

DIONG BI CHU, ALIAS PATRICK CHANG, CHANG KA HEE AND LU-LIONG CORPORATION, PETITIONERS, VS. THE HON. COURT OF APPEALS, HON. GREGORIO G. PINEDA, AS PRESIDING JUDGE, COURT OF FIRS...

G.R. No. L-49588. December 21, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review on certiorari of the 16 October 1978 resolution[1] of the Court of Appeals in CA-G.R. No. 08363-SP. The antecedent facts are as follows:

In a complaint filed by private respondents Jaime Navoa and Milagros de Leos before Military Commission No. 3, docketed as Criminal Case No. MC-3-57, petitioners Diong Bi Chu alias "Patrick Chang" and Chang Ka Hi alias "Chang Ka Hee", were charged with estafa for violation of Art. 315, par. 2(a) of the Revised Penal Code. It was alleged in the complaint that thru false pretenses and fraudulent acts, petitioners Diong Bi Chu and Chang Ka Hee succeeded in inducing private respondents to mortgage a parcel of land belonging to and registered in the name of Jaime Navoa, and that they (petitioners) misappropriated the proceeds therefrom, causing damages to private respondents in the amount of P670,000.00.

After the prosecution had presented its evidence and rested its case, a demurrer to evidence was filed by Chang Ka Hee. The charge against him was dismissed on the ground that he had nothing to do with the transaction.[2]

On 3 August 1977, Military Commission No. 3 rendered judgment acquitting petitioner Diong Bi Chu alias "Patrick Chang", holding that the transaction between the parties was a joint venture, requiring each party to contribute to a common fund and that –

"There was no *fraus* (sic) nor deceit on the part of the accused Diong Bi Chu since it was admitted that Industria Phils. Inc., did have a contract with the PVTa for the exportation of foreign leaf tobacco for blending purpose. Unfortunately, after the initial shipment, and for the subsequent shipments, the President prohibited the importation of Virginia leaf tobacco, and for the loss suffered, no one is to blame. This is one of the attendant risks in a joint venture which could not be foreseen.

"WHEREFORE, it is the sentence of this Commission that the transaction being a joint venture, with the accused Diong Bi Chu alias Patrick Chang, acting in good faith and without fault nor negligence, for which he can not in any way be held liable, should and is hereby acquitted of the charge." [3]

As an offshoot of the criminal case, on 31 March 1978, private respondents filed a civil action[4] against Diong Bi Chu, Chang Ka Hee and Lu Liong Corporation for recovery of damages arising from guaranty and fraud, before the Court of First Instance of Rizal, Branch 21, docketed as Civil Case No. 29077. Petitioners Diong Bi Chu and Chang Ka Hee were the majority stockholders of Lu Liong Corporation.

Petitioners moved for the dismissal of the civil action for damages filed against them, on the ground that the same

is barred by the prior judgment of Military Commission No. 3 and by private respondents' failure to reserve their right to file a separate civil action.[5] On 30 May 1978, the court denied said motion to dismiss.[6] Petitioners' first and second motions for reconsideration were likewise denied on 10 July and 31 August 1978, respectively.[7]

A petition for certiorari was then filed by herein petitioners before the Court of Appeals, assailing the afore-said orders of the court a quo. In a resolution dated 16 October 1978, the appellate court dismissed said petition, holding that the civil action for damages under Art. 33 of the Civil Code is independent of the criminal case and that the dismissal of the criminal case against petitioner Chang Ka Hee and the acquittal of petitioner Diong Bi Chu do not constitute a bar to the prosecution of the civil action for damages against them. Petitioners moved for reconsideration of said resolution, but the same was denied in a resolution dated 29 December 1978.[8]

Not satisfied with the foregoing rulings of the Court of Appeals, petitioners filed the petition at bar, raising the sole issue of whether or not a civil action for damages based on fraud under Art. 33 of the Civil Code is barred by a prior judgment of acquittal in a criminal case.

Art. 33 of the Civil Code provides that "(I)n cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

To hold a person liable for damages under the foregoing provision, only a preponderance of evidence is required. An acquittal in a criminal case is not a bar to the filing of an action for civil damages, for one may not be criminally liable and still be civilly liable. Thus, the outcome or result of the criminal case, whether an acquittal or conviction, is really inconsequential and will be of no moment in the civil action.

To subordinate the civil action contemplated in Arts. 33 and 2177 of the Civil Code to the result of the criminal prosecution would render meaningless the independent character of the civil action when, on the contrary, the law provides that such civil action "may proceed independently of the criminal proceeding and regardless of the result of the latter." Art. 33 of the Civil Code contemplates a civil action for recovery of damages that is entirely unrelated to the purely criminal aspect of the case. This is the reason why only a preponderance of evidence and not proof beyond reasonable doubt is deemed sufficient in such civil action.[9]

The civil action under Art. 33 need not be reserved because the law itself already makes the reservation.[10] In the case of *Bonite v. Zosa*,[11] it was held that:

"Besides, the requirement in Section 2 of Rule 111 of the former Rules on Criminal Procedure that there be a reservation in the criminal case of the right to institute an independent civil action, has been declared as not in accordance with law. It is regarded as an unauthorized amendment to the substantive law, i.e. the Civil Code, which does not require such a reservation. In fact, the reservation of the right to file an independent civil action has been deleted from Section 2, Rule 111 of the 1985 Rules on Criminal Procedure, in consonance with the decisions of this Court declaring such requirement of a reservation as ineffective."

Thus, dismissal of the criminal case against Chang Ka Hee and acquittal of Diong Bi Chu before Military Commission No. 3 for the charge of estafa is not a bar to the civil action for damages against them, based on fraud.

While a military commission or tribunal was declared to have no jurisdiction to try, even during the period of martial law, civilians for offenses allegedly committed by them, as long as the civil courts are open and functioning,[12] however, such ruling applies only to future cases or cases still on-going or not yet final -

"In the interest of justice and consistency, we hold that *Olaguer* should, in principle, be applied prospectively

only to future cases and cases still ongoing or not yet final when that decision was promulgated. Hence, there should be no retroactive nullification of final judgments, whether of conviction or acquittal, rendered by military courts against civilians before the promulgation of the Olaguer decision. Such final sentences should not be disturbed by the State. Only in particular cases, where the convicted person or the State shows that there was serious denial of the Constitutional rights of the accused should the nullity of the sentence be declared and a retrial be ordered based on the violation of the constitutional rights of the accused, and not on the Olaguer doctrine. If a retrial is no longer possible, the accused should be released since the judgment against him is null on account of the violation of his constitutional rights and denial of due process." [13]

Applying the foregoing principles, despite the validity of the acquittal of Diong Bi Chu and the dismissal of the criminal case against Chang Ka Hee by Military Commission No. 3, such fact does not deprive private respondents of their right to recover civil damages against said persons, based on fraud under Art. 33 of the Civil Code.

WHEREFORE, the petition is DISMISSED for lack of merit, and the case is hereby remanded to the court of origin for further proceedings.

SO ORDERED.

Paras, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), no part. Penned Decision in Court of Appeals.

[1] Penned by Justice Ameurfina A. Melencio-Herrera, with the concurrence of Justices Lorenzo Relova and Simeon M. Gopengco, Rollo, p. 64

[2] Rollo, p. 16

[3] Ibid., p. 22

[4] Ibid., pp. 23-38

[5] Ibid., pp. 40-43

[6] Ibid., p. 44

[7] Ibid., pp. 48 and 54

[8] Ibid., pp. 76-77

[9] Azucena v. Potenciano, G.R. No. L-14028, 30 June 1962, 5 SCRA 468

[10] Garcia v. Florido, G.R. No. L-35095, 31 August 1973, 52 SCRA 420; De Leon Brokerage Co., Inc. v. CA, 114 Phil. 436

[11] G.R. No. L-33772, 20 June 1988, 162 SCRA 173

[12] Cruz v. Enrile, G.R. No. 79077, 15 April 1988, 160 SCRA 702; Olaguer v. Military Commission No. 34, G.R. No. 54588, 22 May 1987, 156 SCRA 144

[13] Tan v. Barrios, G.R. Nos. 85481-82, 18 October 1990

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