

PETRA T. ALMENDRA ET AL., PLAINTIFFS AND APPELLANTS, VS. ELEODORO G. ALVERO, DEFENDANT AND APPELLEE.

G.R. No. L-19820. September 20, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petra T. Almendra and her husband Tomas Almendra appeal from the order of the Court of First Instance of Rizal dismissing their complaint for malicious prosecution on the ground of its insufficiency to state a cause of action.

Whether or not a complaint is sufficient must be determined from its allegations alone, matters not alleged being improper for consideration.[1] The complaint in this case alleges that on July 1, 1959, in the Justice of the Peace Court of Abuyog, Leyte, Eleodoro G. Alvero filed against Petra T. Almendra (whose maiden name is Petra A. Tupa) and her niece Loreta Almendra two separate criminal charges, one for altering boundaries and another for malicious mischief, both of which were dismissed, and that in filing said charges Alvero was moved by malice because he knew that the accusations were false.

The averments of malice however, are negated by the facts found by the Justice of the Peace Court and stated in the orders of dismissal which respectively read as follows:

"Perusing the motion for dismissal and the opposition in relation to the evidence presented by the prosecution, the Court is of the opinion and so holds, that the motion for dismissal is tenable. The circumstances of malice and deliberate intent to inflict the injury to the property of the complainant is lacking. In *People v. Gerale, et al.*, 4 Phil. 218, it was held: That the crime of damage to property is not determined solely by the mere act of inflicting injury upon the property of a third person, but it must be shown that the act had for its object the injury of property merely for the sake of damaging it, without this circumstance (intention) of the culprit cannot be established. It was proven by the prosecution, that the accused cut to the level ground the posts of the fence of the complainant. Malice on this destruction was negated by the admission of the witnesses for the prosecution that the accused provided themselves with seven (7) posts, planted the posts the accused carried to a distance of eight meters from the original fence and nailed the fence to the posts planted by the accused. Malicious intent of the above-entitled case is lacking, for actually the fence was only removed as alleged in the complaint." (Annex C)

"Perusing the motion for dismissal and the opposition, the Court is of the opinion and so holds, that the motion for dismissal is tenable. It is true that the fence is owned by the complaining witness. The complaining witness fenced his lot in line with the community development and so that his pigs would not be astray. But it was not contended that the fence allegedly altered by the accused, constitutes the boundary of the land between Petra A. Tupa and the complainant. Natividad Mata, a witness for the prosecution, did not tell the court that the fence constitutes the boundary of the land between Petra A. Tupa and the complainant. Antonio Calan, allegedly the principal witness for the prosecution, testified that he does not know the boundary of the lands of Petra A. Tupa the other accused and the complainant." (Annex D)

The circumstances on which herein appellee acted were: He was the owner of the fence. Appellant Petra T.

Almendra cut the posts thereof, and then bodily moved the fence and attached it to new posts which she had planted eight meters away from the original site. These circumstances reasonably persuaded appellee that said appellant, in cutting the posts,[2] committed the offense of malicious mischief,[3] and in removing the fence from its location and placing it eight meters away likewise committed the offense of altering boundary marks.[4] The facts which thus presented themselves to appellee were such as would excite the belief in a reasonable mind that the person charged was guilty of the crimes for Which he was to be prosecuted. This is the essence of probable cause, which eliminates the element of malice essential in making out a case of malicious prosecution.[5]

Appellants further contend that aside from their allegations of malicious prosecution they have another cause of action embodied in paragraph 3 of the complaint, which states:

"That because of these two sworn complaints (Annexes A and B) that were personally signed and filed by the herein defendant against the herein Petra T. Almendra, and immediately after the warrant of arrest issued for the arrest of the latter, the said defendant personally and actually helped the arresting policeman of Abuyog, Leyte in personally arresting the herein plaintiff Petra T. Almendra in front of the house of the latter's mother at Buntay Abuyog, Leyte and defendant kept on shouting, when the herein plaintiff Petra T. Almendra was already arrested in public, that the herein plaintiff Petra T. Almendra is a criminal and should be jailed and at the same time cursing the herein plaintiff Petra T. Almendra while the latter was being brought to the Municipal jail of Abuyog, Leyte."

The contention is untenable. The allegedly slanderous words referred to were merely incidental to the supposed malicious prosecution. They clearly were not intended to embody a different cause of action, for in appellants complaint there is no claim for damages by reason of that specific act of slander. Even in their motion for reconsideration of the order of dismissal they did not say that the averments in paragraph 3 constituted in themselves a cause of action such as would have justified further proceedings regardless of the insufficiency of the allegations concerning the malicious prosecution.

The appealed order is affirmed, with costs against appellants.

Bengzon, C. J., Bautista Angelo, Concepcion, Dizon, Bengzon, J. P., and Zaldivar, JJ., concur.

[1] *Reinares v. Arrastria*, L-17083, July 31, 1962; *Mindanao Realty Corporation v. Kintar*, L-17152, November 30, 1962.

[2] According to the complaint for malicious mischief coconut seedlings were hung on the fence and these were also destroyed when Petra T. Almendra cut off the posts of the fence.

[3] Malicious mischief is the crime committed by a person who shall deliberately cause to the property of another any damage which does not constitute arson (Article 327, Revised Penal Code).

[4] The crime of altering of boundaries or landmarks is committed by any person who shall alter the boundary marks or monuments of towns, provinces or estates, or any other marks intended designate the boundaries of the same (Article 313, Revised Penal Code).

[5] *Buchanan v. Vda. de Esteban*, 32 Phil 363.

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