

**JOAQUINA VENTURA, ASSISTED BY HER HUSBAND, JOSE VENTURA,
PLAINTIFF-APPELLANT, VS. EUSEBIO BERNABE,
DEFENDANT-APPELLEE.**

G.R. No. L-26760. April 30, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the order of the Court of First Instance of Rizal, Caloocan City Branch, dismissing - on the ground that the "complaint states no cause of action" - its Civil Case No. C-628, an action for damages based upon an alleged malicious prosecution.

According to the record on appeal, for the crime of falsification of a private document allegedly committed against appellee Eusebio Bernabe, appellant Joaquina Ventura stood trial in the Court of First Instance of Rizal upon the following complaint filed with the fiscal's office:

"The undersigned accuses JOAQUINA DE VENTURA of the crime of 'Falsification of Private Document' under Art. 172 subpar. (2) of the Revised Penal Code, committed as follows:

"That on or about October 4, 1958, in the Municipality of Caloocan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully and feloniously commit falsification in a private document, to wit: the said accused WILLFULLY, UNLAWFULLY and FELONIOUSLY presented to Mr. Eusebio B. Bernabe a supposed letter of Cmdr. Marcelino Calinawan Jr. of the Presidential Fact Finding Committee addressed to Mr. Bernabe asking for a loan of P350.00 and the accused further stating that Cmdr. Calinawan was then in her residence waiting for the money and with the instruction to hand to her the money for delivery to Cmdr. Calinawan which Mr. Bernabe did by issuing a Bank of America Check No. 703659 dated October 5, 1958 for P350.00 and handing the same to the accused; that upon verification, it has been found out that the letter above referred to was never and has never been made by Cmdr. Calinawan and that the signature appearing on the same is not the signature of Cmdr. Calinawan; that the said Check has already been cash(ed) on or about October 7, 1958 to the damage and prejudice of Mr. Eusebio B. Bernabe in the sum of P350.00 Philippine Currency.

"CONTRARY TO LAW"

and was ultimately acquitted in a decision of said court as follows:

"During the trial of this case, Eusebio Bernabe pointed at the accused and told the Court that he had known her and her husband as early as 1958; that he and accused's husband, are compadres. Bernabe testified that Maj. Ventura, accused's husband, in the year 1958, was one of the members of the Presidential Fact Finding Committee, which was under the chairmanship of Commander Calinawan. He said that he was an agent of Ventura and as such he had some dealings with Commander Calinawan, thru Ventura; that during the year 1958, Marcelino Calinawan on five occasions asked him for sums of money thru Maj. Ventura, which sums all amounted to P2,000.00; that he gave all this money to Marcelino Calinawan thru Ventura altho he admitted that he does not know and has not yet met the said Commander Calinawan. On October 4, 1958, Bernabe said,

the accused went to his house and showed to him a letter purporting to be signed by Commander Calinawan, asking for the sum of P350.00; that on the strength of this letter and the representation of the accused that Calinawan was in her house waiting for the money, he right away made a check, Exh. B, and delivered it to the said accused, Bernabe further testified that later on he went to see Commander Calinawan and inquired whether he received the money and the latter replied that he never received any; that he showed Calinawan the letter, Exh. A, and the latter denied that he wrote the said letter.

"In her defense, the accused vigorously denied that she went to the house of Eusebio Bernabe and gave the letter, Exh. A. She also denied having received the check on October 4, 1962. She said that on October 4, 1962 she did not go out of her house because she has just delivered and was still weak. The accused further testified that the complainant in filing this case against her must have been motivated because of a series of misunderstandings he had with her husband. The accused claims that she does not know Commander Calinawan.

"After hearing the evidence of the prosecution and that of the accused, the Court finds the following as established facts: That Eusebio Bernabe was an agent of Maj. Ventura. Major Ventura in turn was an agent of Commander Calinawan who was at that time the Chairman of the Presidential Fact Finding Committee. Bernabe does not know Calinawan and has no direct contact with him, and that as an agent of Maj. Ventura Bernabe has been giving money to Calinawan which totalled all in all P2,000.00.

"Now, on these facts, several questions puzzled the Court. Why was Bernabe giving money to Calinawan when according to his own testimony he does not know the said Calinawan? Why did Bernabe go to Calinawan in order to verify about the letter, Exh. A, and also to find out whether he has received the money that he gave to the accused when he did not do so when he gave Calinawan the sums of money that totalled all in all P2,000.00? The failure of Bernabe to explain these circumstances has made the evidence of the prosecution incoherent and vague and, eventually, affected the credibility of the said Bernabe. On the other hand, the Court finds that the testimony of the accused is more credible. The accused said that Bernabe filed the instant case because of a series of misunderstandings that the said Bernabe had with her husband, Maj. Ventura. This was not even rebutted by the prosecution.

"IN VIEW OF THE FOREGOING, the Court finds the accused NOT GUILTY of the crime charged, and, therefore, ACQUITS her, with costs de oficio.

"SO ORDERED."

Subsequent to this acquittal, appellant, with the assistance of her husband, her co-appellant, filed the above-mentioned civil case against appellee Bernabe praying "that judgment be rendered in favor of the plaintiff and against the defendant:

"(a) ordering the defendant to pay the plaintiff the sum of P30,000.00 for moral damages and another amount of P10,000.00 as exemplary and/or corrective damages;

"(b) ordering the defendant to pay the plaintiff the sum of P2,000.00 for actual damages for attorney's fees incurred in connection with Criminal Case No. 9003, the sum of P720.00 for premium paid on plaintiff's bail bond for 4 years in connection with the Criminal Case No. 9003 and another sum of P2,000.00 as attorney's fees in the instant case;

"(c) and to pay the cost of suit and such other just and equitable reliefs and remedies in and about the premises."

upon the allegation that said "defendant formulated against the plaintiff (the above) criminal charge before the Fiscal's Office, with malicious intent and/or malice aforethought, and without justifiable cause or motive whatsoever, other than to wreck vengeance on the plaintiff and her husband (against) whom defendant had an axe

to grind, and for the purpose of smearing the honor, reputation and prestige of the plaintiff and her family and to embarrass and expose her to public ridicule and contempt, which led to the filing before the Court of First Instance of Rizal of a criminal case docketed as No. 9003 for Estafa thru Falsification of Private Document; copy of the information (criminal complaint above-quoted) is hereto attached and marked Annex A of this complaint" and "by reason of defendant's malicious and unjustifiable filing of the criminal action", she suffered the damages claimed in the above-quoted prayer.

In due time, appellee filed a motion to dismiss grounded thus:

"It is the theory of the defendant that the facts alleged in the complaint does not state a cause of action because the Supreme Court ruled that:

'No civil action for damages on account of malicious prosecution can be maintained unless the court in acquitting the defendant of the criminal charge orders a criminal prosecution to be commenced against the complaining witness for false prosecution. (Gonzales Quiros vs. Palanca Tan Guinlay, 5 Phil. 675; Herrera vs. Escoto 56 Phil. 804; Eclarin vs. Municipality of Tayabas, 32 Phil. 368; U S vs. Barera, 4 Phil. 461)'

'(For) An action instituted for the recovery for (the) injury and damage as a result of a false denunciation or libelous accusation, (may) to be proper and maintainable before the courts it is indispensable that, in the judgment, whereby the accused is absolved or in the order of the final dismissal, the said denunciation or accusation is expressly certified to be false or libelous, otherwise the action cannot prosper. (Grattage vs. Standard Fuel Co. 20 Phil. 460)'

"As gleaned from the above-named rulings of the Supreme Court, action for damages based on malicious prosecution would only lie if the court that renders the decision acquitting the accused declares that the offense charged is false and malicious or orders the prosecution of the complaining witness. A careful perusal of the decision at bar, will show that the same does not contain such declaration or order. The Honorable Judge Andres Reyes simply absolved the accused or the herein plaintiff of the offense charged without, however, making any pronouncement or explicit statements that the accusation is false and libelous; neither did he order that the complaining witness or the herein defendant be proceeded against through an information by the prosecuting officer.

"Moreover, after examining the findings of the Court in the instant case, it is safe to conclude that the herein plaintiff was acquitted not because the accusation against him is fabricated but on the ground of insufficiency of evidence or failure of the prosecution to prove his guilt beyond reasonable doubt."

and over the vigorous objection of the appellant, the trial court issued the appealed order of dismissal, pertinent portions of which read:

"Acting now on said motion and upon careful consideration and study of the case at bar, as well as the arguments adduced for and against said motion, the Court is of the opinion that the complaint states no cause of action. This conclusion is buttressed by the doctrine enunciated in the case of Grattage vs. Standard Fuel Co., Inc., 20 Phil. 460 wherein it is stated that:

'Malicious Prosecution: Declaration by the Trial Judge; Action for Damages. - In order that an action for damages may lie upon a false charge or accusation of a crime of a public nature, it is indispensable that the final decree of acquittal or dismissal in such case should declare that it is false and slanderous. In the absence of such declaration, the false accuser can not be prosecuted upon a claim for indemnity under article 326 of the Penal Code.

'Id; Id; Id; - When in proceedings had in the investigation of a crime falsely charged, the judgment or order of dismissal does not expressly declare that the denunciation or accusation is false and libelous, there is no basis

upon which to rest a claim of civil liability, which is merely a consequence of the criminal responsibility. (Gonzales Quiros vs. Palanca Tan Guinlay, 5 Phil. Rep. 675)'"

In this appeal, appellants' brief, which, incidentally, leaves much room for improvement, assigns three errors allegedly committed by the court below but centers its discussion only on the point that His Honor has erroneously relied on old decisions of this Court applying Article 326 of the Spanish Penal Code of 1887 which required as a condition precedent for the filing of a suit for malicious prosecution (*acusacion o denuncia falsa*) a previous court finding specifically to the effect that the previous accusation was false, inasmuch as, according to appellants, said Article 326 has not been carried over in the Revised Penal Code. While it is obvious that the argument that the stated requirement of the old penal code Article 326 no longer holds under the present laws under which appellants' complaint was filed is well taken, appellants' brief has left it to this Court to note by itself what in fact is the more serious and fatal error committed by the trial court, namely, that it dismissed appellant's complaint notwithstanding that it sufficiently states in form and in substance a cause of action for malicious prosecution under Article 2219 and related provisions of the Civil Code. Exercising Our discretion as authorized by Section 7 of Rule 51 of the Rules of Court, We opt to consider said plain error on Our own initiative and, in consequence, We reverse the appealed order of dismissal.

The sole point raised by appellants regarding Article 326 of the Spanish Penal Code and the decisions applying the same, *Grattage v. Standard Fuel Co.*, 20 Phil. 460; *Gonzales Quiros v. Palanca Tan Guinlay*, 5 Phil. 675; *Herrera v. Escoto*, 56 Phil. 804; *U. S. v. Barrera*, 4 Phil. 461 and *Eclarin v. Municipality of Tayabas*, 32 Phil. 368, cited by the trial court as well as by appellee, needs no elaborate discussion. *People vs. Rivera*, 59 Phil. 236, settled definitely that Article 326 of the Spanish Penal Code "does not appear in the Revised Penal Code, which contains no offense denominated '*acusacion o denuncia falsa*' or its equivalent." The only provision of the Revised Penal Code which may be said to refer to the same subject is Article 363 on Incriminatory Machination providing thus:

"ART. 363. Incriminating innocent person. - Any person who, by any act not constituting perjury, shall directly incriminate or impute to an innocent person the commission of a crime shall be punished by *arresto mayor*."

As has already been held in *Rivera*, this article does not contemplate the idea of malicious prosecution in the sense of someone prosecution or instigating a criminal charge in court:

"Comparing now article 363 of the Revised Penal Code with article 326 of the old Penal Code, it will be observed that under article 326 of the former Penal Code, the gravamen of the offense is the imputation itself when made before an administrative or judicial officer, whereas in article 363 of the Revised Penal Code the gravamen of the offense is performing an act which 'tends directly' to such an imputation. Article 326 of the old Penal Code punishes false prosecutions whereas article 363 of the Revised Penal Code punishes any act which may tend directly to cause a false prosecution.

"It is well settled law that where the text of a statute is clear, it is improper to resort to a caption or title to make it obscure. Such secondary sources may be resorted to in order to remove, not to create doubt. (Cf. *People vs. Yabut*, 58 Phil. 499.) In the present case we think it proper to call attention to the title immediately preceding article 363 of the Revised Penal Code which is as follows: '*Asechanzas Inculpatórias*', as throwing some light on the classes of acts which tend directly to lead to false prosecutions. The word *asechanza*, as defined in standard dictionaries, means as follows:"

""Intriga, lazo, red, zancadilla, tranquila, engaño, engaño, artificio, trama, treta, especie de maquinacion urdida, de celada dispuesta contra alguno, bien sea para perderlo enteramente, bien para jugarle (sin hundirlo) alguna mala pasada. Engaño o artificio para hacer daño a otro. Usase, por lo comun, en el plural, asechanzas. Accion y efecto de asechar." It seems to us a forced extension of the term *asechanza* to bring a formal criminal

complaint within the conception of *intriga*, *engaño*, *artificio*, etc. It seems the more reasonable and sensible interpretation to limit article 363 of the Revised Penal Code to acts of 'planting' evidence and the like, which do not in themselves constitute false prosecutions but tend directly to cause false prosecutions."

Appellants do not pretend, neither have they alleged in their complaint, that appellee has planted evidence against them. At the most, what appellee is alleged to have done is that he had filed the criminal complaint above-quoted against appellant Joaquina Ventura without justifiable cause or motive and had caused the same to be prosecuted, with him (appellee) testifying falsely as witness for the prosecution. These acts do not constitute incriminatory machination, particularly, because Article 363 of the Revised Penal Code punishing said crime expressly excludes perjury[1] as a means of committing the same.

To be sure, for the purposes of the present civil case, it is of no moment that there is no such crime of malicious prosecution in the Revised Penal Code. The present civil action need not be based on the existence of such a crime. Article 2219 of the Civil Code which provides that "moral damages may be recovered in the following cases: (8) Malicious prosecution" would more than sufficiently serve as a basis for relief in court against a party who has maliciously caused another to baselessly and unjustifiably undergo a criminal prosecution for an offense he knows the latter has not committed. Related provisions like Article 21 of the same code providing, "any person who willfully causes loss or injury to another in a manner contrary to morals, good customs or public policy shall compensate the latter for the damage" and Article 2176 on torts or quasi-delict may also serve the purpose.

We have referred to Rivera only to show that the provision of Article 326 of the Spanish Penal Code to the effect that "no se procedera, sin embargo, contra el denunciador o acusador sino en virtud de sentencia firme o auto, tambien firme, de sobreseimiento del tribunal que hubiere conocido del delito imputado", whether it referred to a subsequent civil or criminal proceeding, has no counter-part in the articles of the Civil Code just mentioned nor in any other law or rule of court. Thus, all that the aggrieved party in a case of malicious prosecution has to prove to merit the award of damages is that he has been denounced or charged falsely of an offense by the defendant, that the latter knows that the charge was false, that the said defendant acted with malice and, of course, the damages he has suffered. In *Martinez v. United Finance Corporation*, G. R. No. L-24017, August 31, 1970, 34 SCRA 524, Mr. Justice Makalintal, speaking for the Court, held:

"Malicious prosecution, to be the basis of a suit, requires the elements of malice and want of probable cause in the prosecution of an action against the plaintiff. A third element is that the defendant must himself be the prosecutor or the instigator of the prosecution, which ended in acquittal. These elements are discussed in the case of *Buchanan vs. Vda. de Esteban*, (32 Phil. 363.) thus:

"To support an action for malicious prosecution under American law the plaintiff must prove, in the first place, the fact of the prosecution and the fact that the defendant was himself the prosecutor, or that he instigated its commencement, and that it finally terminated in his acquittal, that, in bringing it, the prosecutor had acted without probable cause, and that he was actuated by legal malice, i. e., by improper or sinister motives. These three elements must concur; and there is no distinction between actions for criminal prosecution, and civil suits. Both classes require substantially the same essentials. Malice is essential to the maintenance of an action for malicious prosecution and not merely to the recovery of exemplary damages. But malice alone does not make one liable for malicious prosecution, where probable cause is shown, even where it appears that the suit was brought for the mere purpose of vexing, harassing and injuring his adversary. In other words, malice and want off probable cause must both exist in order to justify the action.' (Quoted in *Rehabilitation Finance Corp. v. Koh*, L-15512, Feb. 28, 1962, 4 SCRA 535, 540.)"

It is true that in that case of *Martinez*, this Court sustained the order of dismissal of the complaint for malicious prosecution partly because a preliminary investigation had been conducted by the fiscal had found probable cause

for the filing of a estafa case against Martinez, but the main consideration for such action of this Court was the fact that from the recitals in the judgment acquitting the plaintiff, it appeared that although the court found that said plaintiff had been guilty of deceit, the issue resolved by the court was that in law such deceit did not constitute estafa, a matter which had been passed upon by the fiscal in a different way, naturally, without any fault on the part of the defendant. In other words, in Martinez case, the findings of the criminal court in the decision of acquittal negated the imputation of malice on the part of the defendant in charging plaintiff with estafa before the fiscal.

In the case at bar, the complaint alleges, as earlier stated, that "defendant formulated against the plaintiff (the above) criminal charge before the Fiscal's Office, with malicious intent and/or malice aforethought, and without justifiable cause or motive whatsoever, other than to wreck vengeance on the plaintiff and her husband (against) whom defendant had an axe to grind, and for the purpose of smearing the honor, reputation and prestige of the plaintiff and her family and to embarrass and expose her to public ridicule and contempt, which led to the filing before the Court of First Instance of Rizal of a criminal case docketed as No. 9003 for Estafa thru Falsification of Private Document; copy of the information (criminal complaint above-quoted) is hereto attached and marked Annex A of this complaint" and "by reason of defendant's malicious and unjustifiable filing of the criminal action", she suffered the damages claimed in the above-quoted prayer. Unlike in the Martinez case, We cannot say that the aforequoted decision that acquitted Bernabe suggests clearly that said respondent had good reasons to accuse appellant Juquina Ventura as he did. Quite on the contrary, the findings of the court that the "testimony of the accused is more credible" and that the testimony of said accused that "Bernabe filed the instant case because of a series of misunderstandings that the said Bernabe had with her husband, Maj. Ventura - was not even rebutted by the prosecution", would seem to indicate otherwise, that is, that the exculpatory version of the accused was the true one.

In any event, whether or not all the circumstances would show actual or legal malice is a matter of proof. At this juncture, the only question before Us is whether or not the complaint of appellants make out a case of damages for malicious prosecution. In *Palma vs. Graciano*, 99 Phil. 72, penned by no less than our present Chief Justice Concepcion, it was pertinently pointed out:

"x x x The order of dismissal complained of is predicated upon the theory that the filing of the information above referred to, is 'presumed' to have been made 'in good faith' and that, in fact, the proper court had found the existence of probable cause against plaintiff herein, contrary to the allegations in the complaint, which specifically charges 'bad faith', lack of 'any probable cause', desire to give vent to 'personal hatred and vengeance,' and intent to harass and embarrass the plaintiff and to besmirch his honor and reputation. The only question for determination by the court, at the time of the issuance of said order, was whether or not the complaint states a cause of action. This implied that said issue was to be passed upon on the basis of allegations of the complaint, assuming them to be true. Instead, his honor, the trial judge inquired into the truth of said allegations and, in effect, found them to be false. And this it did without giving the plaintiff an opportunity to prove his aforesaid allegations. Thus, the lower court had, not only exceeded its jurisdiction, by going beyond the purview of the issue posed by defendants' motion to dismiss, but, also, denied due process of law to plaintiff herein, by, in effect deciding the case on the merits, before it had been submitted for decision and before plaintiff had had a chance to introduce evidence in support of the allegations of his complaint."

As may be noted, the phraseology of the material allegations of the complaint in this case and those in the above case of *Palma* are practically identical, for which reason, a similar result is called for. After all, what could be a safe test as to whether or not there is malicious prosecution is indicated in *Buenaventura et al. v. Sto. Domingo and Ignacio*, 103 Phil. 239, thus:

"It is true that the present action is not criminal but civil in nature, but the provisions of the Civil Code in

making reference to malicious prosecution must necessarily imply that the person to be held liable to pay moral damages should have acted deliberately and with knowledge that his accusation of the person subject to such malicious prosecution, was false and groundless. The same thing is true as regards the demand for attorney's fees and expenses of litigation, authorized under Article 2208, No. 3 of the Civil Code."

Substantially, if not literally, and on the whole, this is what the complaint here in question alleges, hence Our conclusion that the same states a cause of action.

For the rest, it might just as well be clarified here, lest some statements in Martinez and Buenaventura relative to the materiality of the fiscal's having filed an information on the question of malice of the accuser may be misunderstood, that such participation of the fiscal is not decisive and that malice may still be shown, the holding of a preliminary investigation and the finding of probable cause by the fiscal notwithstanding. The same may be said of cases where preliminary investigations are conducted by judges. The determination of the issue of malice must always be made to rest on all the attendant circumstances, including the possibility of the fiscal or judge being somehow misled by the accuser's evidence. No doubt, the very purpose of preliminary investigations is to avoid baseless and malicious prosecutions, still, whether or not in a particular case such an objective has been duly pursued is a matter of proof. Just as it is bad to encourage the indiscriminate filing of actions for damages by accused persons after they have been acquitted, whether correctly or incorrectly, a blanket clearance of all who may be minded to charge others with offenses, fancied or otherwise, without any chance of the aggrieved parties in the appropriate cases of false accusation to obtain relief, is in Our opinion short of being good law.

In this connection, it may be mentioned that in the original draft of the Civil Code prepared by the Code Commission, the present provisions on human relations, evidencing concern so that offended parties in criminal cases may have redress in civil actions independently of the fate of the corresponding criminal case or even without this, were in a sense counterbalanced by a proposal to make the state itself liable in damages to anyone who might, on the other hand, be erroneously or falsely charged with an offense by the government prosecutor. As has happened, however, such an idea did not gain legislative approval. This accounts for the absence of any specific provision on malicious prosecution in the chapter on human relations, but it also indicates that in the mind of the legislators the primary responsibility for a false charge is with the person who initiates or instigates the criminal prosecution and Articles 2219, 21 and 2176 may be availed of in particular instances where such person is actuated instances by malice or other evil motive.

IN VIEW OF ALL THE FOREGOING, the appealed decision is reversed and this case is ordered remanded to the court of origin for further proceedings not inconsistent with the above opinion, with costs against appellee.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

[1] In the Spanish text of the Revised Penal Code which is controlling, the provision refers to "falso testimonio."

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