# THE UNSETTLING IMPLICATIONS OF THE RULE IN PADUA VS. ROBLES,* ON THE MEANING OF "DOUBLE RECOVERY" PROSCRIBED IN ART. 2177 OF THE CIVIL CODE

Judge J. CEZAR SANGCO**

Normandy Padua, the ten (10)-year-old son of the spouses Paulino and Lucena Padua, was hit and killed by a Bay Taxi Cab owned by Gregorio N. Robles and driven by Romeo N. Punzalan in the early morning of New Year's Day, 1969, in barrio Barreto, Olongapo City. The Paduas filed an action for damages based on **quasi-delict** or **culpa aquiliana** in the Court of First Instance of Zambales against Punzalan and his employer (Civil Case 427-0) while the City Fiscal of Olongapo filed with the same court a criminal action for homicide thru reckless imprudence (Crim. Case 1158-0).

On Oct. 27, 1969, judgment in Civil Case 427-0 was rendered, the dispositive part of which is as follows:

"WHEREFORE, judgment is hereby rendered ordering the defendant Romeo Punzalan to pay the plaintiffs the sums of ₱12,000.00 as actual damages, ₱5,000 as moral and exemplary damages, and ₱10,000.00 as attorney's fees; and **dismissing the complaint insofar as the Bay Taxi Cab Company is concerned.** With costs against the defendant Romeo Punzalan." (Underscoring supplied.)

Almost a year later, or on October 5, 1970, Punzalan was convicted in Criminal Case 1158-0, the dispositive part of which is as follows:

"WHEREFORE, the Court finds the accused Romeo Punzalan y Narciso guilty beyond reasonable doubt of the crime of homicide through reckless imprudence, as defined and penalized under Article 365 of the Revised Penal Code, attended by the mitigating circumstance of voluntary surrender, and hereby sentences him to suffer the indeterminate penalty of TWO (2) YEARS, FOUR MONTHS and ONE (1) DAY of **prision correccional**, as minimum, to SIX (6) YEARS and ONE (1) DAY of **prision mayor**, as maximum, and to pay the costs. **The civil liability of the accused has already been determined and assessed in Civil Case No. 427-0, entitled 'Paulino Padua, et al. vs. Romeo Punzalan, et al."** (Underscoring supplied).

* G.R. No. L-40486, August 29, 1975, 66 SCRA 485.

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The judgment in the civil case was executed against Punzalan but was returned unsatisfied because he was insolvent. Thereafter the Paduas instituted an action in the same court against Robles to enforce the latter's subsidiary liability under Art. 103 of the Revised Penal Code. Robles filed a motion to dismiss based on two grounds: (1) that the action is barred by the judgment in Civil Case 427-0; and (2) failure of the complaint to state a cause of action, which motion the Court a **quo** granted, and accordingly dismissed the case on Oct. 25, 1972 in an order to that effect. This order of dismissal was questioned in the Court of Appeals which certified the case to the Supreme Court as one involving questions of law.

As stated by the Supreme Court, the issue in this case is: "Whether the judgment of October 5, 1970 in Criminal Case 1158-0 includes a determination and adjudication of Punzalan's civil liability arising from his criminal act upon which Robles' subsidiary civil responsibility may be based."

HELD: "The sufficiency and efficacy of a judgment must be tested by its substance rather than its form. In construing a judgment, its legal effects including such effects as necessarily follow because of legal implications, rather than the language used, govern. Also, its meaning, operation, and consequences must be ascertained like any other written instrument. Thus, a judgment rests on the intention of the court as gathered from every part thereof, including the situation to which it applies and the attendant circumstances.

"It would appear that a plain reading, on its face, of the judgment in Criminal Case 1158-0, particularly its decretal portion, easily results in the same conclusion reached by the court **a quo**: that the said judgment assessed no civil liability arising from the offense charged against Punzalan. However, a careful study of the judgment in question, the situation to which it applies, and the attendant circumstances, would yield the conclusion that the court **a quo**, on the contrary, recognized the enforceable right of the Paduas to the civil liability arising from the offense committed by Punzalan and ordered the corresponding indemnity therefor.

"Civil liability coexists with criminal responsibility. In negligence cases, the offended party (or his heirs) has the option between an action for enforcement of civil liability based on **culpa aquiliana** under Article 2177 of the Civil Code. The action for enforcement of civil liability based on **culpa criminal** (Section 1 of Rule 111 of the Rules of Court) is deemed simultaneously instituted with the criminal action, unless expressly waived or reserved for a

separate application by the offended party. Article 2177 of the Civil Code, however, precludes recovery of damages twice for the same negligent act or omission.

"In the case at bar, the Court finds it immaterial that the Paduas chose, in the first instance, an action for recovery of damages based on **culpa aquiliana** under Articles 2176, 2177, and 2180 of the Civil Code, which action proved ineffectual. The Court also takes note of the absence of any inconsistency between the aforementioned action priorly availed of by the Paduas and their subsequent application for enforcement of civil liability arising from the offense committed by Punzalan and, consequently, for exaction of Robles' subsidiary responsibility. Allowance of the latter application involves no violation of the proscription against double recovery of damages for the same negligent act or omission. For, as hereinbefore stated, the corresponding officer of the court **a quo** returned unsatisfied the writ of execution issued against Punzalan to satisfy the amount of indemnity awarded to the Paduas in Civil Case 427-0. Article 2177 of the Civil Code forbids **actual double recovery** of damages for the same negligent act or omission. Finally, the Court notes that the same judge* tried, heard, and determined both Civil Case 427-0 and Criminal Case 1158-0. Knowledge of and familiarity with all the facts and circumstances relevant and relative to the civil liability of Punzalan may thus be readily attributed to the judge when he rendered judgment in the criminal action.

"In view of the above considerations, it cannot reasonably be contended that the court **a quo** intended, in its judgment in Criminal Case 1158-0, to omit recognition of the right of the Paduas to the civil liability arising from the offense of which Punzalan was adjudged guilty and the corollary award of the corresponding indemnity therefor. Surely, it cannot be said that the court intended the statement in the decretal portion of the judgment in Criminal Case 1158-0 referring to the determination and assessment of Punzalan's civil liability in Civil Case 427-0 to be pure jargon or 'gobbledygook' and to be absolutely of no meaning and effect whatsoever. The substance of such statement, taken in the light of the situation to which it applies and the attendant circumstances, makes unmistakably clear the intention of the court to accord affirmation to the Paduas' right to the civil liability arising from the judgment against Punzalan in Criminal Case 1158-0. Indeed, by including such statement in the decretal portion of the said judgment, the court intended to adopt the same adjudication and award it made in Civil Case 427-0 as Punzalan's civil liability in Criminal Case 1158-0.

"There is indeed much to be desired in the formulation by Judge Amores of that part of the decretal portion of the judgment in Criminal Case 1158-0 referring to the civil liability of Punzalan resulting from his criminal conviction. The judge could have been forthright and direct instead of circuitous and ambiguous. But, as we have above explained, the statement on the civil liability of Punzalan must surely have a meaning; and even if the statement were reasonably susceptible of two or more interpretations, that which achieves moral justice should be adopted, eschewing the other interpretations which in effect would negate moral justice.

"It is not amiss at this juncture to emphasize to all magistrates on all levels of the judiciary hierarchy that extreme degree of care should be exercised in the formulation of the dispositive portion of a decision, because it is this portion that is to be executed once the decision becomes final. The adjudication of the rights and obligations of the parties, and the dispositions made as well as the directions and instructions given by the court in the premises in conformity with the body of the decision, must all be spelled out clearly, distinctly and unequivocally, leaving absolutely no room for dispute, debate, or interpretation.

"We therefore hold that the Paduas' complaint in Civil Case 1079-0 states a cause of action against Robles whose concomitant subsidiary responsibility, per the judgment in Criminal Case 1158-0, subsists.

"ACCORDINGLY, the order **a quo** dated October 25, 1972 dismissing the complaint in Civil Case 1079-0 is set aside, and this case is hereby remanded to the court **a quo** for further proceedings conformably with this decision and with law. No pronouncement as to costs."

More concisely, the rule in this case may be restated thus: Where the offended party or his privies instituted an action for damages based on **quasi-delict** against both the driver and his employer but the complaint was dismissed as to the employer upon proof by him of due diligence both in the selection and supervision of his driver, and the damages adjudged and executed against the latter were wholly unsatisfied because of his insolvency, the same court which subsequently tried and convicted the same driver may, by adoption or by reference, award or re-award in the criminal case the same damages it determined and awarded in the tort action in order to avoid a failure of moral and social justice. Since the driver has been previously shown to be insolvent in the tort action, the damages determined and awarded in the tort action and re-awarded in the criminal case can be the basis of the offended party's cause of action against the employer's subsidiary civil liability under Art. 103 of the Revised Penal Code. The prior institution of the tort action against the driver may not be considered an implied reservation of the civil action based on the crime under Sec. 1 of Rule III of the Rules of Court, nor an election to recover damages from him based on **quasi-delict** by the offended party or his privies, where both actions were tried by the same court. Neither would it constitute double recovery based on the same act or omission of the same driver because what is proscribed by Art. 2177 is actual recovery, not merely an actual award of damages, in both actions.

During a discussion of this case in my San Beda class in Torts and Damages, a perceptive student pointed out: "Sir, I think the Court adopted or confirmed your analysis and conclusion on the implications of the rule in the Diana vs. Batangas Transportation

* Judge Augusto M. Amores.

Co.[1] and Jocson vs. Glorioso[2] cases on the meaning of double recovery under Art. 2177, without considering your critique on the absurdity and untenability of such a rule."[3] I believe the student was right except that the Court, though more categorical in its ruling as to the meaning of double recovery in this case, went much farther than in either of the aforementioned cases where no actual award of damages by final judgment in the tort action was ever made, and for that reason the untenability of its ruling is even more pronounced, and its unsettling effects more extensive.

According to the ruling in this case, the proscription: "But the plaintiff cannot recover damages twice for the same act or omission of the defendant" in Art. 2177 of the Civil Code, does not mean merely suing the same defendant for damages, first, on the theory of **quasi-delict** or **culpa aquiliana**, and then again on his civil liability arising from the crime he committed. Neither does it mean actually obtaining an adjudication of his claim for damages under either or both causes of action and executing such judgments therein. It means actually recovering or receiving the amount of damages awarded to him in the judgments rendered under both causes of action. This equates liability with solvency and amounts to saying that one cannot be said to have been held liable in tort when he fails to satisfy the judgment therefor due to his insolvency, for the purpose of determining whether or not he was in fact held liable twice.

Under this definition, the offended party or his privies can now successively or simultaneously maintain in the same court two civil actions against the accused, one based on the crime he committed, and another on **quasi-delict** or **culpa aquiliana** wherein may be included his employer, and be awarded damages in both actions either of which he may have executed. So long as he does not actually receive the damages awarded to him under both actions, there will be no double recovery under Art. 2177 of the Civil Code. As one of the concurring Justices suggested, the offended party or his privies may even choose the bigger award in the two actions, to the extent that if he has executed and received the smaller award first, he can still ask for a partial execution of the subsequent bigger award to make up for the difference between the two judgments. If this suggestion would not result in recovering both under the theory of delict and quasi-delict, nothing ever would. Evidently also, the offended party will generally receive a smaller award in a civil action arising from the crime instituted with the criminal action since he usually cannot recover damages for attorney's fees therein, nor moral damages, in the absence of aggravating circumstances which ordinarily are not present in negligence or imprudence cases, than he could in the tort action.

This is unsettling, indeed! It will set at naught Art. 2177 of the Civil Code and Sections 1 and 3 of Rule III of the Rules of Court and all the fine distinctions drawn by the Court between a civil action based on crime and one based on quasi-delict, and all

[1] 93 Phil. 391.
[2] 22 SCRA 316-18.
[3] See Sangco, Torts and Damages, 1973 ed.,pp. 36-37.



the laws and rules on the effect of a choice between these remedies. Thus, the offended party or his privies could now enjoy the unique privilege of dispensing with such established and well-settled rules as that for the same act or omission of the defendant he can only choose between recovering his damages either on the basis of the crime committed or on **quasi-delict** since he is prohibited from recovering under both causes of action; that if he elects to have his damages based on the crime determined separately from the criminal case, he must await the final judgment in said case, whereas, if his claim is based on quasi-delict or tort, he need not do so; that in a tort action the employer may exculpate himself from liability for his employee's negligence by proving that he has exercised the diligence of a good father of a family both in selecting and in supervising his employee, whereas such a defense is not available to the same employer under his subsidiary civil liability for his employee's crime; that, if his civil action is based on the crime, his claim for damages will be determined according to the Revised Penal Code, and if based on **quasi-delict**, according to the provisions of the Civil Code; that he cannot recover damages for attorney's fees in an action based on the crime unless he reserves the right to have his claim for damages determined from the criminal case, but may do so in the tort action; that the institution of the civil action based on **quasi-delict** against the accused is an actual reservation of the right of the offended party to recover his damages separately from the criminal case and an election on his part to do so on the theory of **quasi-delict** and not on the crime; that either a reservation or an election to have his claim for damages against the accused determined separately from the criminal case under either of said causes of action necessarily takes the civil action out of the criminal case and by reason thereof the trial court cannot award any damages in the criminal case, and that any award determination is void for lack of jurisdiction. And the employer may as well forget the defense of due diligence both in the selection and supervision of his employee afforded him by Art. 2180 of the Civil Code for being or becoming utterly useless to him because even if he is able to prove and avail of it in the tort action against him, he can still be held liable under his subsidiary civil liability for the same punishable act or omission of his employee under the ruling in this case. These are some of the laws and well-settled rules that the Court must reverse or ignore expressly or impliedly to sustain its ruling in this case, and this appears to be the reason for the hearing **en banc**. The Constitution requires the Court to sit **en banc** whenever it reverses or overrules any of its existing doctrines. Although this Constitutional obligation implies the duty to specify the rules, principles or doctrines it is reversing, overruling or modifying, the Court in this case omitted to do so, thereby clearly indicating that the rule in this case was meant to be "the law" only in this particular case. The confusion in our law on torts is confusing enough and the Court should not wish to compound the confusion even more.

In this writer's view, the controlling question is not whether the judgment in the criminal case includes or was meant to include a determination and adjudication of Punzalan's civil liability arising

from his criminal negligence upon which Robles' subsidiary civil responsibility may be based, but whether such liability may be adjudged in the criminal action at all, where, as in this case, the offended party or his privies not only impliedly reserved but actually instituted a separate civil action for damages against Punzalan arising from the same act or omission of the latter, and had actually elected to base the same not on the crime but on **quasi-delict**; and even if there was neither reservation nor election, the judgment in the tort action would bar the civil action based on the crime either under the doctrine of **res judicata** or the principle of estoppel by judgment.

The settled rule is that where the offended party's injury or damage is caused by a punishable act or omission, he may not only elect to recover his damage either on the basis of the crime committed under Art. 100, Revised Penal Code, or on the basis of **quasi-delict** under Art. 2176 of the Civil Code[4] although he is precluded from recovering under both,[5] but, in either case, he may also have his claim for damages determined separately from the criminal case.[6] Where he elects to have his claim for damages determined separately from the criminal case under either cause of action, either by reserving his right to do so or by actually instituting it, no damages can be awarded in the criminal case for the obvious reason that no civil action is before the court in the said case, and any award for damages therein would be void for lack of jurisdiction.[7]

The actual institution of the civil action based on **quasi-delict** by the Paduas against both the driver Punzalan and his employer, Robles and/or the Bay Taxi Cab Co., was clearly not only an actual reservation of the civil action against Punzalan but was also an election to sue the latter on tort and not on the basis of the offense charged. The mandatory adjudication of damages arising from the offense charged applies only where no such reservation or election is made by the offended party or his privies. Since there was both a reservation and an election, and, indeed, an award of damages by final judgment against Punzalan in the separate civil action based on tort which was even executed against the latter, the Court **a quo** clearly had no power, authority, or jurisdiction to award damages in the criminal case.

But even on the hypothesis that there was neither express nor implied reservation in the criminal action nor an election of remedy, the judgment in the tort action against Punzalan, which was not only final but had in fact been executed against him, would be **res judicata** in the civil action deemed instituted in the criminal case also against him. As pointed out by the Court itself in Tactaquin vs. Palileo, the foundation of both civil actions is the same act or omission, whether said act or omission be denominated delict or **quasi-delict**, and what is litigated in both actions is the same negligence of the same defendant. And the parties both in the civil

[4] Barredo vs. Garcia, supra; Art. 2177, Civil Code.
[5] Art. 2177, Civil Code.
[6] Sec. 1, Rule III, Rules of Court; Articles 30 and 31, Civil Code.
[7] Rotea vs. Halili, 109 Phil. 496; Tactaquin vs. Palileo, 21 SCRA 346.



**action** based on the crime and that based on tort are the Paduas and Punzalan. There is thus identity of parties and causes of action. Moreover, even assuming that the causes of action be considered distinct and independent of each other, estoppel by judgment would still apply. For **res judicata** to apply, there must be identity of parties to the action and of causes of action, but estoppel by judgment can exist where there is identity of parties, although the causes of action in the two proceedings are completely distinct.[8] A party may not, by changing the form of the lawsuit or adopting a different method of presenting the matter, escape the application of the principle that the same cause of action may not be litigated twice between the same parties.[9] Once an issue has been raised and finally decided by a court of competent jurisdiction, generally speaking it becomes **res judicata** or can be made the basis of a plea of estoppel by judgment as between the parties to that litigation, no matter in what manner it was raised and whether or not it was the principal issue or merely a incidental issue.[10] How then can damages be awarded in the criminal case?

The statement of the trial court in the criminal case that "The civil liability of the accused has already been determined and assessed in Civil Case No. 427-0" should be construed, assuming there is need for it, in the light of the foregoing laws, rules and principles. Read in their light, as the judge who actually issued the order in question evidently did, what Judge Amores meant to convey by said statement was that the trial court was not awarding or did not award damages in the criminal case because it could not do so, for the reason that the Paduas had not only reserved and elected to recover the same based on **quasi-delict** in the separate civil action they instituted therefor, Civil Case No. 427-0, but also because the Court had already awarded damages in said civil action against the same driver.

Since the civil action is deemed instituted with the criminal case and the court is mandatorily obliged to make an adjudication of damages therein unless the right to recover such damages is either reserved or the civil action therefor has actually been instituted separately from the criminal case, most trial judges feel obliged to state in their judgments of conviction why they are not awarding damages in the criminal case. This is what Judge Amores obviously tried to do, and meant to convey by the statement in question. In this writer's opinion, there is nothing equivocal about Judge Amores' aforequoted statement. The Supreme Court evidently read into said statement what it had itself decided to do, and now wants the court **a quo** to do and is ordering it to do — award in the criminal case by adoption or by reference, presumably because no proof of damages were adduced in the criminal case, the same damages it had already awarded in the tort action against

[8] Paccial vs. Palermo, 47 O.G. 6184, April 29, 1950, No. L-2185; Rep. Digest, Vol. 4, p. 332.
[9] Paccial vs. Palermo, supra; Florendo vs. Gonzales, 48 O.G. 1323, Nov. 28, 1950, No. L-2566; Francisco vs. Blas, May 4, 1953, No. L-5078; Barrera vs. Del Rosario, et al., April 28, 1956, No. L-8928.
[10] Eugenio vs. Tiangco, 47 O.G. 1132, Sept. 20, 1949, No. L-2804; Robis vs. Caspe, Sept. 28, 1954, N. L-6166.

the same driver despite existing law and consistent rulings that attorney's fees cannot be awarded as damages in the criminal case where the civil liability arising from the crime is deemed instituted therein, nor are moral damages recoverable in the absence of aggravating circumstancs, or that the damages recoverable under either cause of action are governed by different laws, and the fact that no civil action is before the court a **quo** in the criminal proceedings, in order to thereby achieve moral and social justice or fill a supposed "gap" in our law.

Compassion, justified in the name of equity and moral and social justice, discernibly pervades the resolution of this case. However, a more objective and dispassionate analysis of the entire situation will readily reveal that it is nothing more than a plain case of an erroneous choice of remedy on the part of the Paduas or their counsel.

The Paduas or their lawyer knew or should have known, because it is basic in our law on negligence, that their only hope of recovering full indemnity for the death of Normandy is against Punzalan's employer, and this they could ensure only in a civil actoin, based on the crime and instituted together with the criminal action, because such action deprives the employer of the defense of due diligence in the selection and supervision of its employee, and the conviction and insolvency of the driver Punzalan is conclusive on his employer's subsidiary liability; whereas, in an action based on **quasi-delict,** even if Punzalan were found negligent and therefore liable, his employer might relieve itself of responsibility therefor by proving it exercised the diligence of a good father of a family both in selecting and in supervising him, which it could readily prove and evidently did in this case. But apparently the Paduas or their lawyer took the risk inherent in the latter cause of action because they were anxious to recover their damages ahead and independently of the criminal case which must have been undergoing the usual preliminary investigation at the time they filed their tort action, as clearly indicated by the fact that the criminal case was decided almost a year after the tort action was decided by the same court which ordinarily gives or should give preference to criminal cases. Had the Paduas or their lawyer elected in the first instance to recover their damages in the criminal case on the basis of the offense charged, there would have been no need for the Supreme Court to bail them out of the predicament they placed themselves in. The purpose of the doctrine of election of remedies is not to prevent recourse to any remedy but to prevent double redress for a single wrong.[11] By electing to sue in tort, the Paduas waived their right to a civil action based on the crime, for the same act or omission of the defendant Punzalan.

Contrary to the suggestion of the other concurring justice, there is evidently no "gap" either in our law or in our jurisprudence to attain the "purpose" sought to be achieved by the Court in this case. There is only an erroneous choise of the action ensuring it. And this is one clear instance where a party was not only held not

[11] First National Bank vs. Flynn, 190 Minn. 250 N.W. 806, 92 A.L.R. 1272.



bound by the mistake of his lawyer but was also allowed to profit by it.

Whether a clear case of an erroneous choice of remedy such as this deserves the compassion accorded to it, or should have given rise to apprehensions of failure of moral and social justice which calls for resort to equity, does not appear to us indubitable. In any event, an isolated case of this kind does not, in our humble opinion, merit overturning established law and jurisprudence or creating instability therein such as was created here. And Judge Amores certainly does not deserve to be censured for adhering to the prevailing law and rules before the Court had oveturned them, no matter how inadequately he has expressed his adherence thereto. Neither deserving of censure is the judge who actually granted the motion to dismiss and issued the order in question.

Had Judge Amores not made any statement at all about the civil liability of the accused in the criminal case, there would have been no occasion for construction, and through it, a very strained equity ruling in this case.

Apart from the question of its dubious application in this case, when should a court disregard existing law and well-settled jurisprudence providing for adequate alternative remedies and resort to equity?

The prime rule and maxim, as we apprehend it, is that equity is resorted to only when there is no remedy at law, or the remedy is inadequate. In this case there is more than one adequate remedy provided by law at the option of the plaintiffs, and one of them precisely is that which the Court is now extending to them but which the plaintiffs had previously rejected in favor of the other remedy to attain their particular purpose. Is an unfortunate choice of remedy a proper object either of equity or of moral and social justice?

No rule or guideline has been set by the Supreme Court and none is inferable from this or in any of its other equity rulings. And it is imperative that the Court provide such a rule or guideline, not only so that the lower courts may know when to apply equity, but also that they may spare themselves from a "judicial spanking" either for adhering to or disregarding existing law and settled jurisprudence. But what really disturbing about unguided equity judgments is not that they can be as unpredictable as the human heart, but that they constitute an open temptation and a handy license to an enterprising judge to cash in on equity in the guise of compassion.

One last point. The rule in this case, taken with that in the later case of Torrijos vs. Court of Appeals,[12] would very substantially change or amend our law on torts and related procedural law. Should they be considered as precedents? The Supreme Court is unclear on this question. In this connection, it should be noted that, unlike the case under comment, which is a unanimous decision **en banc,** the Torrijos case, which is likewise unsettling, is a decision by only one division of the Court.

[12] L-40336, October 24, 1975; 67 SCRA 394; See author's critique on this case in the December, 1975 issue of the IBP Journal.