

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
MERCEDES L. JAVELLANA, PETITIONER, VS. ITONG AMISTAD,
RESPONDENT.**

G.R. No. L-34666. October 30, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

The legal question raised in this petition for certiorari is whether from a decision of acquittal, the complainant in a criminal action for estafa, may appeal with respect to the civil aspect of the case.

The criminal action in this case was commenced in the Court of First Instance of Baguio and Benguet, under an information which reads:

"I N F O R M A T I O N

"The undersigned Acting 1st Assistant City Fiscal accuses ITONG AMISTAD of the crime of Estafa penalized under Article 316 Paragraph 2, of the Revised Penal Code, committed as follows:

"That on or about January 30, 1965, October 11, 1965, and December 23, 1965, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously -

(1) (January 30, 1965) sell, convey, transfer and deliver by way of a deed of sale in favor of Ben Palispis an unsegregated portion of 42,326 square meters of that parcel of land described in -

ORIGINAL CERTIFICATE OF TITLE No. 0-105

'A parcel of land (Lot 1, plan Psu-203086- Amd., Civil Reservation Case No. 1, L.R.C. Civil Reservation Record No. 211), situated in the Res. Sec. 'J', City of Baguio. Bounded on the NE., by property of Honor Kingdome; on the SW., by Lot 2; on the W and NW., by Public Land. x x x contain-ing an area of EIGHTY FOUR THOUSAND SIX HUNDRED AND FIFTY THREE (84,653) Square meters, more or less, x x x' in the names of spouses Itong Amistad and Luisa Tengdan;

(2) (October 11, 1965) sell, convey, transfer and deliver by way of a deed of sale in favor of Teodoro Mat-an the remaining 42,326 square meters of the above-described parcel of land; and

(3) (December 23, 1965) execute a supplemental deed of sale over the entire area covered by Original Certificate of Title No. 0-105 in favor of vendees Ben Palispis and Teodoro Mat-an which effected the issuance of two separate titles in favor of said vendees -

knowing fully well and purposely withholding the information that on or about February 10, 1962, he had previously entered into an agreement with one MERCEDES L. JAVELLANA to convey to her an area of 10,000 square meters from the above-described parcel of land for the sum of TEN THOUSAND (P10,000.00) PESOS and had already received from her the sum of FIVE THOUSAND (P5,000.00) PESOS, thereby

causing damage and prejudice to said Mercedes L. Javellana in the amount of FIVE THOUSAND (P5,000.00) PESOS, Philippine Currency.

All contrary to law."

After trial, decision was rendered dated February 8, 1971, and promulgated on March 18, 1971 acquitting the accused, respondent herein, the Court holding that "the case of the prosecution is civil in nature" and that "the guilt of the accused has not been proven beyond reason-able doubt."

From the judgment of acquittal, the complainant, the petitioner herein, appealed to the Court of Appeals insofar as the civil liability of the accused is concerned. With-out awaiting the completion of the transcript of the steno-graphic notes in the case, the Court of Appeals dismissed the appeal merely on the legal proposition that an appeal by the complainant from a judgment of acquittal should be disallowed.

The Resolution of the Court of Appeals dated December 1, 1971, is set forth in full as follows:

"This refers to an appeal against the judgment of the Court of First Instance of Baguio, in Criminal Case No. 4205, wherein the accused Itong Amistad who was prosecuted for the crime of estafa (paragraph 2, Article 316 R.P.C.), was acquitted. The decision was promulgated on March 18, 1971 and on that same day, the complainant, through counsel, filed a Notice of Appeal from said judgment, 'insofar as the civil liability of the accused is concerned.' Apparently the appeal was approved by the trial court, the records of the case were elevated to this Court, and this Court required the completion of the same.

"Now, while the right of the offended party to intervene in the criminal action (Section 15, Rule 110, Rules) as well as to appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the appellant (Section 2, Rule 122, Rules) is recognized, the offended party however, can-not appeal if the accused is acquitted as matters are (People vs. Herrera, 74 Phil. 21). Indeed, the trial court in acquitting the herein defendant stated:

'In the mind of the court, the case of the prosecution is civil in nature. In fact, the supervening acts of the parties after the execution of Exhibit A until the execution of Exhibit D are clear and unequivocal which ineluctably lead this court to believe that the guilt of the accused has not been proven beyond reasonable doubt.'

"An appeal from the judgment of the Court of First Instance would perforce require a new deter-mination of defendant's criminal liability. This cannot be done. Besides, the offended party has the remedy of bringing a civil action independently of the criminal action.

"Indeed, this question is not new. It has already been so ruled by the Supreme Court in several cases (People vs. Flores, G.R. No. L-7523, December 18, 1957, citing People vs. Velez, 77 Phil. 1026; People vs. Benjamin Liggayu, et al., No. 8224, October 31, 1955; People vs. Joaquin Lipana, 72 Phil. 166; People vs. Florendo, 73 Phil. 679 [decided under the new Rules of Court]; Ricafort vs. Fernan, 101 Phil. 575, 572).

"Considering that the complainant is appealing from a judgment acquitting the accused in a crim-inal case, her appeal should be disallowed.

"WHEREFORE, the appeal is hereby ordered dismissed. The stenographers who were required to submit their respective transcripts of stenographic notes in this case are hereby excused therefrom. (pp. 6-7, Brief for the Respondent, p. 78, Rollo).

A motion for reconsideration of the Resolution of the Court of Appeals was filed but was denied on January 4, 1972. From both aforesaid Resolutions dismissing the appeal and the order denying the Motion for Reconsideration, the peti-tioner came to this Court on a petition for certiorari with prayer that the Resolution of the Court of Appeals be reversed, and that judgment be rendered in favor of petitioner and against respondent

insofar as the latter's liability is concerned –

"(a). ordering respondent to pay to petitioner such sum as this Court shall adjudge to rightfully represent the value of the one-hectare portion of the land involved agreed to be conveyed to petitioner by respondent in accordance with the Agreement to Convey Real Property (Exhibit 'A');

"(b). Ordering respondent to pay to petitioner the expenses of litigation actually incurred by the latter; and

"(c). Ordering respondent to pay the costs of suit." (p. 28, Brief for the Petitioner, p. 60, Rollo).

The sole legal question for determination as stated at the outset, is whether an appeal by the complainant for estafa, may be allowed from a decision acquitting the accused of the crime charged, only insofar as the latter's civil liability is concerned.

In support of her affirmative position on the issue above stated, petitioner cites Section 2, Rule 122 of the Rules of Court which provides:

"SEC. 2. Who may appeal.- The People of the Philippines can not appeal if the defendant would be placed thereby in double jeopardy. In all other cases either party may appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the appellant." (p. 12, Brief for the Petitioner, p. 60, Rollo).

Additionally, she cites Section 3 of Rule 111, from which she quotes the following:

"SEC. 3. Other civil actions arising from offenses.- In all cases not included in the preceding section the following rules shall be observed:

" x x x;

"(c) 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 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 damage suffered." (Rule 111, Rules of Court in the Philippines.) (pp. 13-14, Id.)

Finally, she cites Article 29 of the Civil Code of the Philippines which reads:

"ART. 29. 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 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." (p. 14, Id.).

From the aforequoted provisions, petitioners contend that the remedy of appeal is expressly granted to her inasmuch as the civil action for the recovery of civil liability is impliedly instituted with the criminal action, Criminal Case No. 4205 of the Court of First Instance of Baguio and Benguet, there having been no reservation to file a separate civil action or a waiver of the right to file one. She had in fact hired a private prosecutor to handle, primarily the civil aspect of the case, the prosecution of the crime remaining under the direction and control of the prosecuting Fiscal. The private prosecutor presented evidence bearing on the civil liability of the accused. In a memorandum he filed, he also discussed extensively the civil liability of the accused, despite which, the trial court failed to rule on the latter's civil liability to the complainant.

It is this omission, as alleged by petitioner herein, that constitutes the thrust of her first assignment of error, the only one We feel called upon to rule on, among her three assigned errors, the other two having relation to how the trial court evaluated the evidence, and the extent of damages petitioner alleges to be entitled to under such evidence, which evidently may not be passed upon in the instant proceedings, the evidence presented during the trial not having been elevated to this Court, nor even to the Court of Appeals, at least not fully or completely.

Confining ourselves, therefore, to the first assigned error, We find no ground to reverse the Resolution of the Court of Appeals on the purely legal question of whether the petitioner, as complainant in Criminal Case No. 4025 of the Court of First Instance of Baguio and Benguet, for estafa, can appeal from the judgment acquitting the accused, because the trial court failed to declare the latter's civil liability to the complainant, which was allegedly proven by the evidence.

The provision of Article 29 of the Civil Code relied upon by the petitioner clearly requires the institution of a separate action by the filing of the proper complaint. To such complaint, the accused as the defendant therein, may file the appropriate responsive pleading, which may be an answer or a motion to dismiss. In a criminal action, notwithstanding that the action for the recovery of civil liability is impliedly instituted therewith, if not reserved or waived, the accused is not afforded the same remedy. Neither is the mandatory pre-trial held as is required of all civil actions. The obvious reason is that the civil liability recoverable in the criminal action is one solely dependent upon conviction, because said liability arises from the offense, with respect to which pre-trial is never held to obtain admission as to the commission thereof, except on the occasion of arraignment. This is the kind of civil liability involved in the civil action deemed filed simultaneously with the filing of criminal action, unless it is reserved or waived, as so expressly provided in Section 1, Rule 111 of the Rules of Court and as held in *People vs. Herrera*, 74 Phil. 21.

If the civil liability arises from other sources than the commission of the offense, such as from law or contract or quasi-delict, its enforcement has to be by an ordinary civil action, which, as expressly provided in Article 29 of the Civil Code may be disposed of as a mere preponderance of evidence would warrant. Then, all the defenses available, such as prescription, lack of jurisdiction, set-off, and the other grounds for a motion to dismiss may be availed of, as may be proper under the peculiar facts and circumstances of the case, complete with pre-trial after issues have been joined. Upon these considerations, it becomes clear that the argument of petitioner invoking the rule against multiplicity of action may not forcefully or convincingly be put forth.

In the Resolution of the Court of Appeals several cases have been cited which held that an appeal from the dismissal of the criminal case on motion by the fiscal may not be taken by the offended party (*People vs. Lipana*, 72 Phil. 168; *People vs. Florendo*, 73 Phil. 679). In the case of *People vs. Herrera, et al.*, 74 Phil. 21, the accused was acquitted without the court making any pronouncement as to his civil liability, in exactly the same manner that the Court of First Instance of Baguio and Benguet in Criminal Case No. 4025, was charged with a similar omission in the case at bar. The Supreme Court did not permit an appeal by the offended party, the Court saying:

"The decision of the justice of the peace court which acquitted the defendant of the charge and did not make any pronouncement holding the defendant civilly liable put an end to the case, not only by freeing the defendant from criminal responsibility but also by rejecting all liability for damages arising from the alleged crime of malicious mischief. The offended parties not having reserved their right to bring a separate civil action, the aforesaid decision of acquittal covered both the criminal and the civil aspects of the case under Rule 107, section 1(a) of the new Rules of Court. An appeal from that decision to the Court of First Instance, as intended by the offended parties, would reopen the question of defendant's civil liability arising from the alleged crime. And considering that such civil liability must be based on the criminal responsibility of the defendant (art. 100, Revised Penal Code), any review or re-examination of the question of civil liability would perforce require a new determination of defendant's criminal liability. But another trial upon defendant's

criminal responsibility cannot be held, in view of his previous acquittal in the justice of the peace court. So the appeal from the decision of the justice of the peace court is not authorized by law."

Brought out in bold relief in the aforequoted ruling is that what is impliedly brought simultaneously with the criminal action is the civil action to recover civil liability arising from the offense. Hence, the two actions may rise or fall together. However, if the civil action is reserved, or if the ground of acquittal is reasonable doubt as to the guilt of the accused, a separate civil action may be filed, the complainant alleging a cause of action independent of, and not based on, the commission of an offense. Only pre-ponderance of evidence would then be required.

The futility of petitioner's instant recourse becomes all too evident upon consideration of the principles enunciated, particularly in the Herrera case, since if the civil liability recoverable in a criminal action is one arising from the crime charged, no longer may the respondent be found criminally liable upon a review of the evidence, after the verdict of acquittal has been handed down by the trial court. Again, petitioner tries to show that the cases cited by the Court of Appeals are not in point. But she has not cited one single case faintly supporting her position as she has tried to maintain in the instant case.

Nevertheless, petitioner may not complain, as she does of being denied due process for disallowing her appeal. She can institute a separate civil action if her cause of action could come under the category of quasi-delict or one arising from law, contract or any other known source of civil liability, but certainly not anymore from the offense of which petitioner had already been acquitted. It is but fair to require petitioner to take this course of action, not only because she would have to pay for the lawful expenses for instituting the action to obtain the relief she seeks from respondent, from which she is spared in the prosecution of a criminal case, but also for the respondent or defendant to avail of all defenses and remedies as are open to him in a separate civil action not otherwise available in a criminal action that carries with it the civil action when deemed simultaneously filed with it, to recover civil liability arising from the crime charged.

For all the foregoing, the Resolution appealed from is affirmed, and the instant petition is, accordingly, dismissed, without pronouncement as to costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.
Teehankee (Chairman), J., takes no part.

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