

ELIZALDE S. CO, PETITIONER, VS. LUDOLFO P. MUÑOZ, JR., RESPONDENT.

G.R. No. 181986. December 04, 2013

Ponente: BRION, J.

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BRION, J.:

Before us is a petition for review on certiorari[1] seeking to set aside the decision[2] dated January 31, 2007 and resolution[3] dated March 3, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 29355. The CA rulings reversed and set aside the decision[4] dated February 24, 2004 of the Regional Trial Court (RTC) of Legaspi City, Branch 5, in Criminal Case Nos. 9704, 9705 and 9737, and acquitted respondent Ludolfo P. Muñoz, Jr. (Muñoz) of three counts of libel.

Factual Antecedents

The case springs from the statements made by the respondent against the petitioner, Elizalde S. Co (Co), in several interviews with radio stations in Legaspi City. Muñoz, a contractor, was charged and arrested for perjury. Suspecting that Co, a wealthy businessman, was behind the filing of the suit, Muñoz made the following statements:

(a)

Co influenced the Office of the City Prosecutor of Legaspi City to expedite the issuance of warrant of arrest against Muñoz in connection with the perjury case;

(b)

Co manipulated the results of the government bidding involving the Masarawag-San Francisco dredging project, and;

(c)

Co received P2,000,000.00 from Muñoz on the condition that Co will sub-contract the project to Muñoz, which condition Co did not comply with.[5]

Consequently, Co filed his complaint-affidavit which led to the filing of three criminal informations for libel before the RTC.[6] Notably, Co did not waive, institute or reserve his right to file a separate civil action arising from Muñoz's libelous remarks against him.[7]

In his defense,[8] Muñoz countered that he revealed the anomalous government bidding as a call of public duty. In fact, he filed cases against Co before the Ombudsman involving the anomalous dredging project. Although the Ombudsman dismissed the cases, Muñoz claimed that the dismissal did not disprove the truth of his statements. He further argued that Co is a public figure considering his participation in government projects and his prominence in the business circles. He also emphasized that the imputations dealt with matters of public interest and are, thus, privileged. Applying the rules on privileged communication to libel suits, the prosecution has the

burden of proving the existence of actual malice, which, Muñoz claimed, it failed to do.

In its decision, the RTC found Muñoz guilty of three counts of libel. The RTC ruled that the prosecution established the elements of libel. In contrast, Muñoz failed to show that the imputations were true and published with good motives and for justifiable ends, as required in Article 361 of the Revised Penal Code (RPC).[9] In light of the Ombudsman's dismissal of Muñoz' charges against Co, the RTC also held that Muñoz' statements were baseless accusations which are not protected as privileged communication.[10]

In addition to imprisonment, Muñoz was ordered to pay P5,000,000.00 for each count of libel as moral damages, P1,200,000.00 for expenses paid for legal services, and P297,699.00 for litigation expense.[11] Muñoz appealed his conviction with the CA.

The CA Ruling

The CA held that the subject matter of the interviews was impressed with public interest and Muñoz' statements were protected as privileged communication under the first paragraph of Article 354 of the RPC.[12] It also declared that Co was a public figure based on the RTC's findings that he was a "well-known, highly-regarded and recognized in business circles." [13] As a public figure, Co is subject to criticisms on his acts that are imbued with public interest.[14] Hence, the CA reversed the RTC decision and acquitted Muñoz of the libel charges due to the prosecution's failure to establish the existence of actual malice.

The Petitioner's Arguments

In the present petition, Co acknowledges that he may no longer appeal the criminal aspect of the libel suits because that would violate Muñoz' right against double jeopardy. Hence, he claims damages only on the basis of Section 2, Rule 111 of the Rules of Court (ROC), which states that the extinction of the penal action does not carry with it the extinction of the civil action. He avers that this principle applies in general whether the civil action is instituted with or separately from the criminal action.[15] He also claims that the civil liability of an accused may be appealed in case of acquittal.[16]

Co further makes the following submissions:

First, the CA erred when it disregarded the presumption of malice under Article 354[17] of the RPC. To overcome this presumption, Muñoz should have presented evidence on good or justifiable motive for his statements.[18] On the contrary, the context of Muñoz's radio interviews reflects his evident motive to injure Co's reputation instead of a sincere call of public duty.[19]

Second, the CA erred in declaring Co as a public figure based on the RTC findings that he is known in his community. He claims this as a relatively limited community comprising of his business associates.[20]

The Respondent's Arguments

Muñoz argues that Co misunderstood Section 2, Rule 111 of the ROC because, as its title suggests, the provision presupposes the filing of a civil action separately from the criminal action. Thus, when there is no reservation of the right to separately institute the civil action arising from the offense, the extinction of the criminal action extinguishes the civil action. Since Co did not reserve his right to separately institute a civil action arising from the offense, the dismissal of the criminal action bars him from filing the present petition to enforce the civil liability.[21]

Muñoz further posits that Co is not entitled to recover damages because there is no wrongful act to speak of. Citing *De la Rosa, et al. v. Maristela*, [22] he argues that if there is no libel due to the privileged character of the communication and actual malice is not proved, there should be no award of moral damages.[23]

Lastly, Muñoz avers that Co is indirectly challenging the factual and legal issues which the CA has already settled in acquitting him. Muñoz explains that this Court may no longer overturn the CA's findings as the doctrine of double jeopardy has set in.[24]

The Issues

The parties' arguments, properly joined, present to us the following issues:

- whether a private party may appeal the judgment of acquittal insofar as he seeks to enforce the accused's civil liability; and
- whether the respondent is liable for damages arising from the libelous remarks despite his acquittal.

The Court's Ruling

We do not find the petition meritorious.

The private party may appeal the judgment of acquittal insofar as he seeks to enforce the accused's civil liability.

The parties have conflicting interpretations of the last paragraph of Section 2, Rule 111 of the ROC, which states:

The extinction of the penal action does not carry with it extinction of the civil action. However, 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. (Emphasis ours)

Muñoz claims that the last paragraph of Section 2, Rule 111 of the ROC applies only if the civil liability ex delicto is separately instituted or when the right to file it separately was properly reserved. In contrast, Co claims that Muñoz' acquittal of the crime of libel did not extinguish the civil aspect of the case because Muñoz' utterance of the libelous remarks remains undisputed.

We reject Muñoz' claim. The last paragraph of Section 2, Rule 111 of the ROC applies to civil actions to claim civil liability arising from the offense charged, regardless if the action is instituted with or filed separately from the criminal action. Undoubtedly, Section 2, Rule 111 of the ROC governs situations when the offended party opts to institute the civil action separately from the criminal action; hence, its title "When separate civil action is suspended." Despite this wording, the last paragraph, by its terms, governs all claims for civil liability ex delicto. This is based on Article 100 of the RPC which states that that "[e]very person criminally liable for a felony is also civilly liable." Each criminal act gives rise to two liabilities: one criminal and one civil.

Reflecting this policy, our procedural rules provide for two modes by which civil liability ex delicto may be enforced: (1) through a civil action that is deemed impliedly instituted in the criminal action;[25] (2) through a civil action that is filed separately, either before the criminal action or after, upon reservation of the right to file it separately in the criminal action.[26] The offended party may also choose to waive the civil action.[27] This dual mode of enforcing civil liability ex delicto does not affect its nature, as may be apparent from a reading of the second paragraph of Section 2, Rule 120 of the ROC, which states:

Section 2. Contents of the judgment. – x x x

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. (Emphasis ours)

If, as Muñoz suggests, the extinction of the penal action carries with it the extinction of the civil action that was instituted with the criminal action, then Section 2, Rule 120 of the ROC becomes an irrelevant provision. There

would be no need for the judgment of the acquittal to determine whether “the act or omission from which the civil liability may arise did not exist.” The Rules precisely require the judgment to declare if there remains a basis to hold the accused civilly liable despite acquittal so that the offended party may avail of the proper remedies to enforce his claim for civil liability *ex delicto*.

In *Ching v. Nicdao and CA*,^[28] the Court ruled that an appeal is the proper remedy that a party – whether the accused or the offended party – may avail with respect to the judgment:

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.

From the foregoing, petitioner Ching correctly argued that he, as the offended party, may appeal the civil aspect of the case notwithstanding respondent Nicdao’s acquittal by the CA. The civil action was impliedly instituted with the criminal action since he did not reserve his right to institute it separately nor did he institute the civil action prior to the criminal action. (Emphasis ours)

Moreover, an appeal is favored over the institution of a separate civil action because the latter would only add to our clogged dockets.^[29]

To reiterate, the extinction of the penal action does not necessarily carry with it the extinction of the civil action, whether the latter is instituted with or separately from the criminal action. The offended party may still claim civil liability *ex delicto* if there is a finding in the final judgment in the criminal action that the act or omission from which the liability may arise exists. Jurisprudence has enumerated three instances when, notwithstanding the accused’s acquittal, the offended party may still claim civil liability *ex delicto*: (a) if the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) if the court declared that the liability of the accused is only civil; and (c) if the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. We thus now proceed to determine if Co’s claim falls under any of these three situations.

The respondent is not civilly liable because no libel was committed.

The CA has acquitted Muñoz of libel because his statement is a privileged communication. In libel, the existence of malice is essential as it is an element of the crime.^[30] The law presumes that every imputation is malicious;^[31] this is referred to as malice in law. The presumption relieves the prosecution of the burden of proving that the imputations were made with malice. This presumption is rebutted if the accused proved that the imputation is true and published with good intention and justifiable motive.^[32]

There are few circumstances wherein malice in law is inapplicable. For instance, Article 354 of the RPC further states that malice is not presumed when:

(1)

a private communication made by any person to another in the performance of any legal, moral or social duty;^[33] and

(2)

a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.^[34]

Jurisprudence supplements the enumeration in Article 354 of the RPC. In *Borjal v. CA*,^[35] we held that in view of the constitutional right on the freedoms of speech and of the press, fair commentaries on matters of public interest are privileged. In *Guinguing v. CA*,^[36] we ruled that the remarks directed against a public figure are likewise privileged. In order to justify a conviction in libel involving privileged communication, the prosecution must establish that the libelous statements were made or published with actual malice or malice in fact – the knowledge that the statement is false or with reckless disregard as to whether or not it was true.^[37] In other words, our rulings in *Borjal* and *Guinguing* show that privileged communication has the effect of destroying the presumption of malice or malice in law and consequently requiring the prosecution to prove the existence of malice in fact.

In the present case, the CA declared that the libelous remarks are privileged. The legal conclusion was arrived at from the fact that Co is a public figure, the subject matter of the libelous remarks was of public interest, and the context of Muñoz' statements were fair comments. Consequently, malice is no longer presumed and the prosecution has the burden of proving that Muñoz acted with malice in fact. The CA found that the prosecution failed in this respect.

Co assails the CA's ruling by raising arguments that essentially require a review of the CA's factual and legal findings. However, the Court cannot, through the present petition, review these findings without going against the requirements of Rule 45 with respect to factual matters, and without violating Muñoz' right against double jeopardy given that the acquittal is essentially anchored on a question of fact.

In light of the privileged nature of Muñoz' statements and the failure of the prosecution to prove malice in fact, there was no libel that was committed by Muñoz. Without the crime, no civil liability *ex delicto* may be claimed by Co that can be pursued in the present petition. There is no act from which civil liability may arise that exists.

WHEREFORE, premises considered, we DENY the petition. The Decision of the Court of Appeals (CA) in CA-G.R. CR No. 29355 dated January 31, 2007 is AFFIRMED.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Under Rule 45 of the Revised Rules of Court; rollo, pp. 50-93.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison; id. at 97-110.

[3] Id. at 46-48.

[4] Penned by Judge Pedro R. Soriano; id. at 435-446.

[5] Id. at 101, 106, 244, 374.

[6] Criminal Case Nos. 9704, 9705 and 9737, which were consolidated in view of the identity of parties and issues; RTC decision; id. at 435-446.

[7] Id. at 561.

[8] Id. at 372-383.

[9] Article 361. Proof of the truth. - In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with

good motives and for justifiable ends, the defendants shall be acquitted.

Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties.

In such cases if the defendant proves the truth of the imputation made by him, he shall be acquitted. (Emphasis ours)

[10] Rollo, p. 444.

[11] Id. at 446.

[12] Id. at 108; Article 354. Requirement for publicity. - Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions. (Emphasis ours)

[13] See rollo, pp. 444-445, wherein the RTC stated: “Mr. Elizalde Co is a respected person in the community. He is well-known – a big-time businessman – his name a by-word in the business circles – with his construction company conferred with the highest Triple AAA category rating to engage in the construction business – with membership in several private and public associations. The church recognized his charitable work bestowing him with a recognition award as a distinguished alumnus. He carries the unsullied good reputation of his family untarnished by any scandal in the past. x x x ”

[14] Id. at 108.

[15] Id. at 592.

[16] Citing *Bautista v. CA*, G.R. No. 46025, September 2, 1992, 213 SCRA 231; id. at 593.

[17] Article 354. Requirement for publicity. - Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, x x x (Emphasis ours)

[18] Rollo, pp. 654-656.

[19] Id. at 87.

[20] Id. at 80.

[21] Id. at 560-561, citing *People v. Pantig*, 97 Phil. 748 (1955).

[22] (CA) 50 O.G. 254.

[23] Pages 10-12, Memorandum for the Respondent.

[24] Page 14, Memorandum for the Respondent.

[25] Rules of Court, Rule 111, Section 1.

[26] Id.

[27] Id.

[28] G.R. No. 141181, April 27, 2007, 522 SCRA 316, 353.

[29] Padilla v. CA, 214 Phil. 492 (1984).

[30] In Daez v. Court of Appeals, G.R. No. 47971, October 31, 1990, 191 SCRA 61, 67, this Court held that there is libel only if the following elements exist: (a) imputation of a discreditable act or condition to another; (b) publication of the imputation; (c) identity of the person defamed; and, (d) existence of malice.

[31] Article 354 of the RPC.

[32] First paragraph, Art. 354, Revised Penal Code.

[33] Art. 354(1), Revised Penal Code.

[34] Art. 354(2), Revised Penal Code.

[35] 361 Phil. 1 (1999).

[36] 508 Phil. 193 (2005).

[37] Supra note 35 and 36.

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