

CORNELIO AMARO, AND JOSE AMARO, PLAINTIFFS AND APPELLANTS, VS. AMBROCIO SUMANGUIT, DEFENDANT AND APPELLEE.

G. R. No. L-14986. July 31, 1962

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appellants filed suit for damages in the Court of First Instance of Negros Occidental against the chief of police of the City of Silay. Although not specifically alleged in the complaint, it is admittedly by both parties, as shown in their respective briefs, that the action is predicated on Articles 21 and/or 27 of the Civil Code, which provide:

"ART. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

" ART. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken."

The complaint was dismissed upon appellee's motion in the court below on the ground that it does not state facts sufficient to constitute a cause of action. The only question now before us refers to correctness of the order of dismissal.

The pertinent allegations in the complaint are that on October 5, 1958 appellant Jose Amaro was assaulted and shot at near the city government building of Silay; that the following day he, together with his father (Cornelio Amaro) and his witnesses, "went to the office of the defendant but instead of obtaining assistance to their complaint they were harassed and terrorized;" that in view thereof they "gave up and renounced their right and interest in the prosecution of the crime. . . .;" that upon advice of the City Mayor given to appellee an investigation (of said crime) was conducted and as a result the city attorney of Silay was about to file or had already filed an information for illegal discharge of firearms against the assailant; and that "having finished the investigation of the crime complained of the defendant chief of police is now harassing the plaintiffs in their daily work, ordering them thru his police to appear in his office when he is absent, and he is about to order the arrest of the plaintiffs to take their signatures in prepared affidavits exempting the police from any dereliction of duty in their case against the perpetrator of the crime."

We are of the opinion that the facts set out constitute an actionable dereliction on appellee's part in the light of Article 27 of the Civil Code. That appellants were "harassed and terrorized" may be a conclusion of law and hence improperly pleaded. Their claim for relief, however, is not based on the fact of harassment and terrorization but on appellee's refusal to give them assistance, which it was his duty to do as an officer of the law. The requirement under the aforesaid provision that such refusal must be "without just cause" is implicit in the context of the allegation. The statement of appellee's dereliction is repeated in a subsequent paragraph of the complaint, where it is alleged that "he is about to order the arrest of the plaintiffs" to make them sign affidavits of

exculpation in favor of the policeman.

The complaint is, without doubt, imperfectly drafted. It suffers from vagueness and generalization. But all that the Rules require is that there be a showing, by a statement of ultimate facts, that the plaintiff has a right and that such right has been violated by the defendant. An action should not be dismissed upon mere ambiguity, indefiniteness or uncertainty, for these are not grounds for a motion to dismiss, under Rule 8, but rather for a bill of particulars according to Rule 16. Moran, Comments on the Rules of Court 1957 ed. Vol. 1, p. 111. In two cases decided by this Court, it was observed:

"Under the new Rules of Court, an action cannot be dismissed upon the ground that the complaint is vague, ambiguous, or indefinite (See Rule 8, Section 1), because the defendant, in such case, may ask for more particulars (Rule 16) or he may compel the plaintiff to disclose more relevant facts under the different methods of discovery provided by the Rules. (Rules 18, 20, 21, 22 and 23.) Professor Sunderland once said: 'The real test of a good pleading under the new rules is whether the information given is sufficient to enable the party to plead and prepare for trial. A legal conclusion may serve the purpose of pleading as well as anything else if it gives the proper information. If the party wants more he may ask for more details in regard to the particular matter that is stated too generally.' (Vol. XIII, Cincinnati Law Review, January 1939.)" Go Tiamco vs. Diaz, 75 Phil., 672.

"At any rate, if respondent's complaint, which was clear enough, had created confusion in petitioner's mind as to the foundation of her cause of action, then it should have moved for more definite statement of the same before the trial." De Leon Brokerage Co., Inc., vs. The Court of Appeals, et al., G. R. No. L-15247, February 28, 1962.

The fact, cited by the court below in the order subject to review, that appellants have another recourse (in connection with the crime of illegal discharge of firearms supposedly committed against one of them) as by filing their complaint directly with the city attorney of Silay or by lodging an administrative charge against appellee herein, does not preclude this action for damages under Article 27 of the Civil Code and hence does not justify its dismissal.

The order appealed from is set aside and the case is remanded to the court of origin for further proceedings. Costs against appellee.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and Regala, JJ., concur.

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