

**ALMARIO T. SALTA, PETITIONER, VS. HON. JUDGE JESUS DE VEYRA,
IN HIS CAPACITY AS PRESIDING JUDGE OF THE CFI OF MANILA,
BRANCH XIV AND PHILIPPINE NATIONAL BANK, RESPONDENTS.**

G.R. No. L-37733. September 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

In these two cases, the only issue to be resolved is whether a decision of acquittal in a criminal case operates to dismiss a separate civil action filed on the basis of the same facts as alleged in the criminal case, which is for violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

The petitioner, Almario T. Salta, in G. R. No. L-37733, takes the affirmative stand on the issue as above indicated, as he made manifest in his motion to dismiss Civil Case No. 79583, of the CFI of Manila, Branch XIV, which was, however, denied by Hon. Jesus de Veyra, presiding. In a similar motion, aforementioned petitioner sought to dismiss another civil case (Civil Case No. 88343), pending before Branch VII of the same CFI of Manila, presided over by Hon. Amante Purisima who granted the motion to dismiss.

We have, therefore, the unedifying spectacle of two cases involving the same issue disposed of by two judges in a manner directly in opposition of each other. For a uniform ruling that would authoritatively settle this regrettable conflict of opinion, the two cases have been consolidated for a single decision. For purposes of convenience, however, although the petitioner in G. R. No. L-37733, Almario T. Salta, is the private respondent in the other case, G. R. No. L-38035, in which the petitioner is the Philippine National Bank, We shall refer in this decision to Salta as "petitioner," and the PNB, as "respondent bank."

Petitioner was an employee of the PNB assigned as Manager of the Malolos' branch. As such, his duty was, among others, to himself grant loans, or only to recommend the granting of loans, depending on the amount of the loan applied for. In the performance of this particular duty, he is supposed to exercise care and prudence, and with utmost diligence, observe the policies, rules and regulations of the bank.

In disregard of the pertinent rules, regulations and policies of the respondent bank, petitioner indiscriminately granted certain loans mentioned in the complaints filed by PNB, in a manner characterized by negligence, fraud and manifest partiality, and upon securities not commensurate with the amount of the loans. This is how the respondent bank found petitioner to have discharged his duties as branch manager of the bank, and so it filed a civil action in the CFI of Manila (Civil Case No. 79583, Branch XIV) on April 22, 1970, and another case (Civil Case No. 88343, Branch VII) on September 23, 1972, to recover losses the bank suffered. At the same time the bank caused to be filed, based on the same acts, a criminal case with the Circuit Criminal Court of the Fifth Judicial District at San Fernando, Pampanga, Criminal Case No. CCC-V-668, for violation of the Anti-Graft and Corrupt Practices Act.

In the criminal case, the Court, on motion to dismiss filed by the defense, after the prosecution has rested, granted the motion in a 64-page Resolution, the dispositive portion of which reads:

"CONFORMABLY WITH ALL THE FOREGOING, therefore, the Motion to Dismiss (Demurrer to Evidence) should be as it is hereby granted and accused ALMARIO T. SALTA ACQUITTED of the offense charged in the Information, the prosecution having failed to prove the essential ingredient and/or elements of the crime charged, with costs de oficio."[1]

With his acquittal in the criminal case, petitioner filed Motions to Dismiss in each of the two civil cases, based on Section 3(c), Rule III of the Revised Rules of Court which provides:

"(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. x x x"[2]

It is in the resolution of the motions to dismiss that Judges de Veyra and Purisima of the CFI of Manila took diametrically opposing views, the former denying the motion, the latter granting it.

We sustain the order denying the motion to dismiss as issued by Judge de Veyra, which, for its brevity, but clear and convincing, We quote as follows:

"Having been acquitted by the Circuit Court of the charges of violation of the Anti-Graft Law, Defendant now seeks the dismissal of the civil case which arose from the same set of facts. The motion to dismiss must be denied for the reason that acquittal in the criminal case will not be an obstacle for the civil case to prosper unless in the criminal case the Court makes a finding that even civilly the accused would not be liable - there is no such a finding. Apart from this, Plaintiff in this present civil case bases its case either on fraud or negligence - evidence that only requires a preponderance, unlike beyond reasonable doubt which is the requisite in criminal cases.

"The motion to dismiss is, therefore, denied for lack of merit."[3]

To begin with, the filing in this case of a civil action separate from the criminal action is fully warranted under the provision of Article 33 of the New Civil Code.[4] The criminal case is for the prosecution of an offense the main element of which is fraud, one of the kinds of crime mentioned in the aforesaid provision. Based on the same acts for which the criminal action was filed, the civil actions very clearly alleged fraud and negligence as having given rise to the cause of action averred in the complaints. It needs hardly any showing to demonstrate this fact, which petitioner disputes, particularly as to the sufficiency of the allegation of fraud in the civil complaints. Definitely, We hold that the following allegation in the complaints unmistakably shows that the complaints do contain sufficient averment of fraud:

"13. That there was fraud committed by the defendant in granting the aforesaid loans which rendered him liable for his acts, which fraud is positively and easily identifiable in the manner and scheme aforementioned."[5]

That there is allegation of negligence is also unmistakably shown when the complaint states that "the defendant as manager of Malolos Branch, in gross violation of the bank rules and regulations, and without exercising necessary prudence, x x x extended a number of credit accommodations x x x."[6] On this allegation of negligence alone, the civil case may be maintained as an entirely independent action from the criminal case. Consequently, Section 3(c), Rule III of the Revised Rules of Court has no application thereto.

The ruling in the case of PNB vs. Bagamaspad,[7] involving the same respondent herein, and also against its branch manager, unerringly charts the course to be followed in the final resolution of these cases. Thus –

"The trial court based in the civil liability the appellants herein on the provisions of Article 1718 and 1719 of the Civil Code, defining and enumerating the duties and obligations of an agent and his liability for failure to comply with such duty. x x x. A careful study and consideration of the record, however, convinces us and we agree with the trial court that the defendants-appellants have not only violated instructions of the plaintiff

Bank, including things which the bank wanted done or not done, all of which were fully understood by them, but they (appellants) also violated standing regulations regarding the granting of loans; and what is more, thru their carelessness, laxity and negligence, they allowed loans to be granted to persons who were not entitled to secure loans." [8]

If petitioner's civil liability is, as alleged in the complaint, based on negligence, apart from the averment of fraud, then on the strength of the aforesaid ruling, the civil action can be maintained regardless of the outcome of the criminal action.

The opinion of former Justice J.B.L. Reyes in *Dionisio vs. Alvendia* [9] is not only enlightening, but authoritative. Thus –

"...in the case of an independent civil actions under the Civil Code, the result of the criminal case, whether acquittal or conviction, would be entirely irrelevant to the civil action. This seems to be the spirit of the law when it decided to make these actions 'entirely separate and distinct' from the criminal action (Articles 22, 33, 34 and 2177). Hence in these cases, I think Rule 107 Sec. 1(d) does not apply." [10]

It is significant to note that under Article 31 [11] of the New Civil Code, it is made clear that the civil action permitted therein to be filed separately from the criminal action may proceed independently of the criminal proceedings "regardless of the result of the latter." It seems perfectly reasonable to conclude that the civil actions mentioned in Article 33, permitted in the same manner to be filed separately from the criminal case, may proceed similarly regardless of the result of the criminal case.

Indeed, when the law has allowed a civil case related to a criminal case, to be filed separately and to proceed independently even during the pendency of the latter case, the intention is patent to make the court's disposition of the criminal case of no effect whatsoever on the separate civil case. This must be so because the offenses specified in Article 33 are of such a nature, unlike other offenses not mentioned, that they may be made the subject of a separate civil action because of the distinct separability of their respective juridical cause or basis of action. This is clearly illustrated in the case of swindling, a specie of an offense committed by means of fraud, where the civil case may be filed separately and proceed independently of the criminal case, regardless of the result of the latter.

The wisdom of the provision of Article 33 of the New Civil Code is to be found in the fact that when the civil action is reserved to be filed separately, the criminal case is prosecuted by the prosecuting officer alone without intervention from a private counsel representing the interest of the offended party. It is but just that when, as in the present instance, the prosecution of the criminal case is left to the government prosecutor to undertake, any mistake or mishandling of the case committed by the latter should not work to the prejudice of the offended party whose interest would thus be protected by the measure contemplated by Article 33 and Article 2177 [12] of the New Civil Code.

Prescinding from the foregoing, it should be stated with emphasis, for its decisive effect on how the issue raised in this case should be disposed of, that in no manner may the resolution of the Circuit Criminal Court be read as positively stating that the fact from which the civil action might arise did not exist, as required in the provision relied upon by petitioner, Section 3(c), Rule III of the Revised Rules of Court. As Judge de Veyra put it, "acquittal in the criminal case will not be an obstacle for the civil case to prosper unless in the criminal case the Court makes a finding that even civilly, the accused would not be liable--there is no such finding." There, indeed, could not be such finding because the criminal court, aware that the civil case is not before it, would be acting in excess of jurisdiction if it were to make any pronouncement in effect disposing of a case pending before another court, over which it had not acquired jurisdiction. Even if this were authorized by the Rules of Court, the validity of such rule would be open to serious doubt as it would be affecting a matter of jurisdiction, which is substantive in character, considering the constitutional limitation of the rule-making power of the Supreme Court, that said rules should not

increase or diminish substantive rights.

WHEREFORE, the order denying the motion to dismiss issued in Civil Case No. 79583 of the Court of First Instance of Manila (G. R. No. L-37733) is affirmed, while the order granting a similar motion in Civil Case No. 88343 of the same court (G. R. No. L-38035) is reversed. Let the records of these two (2) cases be remanded to their respective courts of origin for proper further proceedings. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, and Escolin, JJ., concur. Barredo, J., (Chairman), abstained because petitioner Salta is a very close friend of him and he has personal knowledge of facts which can affect the case differently from the perspective of this decision. Aquino, J., in the result. Abad Santos, J., no part.

[1] pp. 108, 109, Rollo of G. R. No. L-37733.

[2] p. 236, Id.

[3] pp. 127, Id.

[4] Article 33. In 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.

[5] pp. 25-26, Rollo of G. R. No. L-37733.

[6] p. 21, Id.

[7] 89 Phil. 365.

[8] p. 239, Rollo of G. R. No. L-37733.

[9] 102 Phil. 443.

[10] pp. 252-253, Rollo of G. R. No. L-37733.

[11] Article 31. 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.

[12] Article 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

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