

OTILO R. GOROSPE, PETITIONER, VS. RAMON O. NOLASCOR ETC., ET AL., RESPONDENTS.

G.R. No. L-14745. March 30, 1962

Ponente: DIZON, J.

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DIZON, J.:

This is a petition to review by certiorari the decision of the Court of Appeals in CA-G.R. No. 22760-R.

On June 7, 1956, Pastor Romero filed a complaint in the Court of First Instance of Manila against Otilo R. Gorospe (Civil Case No. 30378) to recover the ownership of Lot No. 19, Block No. 58 of the Rita Legarda Subdivision, or the sum of P3,000.00, plus damages and attorney's fees, alleging therein that on or about March 1947, Romero, desirous of owning a lot in Manila, gave Gorospe the sum of P3,000.00 for the purchase of a lot in the Rita Legarda Subdivision of which the latter was an agent; that thereafter, Gorospe informed Romero that he had contracted to purchase Lot No. 19, Block No. 58 of said subdivision in the name of Romero's daughter named Sofronia, with an alleged area of 232.20 sq. meters and at the supposed price of P20.00 per square meter; that several months thereafter, upon learning that all he had was a contract to purchase said lot instead of a clear title thereto, Romero called Gorospe's attention to said fact; that thereupon the latter assured Romero that the area given in said contract to purchase was only tentative; that the sum of P3,000.00 which he already paid to the Rita Legarda, Inc., was sufficient and no further payments need be made, and that, as soon as the true and correct area was computed, the contract would be adjusted and a Torrens' title issued; that in view of these assurances, Romero constructed a house on the lot at a cost of P10,000.00; that in May, 1956, Gorospe informed Romero that unless he paid P4,000.00 in cash, aside from the P3,000.00 he had already paid, he would lose his rights over the lot in question; that, upon making inquiries at the Rita Legarda Inc., Romero learned that Gorospe had acquired title over the lot on May 10, 1956, for the sum of P4,000.00, Transfer Certificate of Title No. 43504 of the Register of Deeds of Manila having been issued in his name.

In his answer to the complaint; Gorospe denied the material allegations thereof and averred that he was the owner of the property in question, having acquired the same from its previous owner in exchange for a lot he owned; and, as a counterclaim, sought to recover moral damages and attorney's fees.

Before the trial of the case, Romero filed a criminal complaint for estafa against Gorospe with the Office of the City Fiscal of Manila based upon the facts above narrated.

On December 17, 1956, Romero moved for the postponement of the trial of the civil case pending the outcome of the preliminary investigation of his criminal complaint for estafa, which motion was granted by the court. After two similar motions for postponement, the Court, on September 10, 1957, issued the following order:

"When this case was called for hearing, nobody appeared for the plaintiff. Instead the clerk called the attention of the Court to a motion dated September 9, 1957 asking for the postponement of the hearing. The Court considers the motion to be without merit and, is, therefore, denied."

"In view of the failure of plaintiff to appear, the Court hereby considers the complaint abandoned. Considering

that the Defendant has counterclaim, the Court hereby authorized the defendant to present his evidence in support of his counterclaim before the Clerk of Court, who is hereby delegated to receive the same."

After receiving Gorospe's evidence in support of his counterclaim, the Court, on September 12, 1957, rendered judgment dismissing the complaint, and, on the counterclaim, sentencing Romero to pay Gorospe the sum of P200.00 as attorney's fees, without costs. Neither party appealed.

On October 23, 1957, the Office of the City Fiscal of Manila filed an information charging Otilo R. Gorospe with the crime of estafa (Criminal Case No. 41992 of the Court of First Instance of Manila).

A motion to quash the information was filed by the accused on January 15, 1958 on the ground that the dismissal of Civil Case No. 30378 for failure of the therein plaintiff to prosecute was an adjudication of the case on the merits and, therefore, constituted a bar to the filing and prosecution of Criminal Case No. 41992 as the issues involved in the former constituted a prejudicial question in the latter. The Court denied this motion on February 8, 1958 and set the case for the arraignment of the defendant. The latter's motion for reconsideration was likewise denied by the Court.

On March 13, 1958 Otilo R. Gorospe filed a petition: for certiorari, prohibition and mandamus, with preliminary injunction, with the Court of Appeals (CA-G. R. No. 22760-R) against the Hon. Ramon O. Nolasco, Judge of the Court of First Instance of Manila, Branch XI, and Pastor Romero, to declare the decision of the Court of First Instance in Civil Case No. 30378 a prejudicial question, thereby barring the prosecution of the petitioner for estafa in Criminal Case No. 41992; to restrain the respondent judge from proceeding with the trial of said criminal case and to order him to dismiss the same.

On March 20, 1958, the Court of Appeals gave due course to the petition and ordered the respondent judge to refrain from proceeding with the trial of Criminal Case No. 41992 until further orders.

On October 31, 1958, the Court of Appeals rendered judgment dismissing the petition and dissolving the writ of preliminary injunction previously issued, from which Gorospe took the present appeal by certiorari.

The issue to be determined is whether or not the decision in Civil Case No. 30378 constitutes a bar to the filing and prosecution of the criminal case for estafa against petitioner Gorospe. On this question, the Court of Appeals held the following:

"An analysis of the averments of the civil complaint and those of the criminal information is in order. The complaint in the civil case was planted upon the claim that the sum of three thousand pesos (P3,000.00) obtained by petitioner from respondent Romero was used by the former to acquire Lot No. 19, Block No. 58 of the Rita Legarda Subdivision, the title to which was placed in petitioner's name. That is why, the complaint prayed that defendant be ordered to deliver to plaintiff the absolute ownership of that lot of, in the alternative, to return to said plaintiff the sum of three thousand pesos (P3,000.00). During the pendency of the civil case, the matter was referred by respondent Romero to the city fiscal's office for criminal prosecution of petitioner for estafa. Further investigation was made by the fiscal. It was then that allegedly the complaining witness came to know that the sum of, three thousand pesos (P3,000.00) received by petitioner from said respondent for the purchase of a lot in Rita Legarda Subdivision, was never paid to or acknowledged by the said subdivision; and that the alleged contract to purchase, delivered by petitioner to respondent Romero, was not genuine for the reason that 'the money therein mentioned was not acknowledged by the said subdivision in payment of the lot mentioned therein'. Thus, it is, that in the criminal information, petitioner was charged with having feloniously misappropriated, misapplied and converted the said sum to his own personal use and benefit, to the damage and prejudice of respondent Pastor Romero and his daughter Sofronia Romero."

"The situation is this: The civil complaint was upon the theory that the money was used for the purchase of a lot; the criminal information, in turn, alleges that the money was never used for the purchase of any lot at all

but, on the contrary, was embezzled by petitioner."

"x x x Fraud is not an essential element of the civil suit; petitioner could well have been held civilly liable for breach of contract with respondent Romero. Upon the other hand, the action for estafa is predicated upon deceit without which there can be no estafa. So that, the one is entirely distinct and may be litigated independently from the other. *Sy vs. Malate Taxicab' and Garage, Inc.*, G.R. No. L-8937, November 28, 1957."

We find the above considerations to be correct and in accord with the provisions of Article 31 of the New Civil Code to the effect that "When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings .and regardless of the result of the latter."

Moreover under the provisions of Section 1, paragraph (e), Rule 107 of the Rules of Court, a final judgment rendered in a civil action absolving the defendant from civil liability, is no bar to a criminal action. As the civil action instituted by Romero against Gorospe was dismissed without the presentation of any evidence upon the issues arising from the complaint and the answer filed in said case, it is manifest that the court did riot and could not have made any finding of fact that made it impossible thereafter to hold Gorospe liable for estafa. Consequently, the dismissal of the civil action cannot in any legal sense constitute a bar to the filing and prosecution of the criminal action for estafa against herein petitioner.

WHEREFORE, the present petition for review by certiorari is denied, with costs.

Bengzon, J.P., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and De Leon, JJ., concur.

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