96 Phil. 558

[G.R. No. L-6207. February 21, 1955]

MAXIMA LAPERAL DE GUZMAN, ASSISTED BY HER HUSBAND ESTEBAN DE GUZMAN, SUBSTITUTED BY MAXIMA L. DE GUZMAN, PLAINTIFF AND APPELLANT, VS. THE SPOUSES ROMAN M. ALVIA AND MAGDALENA A. DE ALVIA, DEFENDANTS AND APPELLEES.

D E C I S I O N

MONTEMAYOR, J.:

This is an appeal from a decision of the Court of First Instance of Manila, dismissing the complaint for the recovery of a piece of jewelry or its value in the sum of P1,500. The facts involved as may be gathered from the record, are simple, clear, and without dispute. Since the year 1931 plaintiffs Esteban de Guzman and his wife Maxima Laperal were engaged in the sale of jewelry and sustained business relations with the defendants Roman Alvia and his wife Magdalena de Alvia who, especially Magdalena, used to receive pieces of jewelry from them for sale on commission or rather that the compensation received by Magdalena was the over price she could secure over and above that fixed by plaintiffs. On October 31, 1946, Magdalena through her husband Roman Alvia received from plaintiffs for sale, several pieces of jewelry, among them the jewelry in question described as “medio terno, rositas with 25 brillantes” valued at P1,500. Said jewelry was later entrusted by Magdalena to one Eugenia Villarin, for sale. Eugenia is said to have absconded with said jewelry and failed to account for it to Magdalena.

On several occasions, plaintiffs demanded of Magdalena and her husband Roman, the return of the jewelry or its value but defendants were unable to comply with the demands. Thereafter, a criminal complaint for estafa was filed in the Court of First Instance of Manila (Criminal Case No. 5549) against Roman Alvia because it was he who actually received the jewelry from plaintiffs and signed the receipt Exhibit A. Roman was acquitted of the charges on the ground that he

merely acted as agent of his wife Magdalena who was the person who had business dealings with the plaintiffs. Then a second complaint also for estafa (Criminal Case No. 8776) was filed against Magdalena. She was also acquitted on the ground that there was no misappropriation or conversion under Article 315 of the Revised Penal Code. Said trial judge Conrado Sanchez in his decision Exhibit 1:

> "Ever since about the year 1931 defendant and complainant sustained business relations. Defendant used to get jewels—for sale— from the spouses Esteban de Guzman and Maxima Laperal de Guzman. The jewels not sold were returned to complainant. It was also the practice known to complainant and his wife that said jewels were being entrusted by defendant to other persons for sale. It seems that the compensation of the accused consists of the overprice that she could secure over and above the price set forth by the complainant.
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> "*Defendant does not deny that she received the jewels* obtained by her husband from complainant under the receipt Exhibit A.
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> "But as to this piece of jewelry, "medio terno rositas", worth P1,500, defendant did not profit therefrom; she did not sell them to said Eugenia Villarin. The fact is that that piece of jewelry (with others) was delivered by defendant to Eugenia Villarin for purposes of sale. There is absolutely no evidence or indication of collusion between defendant and Eugenia Villarin.
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> "Whether or not defendant was authorized by complainant to sell the jewelry is another point of inquiry. It is true that under the terms of the receipt Exhibit A signed by defendant's husband the latter, that is, Roman M. Alvia, was not allowed to sell the jewelry thru an agent. But this Exhibit A was not signed by defendant. And defendant testified in court that the standing practice known to complainant and his wife during their business relations was that she (defendant) could entrust jewels to others for purposes of sale. That explains why in November of 1946 defendant sent her daughter Clara Alvia to ask from

> Dona
> Maxima Laperal de Guzman, wife of complainant, whether they would agree to a reduction of the price of the jewelry in question to P1,350; for then, Eugenia Villarin told defendant that she had a purchaser for that amount.
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> "The record shows that defendant was actuated with *good faith*. When she could no longer locate Eugenia Villarin she went to Mrs. De Guzman and asked
> for time to get back the jewelry. But again she failed to get Eugenia Villarin. She was candid enough to own her own fault in having entrusted the jewelry to that person (referring to Eugenia Villarin). She offered that she be allowed to pay in installments the said piece of jewelry as she did not want to lose her credit with complainant and his wife. She went to the extent of offering two Torrens titles covering five and one-half hectares of rice land in Calauan, Laguna, for complainant and his wife to dispose of the way they wanted to, just to make good her obligation. They did not accept any of her offers. But instead, they threatened criminal action which they did, first against the husband Roman M. Alvia who was acquitted (Criminal Case No. 5549 of the Court of First Instance of Manila, Exh. E), and now against the wife Magdalena de Alvia, both covering the same jewelry.
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> "The facts heretofore related impress upon the mind of the court the fact that *the element of misappropriation or conversion so essential to this type of estafa is conspicuous by its absence in the present case. Therefore, the crime of estafa does ruot exist*.
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> "* * *. In the present case, good faith and lack of intent to appropriate are present. Defendant's liability, therefore, if any, is *purely civil*."

Because of the acquittal of defendants spouses in the two criminal cases, the present civil action to recover the jewelry or its value, was brought in the Municipal Court. resulting in a decision in favor of plaintiffs. On appeal to the Court.of First Instance of Manila, as already stated, the complaint was dismissed on the basis of the doctrine laid down by this Court in the case of Wise & Co. *vs*. Larion 45 Phil., 314 to the effect that acquittal in a criminal prosecution is an insuperable obstacle to the civil proceedings. The

appeal was taken to the Court of Appeals but it was later certified to us by said appellate tribunal.

Without attempting to analyze the decision of this Court in the case of Wise & Co. *vs*. Larion, supra, as to its absolute correctness and its scope, particularly its implications, we are satisfied that said case is not applicable here. It will be noticed that there Justice Street would appear not to have entirely accepted without qualification the doctrine laid down in the case of Almeida *vs*. Abaroa, 40 Phil., 1056, and he seems to have made a distinction as when he said:

> "* * *. It is enough for our present purposes to say that where, as here, *the facts on which civil liability is based are of such nature as inevitably to constitute a crime*, if anything, acquittal in a criminal prosecution is ,an insuperable obstacle to the civil proceeding."

In that case of Wise & Co. although defendant did not make use of or appropriate to himself the amount of which Wise & Co., was swindled, because said amount went to the manager, still, Larion as assistant manager helped, and made himself an accomplice in the misappropriation. For that he was charged with estafa but was acquitted. Under those circumstances his acquittal was an obstacle to his being held liable in civil action. In the present case, however, the facts alleged in the complaint and on which civil liability is based, are not of such nature as to constitute a crime. As held by Judge Sanchez in the Criminal Case No. 8776 against Magdalena, there was no misappropriation or conversion of the jewelry placed in her custody. Neither was there bad faith. Her failure to return the same to its owner was due to the fact that following the practice of which said owner was aware, the jewelry was given for sale to a third party, Eugenia Villarin and the latter was the one who misappropriated it, for which reason she was prosecuted for estafa. It was even intimated by Judge Sanchez in his judgment of acquittal that the responsibility of Magdalena was civil, not criminal.

Counsel for appellants contend that the present case comes under the provisions of Article 29 of the new Civil Code which provides as follows:

> “When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond 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 j bond to answer for damages in cases the complaint should be found to be malicious.
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> “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.”

Although the above-quoted legal provision, under Article 2267 of the same Code is made applicable not only to future cases, but also to those pending, like the present, on the date when the new Civil Code went into effect, said Article 29 however, is hardly applicable because it plainly refers to an acquittal on the ground that the guilt of the accused has not been proven beyond reasonable doubt. The acquittal of Magdalena in Criminal Case No. 8776 was not due to her guilt not having been proven beyond reasonable doubt but because there being no misappropriation or conversion or bad faith, the crime charged was not committed. What in our opinion is applicable is Rule 107, section 1, paragraph (d) of the Rules of Court which reads thus:

> “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. In the other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the.person who may be liable for restitution of the thing and reparation or indemnity for the damages suffered;

Inasmuch as the final judgment in Criminal Case No. 8776 against Magdalena does not contain any declaration that the fact from which civil liability might arise did not exist but on the contrary, it found that she received the jewelry and it intimated that her responsibility was civil rather than criminal, then

the civil action was not extinguished. The rule above reproduced comes from the Spanish Law of Criminal Procedure (Ley de Enjuiciamiento Criminal), article 116 thereof, cited and applied in the case of Oro *vs*. Pajarillo, 23 Phil., 484.

It is therefore clear that the acquittal of Magdalena of the charge of estafa in the criminal case did not extinguish her civil liability. It is equally clear that the acquittal of her husband Roman Alvia in the estafa case against him extinguished his civil liability because the decision acquitting him expressly said that he merely acted as a *mandatario* or agent of Magdalena and consequently, was in no way responsible.

In view of the foregoing, in so far as the decision appealed from dismisses the complaint against Magdalena de Alvia, the same is hereby reversed, with costs. Case remanded for further proceedings.

Paras, C.J., Pablo, Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and *Reyes, J.B.L., JJ.*, concur.

Judgment reversed.

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