

ANAMER SALAZAR, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND J.Y. BROTHERS MARKETING CORPORATION, RESPONDENTS.

G.R. No. 151931. September 23, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Criminal Procedure of the Order[1] of the Regional Trial Court, 5th Judicial Region, Legazpi City, Branch 5,[2] dated November 19, 2001, and its Order[3] dated January 14, 2002 denying the motion for reconsideration of the decision of the said court on the civil aspect thereof and to allow her to present evidence thereon.

On June 11, 1997, an Information for estafa was filed against herein petitioner Anamer D. Salazar and co-accused Nena Jaucian Timario with the Regional Trial Court of Legazpi City, docketed as Criminal Case No. 7474 which reads as follows:

That sometime in the month of October, 1996, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above named-accused, conspiring and confederating with each other, with intent to defraud by means of false pretenses or fraudulent acts executed simultaneously with the commission of the fraud, did then and there wilfully, unlawfully and feloniously, on the part of accused NENA JAUCIAN TIMARIO, drew and issue[d] PRUDENTIAL BANK, LEGASPI CITY BRANCH CHECK NO. 067481, dated October 15, 1996, in the amount of P214,000.00 in favor of J.Y. BROTHERS MARKETING CORPORATION, represented by its Branch Manager, JERSON O. YAO, and accused ANAMER D. SALAZAR endorsed and negotiated said check as payment of 300 cavans of rice obtained from J.Y. BROTHERS MARKETING CORPORATION, knowing fully well that at that time said check was issued and endorsed, Nena Jaucian Timario did not have sufficient funds in or credit with the drawee bank to cover the amount called for therein and without informing the payee of such circumstance; that when said check was presented to the drawee bank for payment, the same was consequently dishonored and refused payment for the reason of "ACCOUNT CLOSED"; that despite demands, accused failed and refused and still fail and refuse to pay and/or make arrangement for the payment of the said check, to the damage and prejudice of said J.Y. BROTHERS MARKETING CORPORATION.

CONTRARY TO LAW.[4]

Upon arraignment, the petitioner, assisted by counsel, entered a plea of not guilty. Trial thereafter ensued.

The Evidence of the Prosecution

On October 15, 1996, petitioner Anamer Salazar purchased 300 cavans of rice from J.Y. Brothers Marketing Corporation, through Mr. Jerson Yao. As payment for these cavans of rice, the petitioner gave the private complainant Check No. 067481 drawn against the Prudential Bank, Legazpi City Branch, dated October 15, 1996, by one Nena Jaucian Timario in the amount of P214,000. Jerson Yao accepted the check upon the petitioner's

assurance that it was a good check. The cavans of rice were picked up the next day by the petitioner. Upon presentment, the check was dishonored because it was drawn under a closed account ("Account Closed"). The petitioner was informed of such dishonor. She replaced the Prudential Bank check with Check No. 365704 drawn against the Solid Bank, Legazpi Branch, which, however, was returned with the word "DAUD" (Drawn Against Uncollected Deposit).

After the prosecution rested its case, the petitioner filed a Demurrer to Evidence with Leave of Court[5] alleging that she could not be guilty of the crime as charged for the following reasons: (a) she was merely an indorser of the check issued by Nena Timario, and Article 315, paragraph 2(d) on estafa penalizes only the issuer of the check and not the indorser thereof; (b) there is no sufficient evidence to prove that the petitioner conspired with the issuer of the check, Nena Jaucian Timario, in order to defraud the private complainant; (c) after the first check was dishonored, the petitioner replaced it with a second one. The first transaction had therefore been effectively novated by the issuance of the second check. Unfortunately, her personal check was dishonored not for insufficiency of funds, but for "DAUD," which in banking parlance means "drawn against uncollected deposit." According to the petitioner, this means that the account had sufficient funds but was still restricted because the deposit, usually a check, had not yet been cleared.

The prosecution filed its comment/opposition to the petitioner's demurrer to evidence.

On November 19, 2001, the trial court rendered judgment acquitting the petitioner of the crime charged but ordering her to remit to the private complainant the amount of the check as payment for her purchase. The trial court ruled that the evidence for the prosecution did not establish the existence of conspiracy beyond reasonable doubt between the petitioner and the issuer of the check, her co-accused Nena Jaucian Timario, for the purpose of defrauding the private complainant. In fact, the private complainant, Jerson Yao, admitted that he had never met Nena Jaucian Timario who remained at large. As a mere indorser of the check, the petitioner's breach of the warranty that the check was a good one is not synonymous with the fraudulent act of falsely pretending to possess credit under Article 315(2)(d). The decretal portion of the trial court's judgment reads as follows:

WHEREFORE, premises considered, the accused Anamer D. Salazar is hereby ACQUITTED of the crime charged but is hereby held liable for the value of the 300 bags of rice. Accused Anamer D. Salazar is therefore ordered to pay J.Y. Brothers Marketing Corporation the sum of P214,000.00. Costs against the accused.[6]

Within the reglementary period therefor, the petitioner filed a motion for reconsideration on the civil aspect of the decision with a plea that he be allowed to present evidence pursuant to Rule 33 of the Rules of Court. On January 14, 2002, the court issued an order denying the motion.

In her petition at bar, the petitioner assails the orders of the trial court claiming that after her demurrer to evidence was granted by the trial court, she was denied due process as she was not given the opportunity to adduce evidence to prove that she was not civilly liable to the private respondent. The petitioner invokes the applicability of Rule 33 of the Rules of Civil Procedure in this case, contending that before being adjudged liable to the private offended party, she should have been first accorded the procedural relief granted in Rule 33.

The Petition Is Meritorious

According to Section 1, Rule 111 of the Revised Rules of Criminal Procedure –

SECTION 1. Institution of criminal and civil actions. – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action.

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions.

The last paragraph of Section 2 of the said rule provides that the extinction of the penal action does not carry with it the extinction of the civil action. Moreover, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.[7]

The criminal action has a dual purpose, namely, the punishment of the offender and indemnity to the offended party. The dominant and primordial objective of the criminal action is the punishment of the offender. The civil action is merely incidental to and consequent to the conviction of the accused. The reason for this is that criminal actions are primarily intended to vindicate an outrage against the sovereignty of the state and to impose the appropriate penalty for the vindication of the disturbance to the social order caused by the offender. On the other hand, the action between the private complainant and the accused is intended solely to indemnify the former.[8]

Unless the offended party waives the civil action or reserves the right to institute it separately or institutes the civil action prior to the criminal action, there are two actions involved in a criminal case. The first is the criminal action for the punishment of the offender. The parties are the People of the Philippines as the plaintiff and the accused. In a criminal action, the private complainant is merely a witness for the State on the criminal aspect of the action. The second is the civil action arising from the delict. The private complainant is the plaintiff and the accused is the defendant. There is a merger of the trial of the two cases to avoid multiplicity of suits.

The quantum of evidence on the criminal aspect of the case is proof beyond reasonable doubt, while in the civil aspect of the action, the quantum of evidence is preponderance of evidence.[9] Under Section 3, Rule 1 of the

1997 Rules of Criminal Procedure, the said rules shall govern the procedure to be observed in action, civil or criminal.

The prosecution presents its evidence not only to prove the guilt of the accused beyond reasonable doubt but also to prove the civil liability of the accused to the offended party. After the prosecution has rested its case, the accused shall adduce its evidence not only on the criminal but also on the civil aspect of the case. At the conclusion of the trial, the court should render judgment not only on the criminal aspect of the case but also on the civil aspect thereof:

SEC. 2. Contents of the judgment. – If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.^[10]

The acquittal of the accused does not prevent a judgment against him on the civil aspect of the case where (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) where the court declared that the liability of the accused is only civil; (c) where the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted. Moreover, the civil action based on the delict is extinguished if there is a finding in the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.

If the accused is acquitted on reasonable doubt but the court renders judgment on the civil aspect of the criminal case, the prosecution cannot appeal from the judgment of acquittal as it would place the accused in double jeopardy. However, the aggrieved party, the offended party or the accused or both may appeal from the judgment on the civil aspect of the case within the period therefor.

After the prosecution has rested its case, the accused has the option either to (a) file a demurrer to evidence with or without leave of court under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, or to (b) adduce his evidence unless he waives the same. The aforecited rule reads:

Sec. 23. Demurrer to evidence. – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives his right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be

reviewable by appeal or by certiorari before the judgment.

In criminal cases, the demurrer to evidence partakes of the nature of a motion to dismiss the case for failure of the prosecution to prove his guilt beyond reasonable doubt. In a case where the accused files a demurrer to evidence without leave of court, he thereby waives his right to present evidence and submits the case for decision on the basis of the evidence of the prosecution. On the other hand, if the accused is granted leave to file a demurrer to evidence, he has the right to adduce evidence not only on the criminal aspect but also on the civil aspect of the case if his demurrer is denied by the court.

If demurrer is granted and the accused is acquitted by the court, the accused has the right to adduce evidence on the civil aspect of the case unless the court also declares that the act or omission from which the civil liability may arise did not exist. If the trial court issues an order or renders judgment not only granting the demurrer to evidence of the accused and acquitting him but also on the civil liability of the accused to the private offended party, said judgment on the civil aspect of the case would be a nullity for the reason that the constitutional right of the accused to due process is thereby violated. As we held in *Alonte v. Savellano, Jr.*:^[11]

Section 14, paragraphs (1) and (2), of Article III, of the Constitution provides the fundamentals.

"(1) No person shall be held to answer for a criminal offense without due process of law.

"(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

Jurisprudence acknowledges that due process in criminal proceedings, in particular, require (a) that the court or tribunal trying the case is properly clothed with judicial power to hear and determine the matter before it; (b) that jurisdiction is lawfully acquired by it over the person of the accused; (c) that the accused is given an opportunity to be heard; and (d) that judgment is rendered only upon lawful hearing.

The above constitutional and jurisprudentially postulates, by now elementary and deeply imbedded in our own criminal justice system, are mandatory and indispensable. The principles find universal acceptance and are tersely expressed in the oft-quoted statement that procedural due process cannot possibly be met without a "law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial."^[12]

This is so because when the accused files a demurrer to evidence, the accused has not yet adduced evidence both on the criminal and civil aspects of the case. The only evidence on record is the evidence for the prosecution. What the trial court should do is to issue an order or partial judgment granting the demurrer to evidence and acquitting the accused; and set the case for continuation of trial for the petitioner to adduce evidence on the civil aspect of the case, and for the private complainant to adduce evidence by way of rebuttal after which the parties may adduce their sur-rebuttal evidence as provided for in Section 11, Rule 119 of the Revised Rules of Criminal Procedure:

Sec. 11. Order of trial. - The trial shall proceed in the following order:

- (a) The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability.
- (b) The accused may present evidence to prove his defense and damages, if any, arising from the issuance of a provisional remedy in the case.
- (c) The prosecution and the defense may, in that order, present rebuttal and sur-rebuttal evidence unless the

court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.

(d) Upon admission of the evidence of the parties, the case shall be deemed submitted for decision unless the court directs them to argue orally or to submit written memoranda.

(e) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified.

Thereafter, the court shall render judgment on the civil aspect of the case on the basis of the evidence of the prosecution and the accused.

In this case, the petitioner was charged with estafa under Article 315, paragraph 2(d) of the Revised Penal Code. The civil action arising from the delict was impliedly instituted since there was no waiver by the private offended party of the civil liability nor a reservation of the civil action. Neither did he file a civil action before the institution of the criminal action.

The petitioner was granted leave of court to file a demurrer to evidence. The court issued an order granting the demurrer on its finding that the liability of the petitioner was not criminal but only civil. However, the court rendered judgment on the civil aspect of the case and ordered the petitioner to pay for her purchases from the private complainant even before the petitioner could adduce evidence thereon. Patently, therefore, the petitioner was denied her right to due process.

IN LIGHT OF ALL THE FOREGOING, the Petition is GRANTED. The Orders dated November 19, 2001 and January 14, 2002 are SET ASIDE AND NULLIFIED. The Regional Trial Court of Legazpi City, Branch 5, is hereby DIRECTED to set Criminal Case No. 7474 for the continuation of trial for the reception of the evidence-in-chief of the petitioner on the civil aspect of the case and for the rebuttal evidence of the private complainant and the sur-rebuttal evidence of the parties if they opt to adduce any.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Annex "A," Rollo, pp. 24-25.

[2] Penned by Judge Vladimir B. Brusola.

[3] Annex "C," Rollo, p. 29.

[4] Rollo, p. 30.

[5] Annex "E," id. at 32.

[6] Id. at 14.

[7] Sec. 2, Rule 111.

[8] Herrera, Remedial Law, Vol. IV, 2001 ed., p. 160.

[9] Section 1, Revised Rules of Evidence.

[10] Section 2, Rule 120 of the Revised Rules of Criminal Procedure. (Emphasis supplied).

[11] 287 SCRA 245 (1998).

[12] Id. at 261.

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