying the complaining party, why should the offense also be proved beyond reasonable doubt? Is not the invasion or violation of every private right to be proved only by a preponderance of evidence? Is the right of the aggrieved person any the less private because the wrongful act is also punishable by the criminal law?

"For these reasons, the Commission recommended the adoption of the reform under discussion. It will correct a serious defect in our laws. It will close up an inexhaustible source of injustice — a cause for disillusionment on the part of innumerable persons injured or wronged." (Commission Report, pp. 45-46)

civil liability after an acquittal from a criminal prosecution, the Court was of the opinion that the persons accused were not responsible for the crime charged. The exemptions therein from civil liability did not result from the mere fact of acquittal, but because the fact from which the civil might arise did not exist. In the case of Almeida v. Abaroa, supra, the accused was found by the Court not to have been the author of the offense charged; hence, he could not possibly be made liable, criminally or civilly. In Francisco v. Onrubia, supra, the judgment of acquittal held that the accused was not responsible for any imprudence, fault, carelessness or negligence whatsoever; the matter of negligence was thus determined in the criminal action and could not be litigated anew. And in Iribar v. Millat,[4] the Court held: "It is said also, that Iribar concealed a large part of the silver loaded on the Don Juan, thus committing actual theft.....It having been decided that there was no such theft, the principle of res adjudicata does not permit that the same question be again brought into discussion, not even as a mere allegation or by way of argument." We may therefore draw a distinction between the decisions themselves and the dicta contained in them. The judgments would remain as they are even if these same cases were to be decided under the so-called "present rule". The fault lies in the ambiguity of the former decisions, rather than in the decisions themselves. And to show that even in these early cases, the Court was already cognizant of the "present rule", we have the reference of the Supreme Court to Art. 116 of the Law of Criminal Procedure, in Francisco v. Onrubia:[5] "And the civil action reserved by the party injured will be allowed after the termination of the criminal proceeding only when he has a right thereto, that is to say, when the judgment rendered is one of conviction, or, in case the accused is acquitted, the complaint is based on some other fact or ground different from the criminal act. But an action based on the same facts that were the subject-matter of the criminal case cannot be maintained *when by a final judgment it was declared that the fact from which the civil action could have arisen did not exist.*" In the early case of U.S. v. Budias,[6] the defendant was acquitted of the criminal charge but the Court held that the civil action still subsisted. It was there said that the defendant may have been guilty of negligence or carelessness or for any other motive, but there was no proof of criminal intent. Defendant was acquitted, but action for damages in a civil suit against the defendant was reserved to the complaining witness. Again, in Worcester v. Ocampo,[7] a libel suit, acquittal of the defendant in the criminal case was not allowed as a defense in the civil case. The Court therein cited the case of Ocampo v. Jenkins[8] wherein it was held that "the fact that the evidence in the criminal cause was insufficient to show Lope K. Santos guilty of the crime charged, in no way barred the right of the person injured by said alleged libel to maintain the present action against him."

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[4] 5 Phil. 362, 366.
[5] 46 Phil. 327, 332, underlining is the author's.
[6] 4 Phil. 502.
[7] 22 Phil. 45, 93.
[8] 14 Phil. 681.

Art. 116 of the old Law of Criminal Procedure was substantially embodied in Sec. 1 of Rule 107 of the Rules of Court. And Art. 29 of the Civil Code serves to supplement, rather than, as others may contend, to repeal the provisions of the Rules of Court, particularly par. (d), Sec. 1 of Rule 107. It may be argued by some that by the words of Art. 29, a civil action may subsequently be brought only if the acquittal from the criminal case proceeds from a "reasonable doubt as to the guilt of the accused", and from no other ground. Once more, confusion arises by the use of words not clear in themselves. Such an interpretation can have no basis. On the contrary, it is against the spirit of Art. 29. There are several grounds of acquittal, and guilt not proved beyond a reasonable doubt is only one of them.[9] Whatever the ground of acquittal, the damage to the injured party remains unsatisfied. The obvious reason for allowing a civil action for damages in spite of acquittal due to the guilt of the accused not having been proved beyond a reasonable doubt, is that a lesser amount of evidence is required in the civil case.[10] There appears no justification why the same reason should not hold good in case, for example, the accused has been acquitted because not all the essential elements of the crime have been satisfactorily shown. In case of acquittal under par. 4 of Art. 11; or subdivisions 1, 2, 3, 5, and 6 of Art. 12; or under Art. 832, civil liability is expressly provided for by the Revised Penal Code. In case of acquittal resulting from a mistake of fact, there may or may not be civil liability depending on whether or not the defendant is absolved from all negligence.

The rule as it stands, therefore, is that acquittal in a criminal action does not mean exemption from civil liability, in case the injured party has reserved the right to institute a separate civil action, and unless the accused has been fully acquitted and found to be free from any responsibility for the crime charged. The question may arise as to when such is the case and when not. This is provided for in Art. 29.

As the bringing of a civil action is now allowed whether the criminal prosecution resulted in a conviction or acquittal, what will be the basis of such action? The value of analyzing this question lies in that it will greatly aid one in determining what course of action to follow in a particular case. After a conviction, the civil liability arises from Art. 100 of the Revised Penal Code. The civil liability being governed by the Revised Penal Code, the

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[9] Defenses for acquittal in criminal cases:
1. No satisfactory evidence for all the essential elements of felony.
2. Absence of criminal intent as in mistake of fact;
3. Any of the justifying circumstances (Art. 11).
4. Any of the exempting circumstances (Art. 12).
5. An absolutory cause especially provided by law.
6. Guilt not proved beyond a reasonable doubt (Rule 123, Sec. 95) (Padilla's Criminal Code, 1949 ed., p. 121).

[10] "There are numerous cases of criminal negligence which cannot be shown beyond a reasonable doubt, but can be proved by a preponderance of evidence. In such cases, defendant can and should be made responsible in a civil action under Arts. 1902-1910 of the Civil Code." (Barredo v. Garcia, G. R. No. 48006, July 8, 1942, p. 34)

employer who may be sued, if there is such employer, may not avail himself of the defense of having exercised due diligence in the selection or supervision of his employee. But on the other hand, his liability is merely subsidiary. Hence, the injured must first proceed against the employee and only if the latter is insolvent will the liability of the employer arise. This theory has, however, been modified by the case of Barredo v. Garcia, which will be discussed later. After an acquittal, the right to recover civil liability, in cases where such right is granted, can no longer be based on the Revised Penal Code. Art. 100 thereof explicitly states that "Every person criminally liable is also civilly liable." If a person is not criminally liable, he cannot be civilly liable under the said article. In certain instances, however, an action for civil liability may nevertheless be based on the Revised Penal Code in spite of acquittal.[11] But in all other cases, the civil action would have to be based on the Civil Code.[12] In such a case, the employer who may be sued can avail himself of the defense of due diligence in the supervision and selection of his employee. But on the other hand, his liability is primary.[13]

The object of the civil action which is brought either after a conviction or acquittal, or independently of any criminal prosecution, is the recovery of damages. It must be shown, therefore, that damages are recoverable for the act which is the basis of such civil action. Thus, even if the accused is convicted, if the law does not expressly authorize the payment of indemnity,[14] the civil action will not prosper. Taking another case, suppose A is charged with having seduced B. A was acquitted because B's reputation was not good. After such acquittal, B may not bring a civil action against A based on the fact that damage was caused to her by reason of the deceit employed by A when such deceit consists in an unfulfilled promise of marriage. It was to avoid such clear injustices as these that the framers of the new Civil Code inserted the provision on moral damages.[15] Under this article, B may possibly recover damages on the ground of wounded feelings, based on the mere fact of carnal intercourse. Also, the present Civil Code enumerates various acts giving rise to an action for damages, independent of any criminal prosecution.[16]

Sec. 1, Rule 107, par. (b) of the Rules of Court allows the bringing of a civil action for damages before the institution of

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[11] Art. 101, Rev. Penal Code.

[12] Art. 2176, Civ. Code: 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.

[13] Barredo v. Garcia, G. R. 48006, July 8, 1942.

[14] U. S. v. Patino, 4 Phil. 160.

[15] Art. 2217, Civ. Code: Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[16] See Arts. 26-35, Civil Code.

a criminal proceeding. May not the defendant in said civil action set up the defense that as the act for which damages are sought to be recovered is an act punishable by law, Art. 1902 (now 2176) cannot be invoked as the basis of the civil action?[17] Obviously, to admit such a defense would nullify the remedy granted to the offended by the Rules of Court. The principle enunciated in the case of Francisco v. Onrubia no longer held true from the moment of the passage of the Rules of Court. The departure is even more clearly manifested in the case of Barredo v. Garcia, which allows the bringing of a civil action under Art. 1902 in spite of the fact that the act which is the basis of such civil action has already been declared punishable. This modifies the principle that after a conviction, the civil action would have to be based on the Revised Penal Code, Art. 100. For by this case, the injured party is given a choice: (1) he may seek damages by relying merely on the judgment of conviction, basing the civil action under Art. 100; or, (2) he may abandon said judgment, and bring an entirely separate civil action under the Civil Code. What the choice will be will depend upon the solvency of the offender, for under the Civil Code, the liability of the employer, if any, is primary. The choice given to the offended party is based on a clear distinction between civil liability arising from crime and the responsibility for quasi-delicts. "The same negligent act causing damages may produce civil liability arising from crime under Art. 100 of the Revised Penal Code, or create an action for quasi-delicts or culpa-extra contractual under Arts. 1902-1910 of the Civil Code. Plaintiffs were free to choose which remedy to enforce." (Barredo v. Garcia, supra, p. 9) This is distinguished from the former theory which held that an act either falls under the Criminal Code or under the Civil Code, never under both. The distinction has been incorporated in Art. 2177 of the Civil Code.[18] This seems to be the better rule for the administration of justice. No doubt there have

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[17] "But the appellant insists that under Art. 1902 of the Civil Code, he has the right to institute this action, notwithstanding the judgment of acquittal rendered in the criminal case against the defendant upon the same cause of action. Said Art. 1902 has no application in the instant case, first, because the article presupposes the existence of fault or negligence upon which the action is based, and second, it refers to a fault or negligence not punishable by law. Under the facts set forth in the complaint, if there was any fault or negligence on the part of the defendant, it must necessarily be a fault punishable by law for through said fault, he caused the death of the plaintiff's son." (Francisco v. Onrubia, supra, p. 335)

[18] 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.

"x x x Therefore, under this article, acquittal from an accusation of criminal negligence, whether on reasonable doubt or not, shall not be a bar to a subsequent civil action, not for civil liability arising from criminal negligence, but for damages due to quasi-delict. The article, however, forestalls a double recovery." (Commission Report, p. 162)

The last sentence of Art. 2177 obviously refers to a case where the plaintiff after having been awarded damages in the criminal action, seeks to recover again for the same act under Art. 2177.

It may be significant to note that Justice Bocobo who penned the decision in the case of Barredo v. Garcia was also the Chairman of the Code Committee.

been instances when the injured party was deprived of any remedy, by giving the employer time to dispose of his property in order to escape judgment. It is very seldom if at all, that the employee is solvent enough to pay for the injuries sustained by the offended party. But under this rule, the employer may be sued at any time under the Civil Code where his liability is primary. The employer may not set up the defense that his liability being governed by the Criminal Code, the same is only secondary and being so, it must first be shown that a civil judgment had been obtained against the employee and that the latter is not able to pay. The previous theory is founded on the principle that Art. 1902 extends only to acts which though causing damage, are not punishable by law. But in the words of Justice Bocobo: "The Revised Penal Code in article 365 punishes not only reckless but also simple negligence. If we were to hold that articles 1902 to 1910 of the Civil Code refer only to fault or negligence not punished by law, according to the literal import of article 1093 of the Civil Code, the legal institution of *culpa aquiliana* would have very little scope and application in actual life. Death or injury to persons and damage to property through any degree of negligence—even the slightest—would have to be indemnified only through the principle of civil liability arising from a crime. In such a state of affairs, what sphere would remain for *quasi-delito* or *culpa aquiliana*? We are loathe to imoute to the lawmaker any intention to bring about a situation so absurd and anomalous. Nor are we, in the interpretation of the laws, disposed to uphold the letter that killeth rather than the spirith that giveth life. We will not use the literal meaning of the law to smother and render almost lifeless a principle of such ancient origin and such full-grown development as *culpa-aquiliana* or *cuasi-delito*, which is conserved and made enduring in articles 1902 to 1910 of the Spanish Civil Code.[19]

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[19] Barredo v. Garcia, *supra*, p. 33.