

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. JULIO TUGAB, DEFENDANT AND APPELLEE.*G.R. No. 45040. November 26, 1938*

Ponente: IMPERIAL, J.

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In the justice of the peace court of Bayombong, Nueva Vizcaya, the provincial fiscal of said province filed an information against the herein defendant charging him with having misappropriated the sum of P5,498.44 belonging to the Government of the Philippine Islands, and the sum of P829.60 belonging to the Philippine National Bank which sums of money were under his care and custody as cashier in the office of the provincial treasurer of Nueva Vizcaya. Simultaneously said fiscal brought a civil action against said defendant for the recovery of the said sums of money, and upon petition tiled by said fiscal the court ordered the attachment of the properties of the defendant, which attachment was subsequently lifted upon the filing of a bond. Because of a demurrer interposed to the complaint the fiscal amended the latter and filed two separate complaints one for the Province of Nueva Vizcaya and the other for the Philippine National Bank.

The criminal case for malversation of public funds was remanded to the Court of First Instance of said province in view of the waiver by the accused of the preliminary investigation. As soon as said case was received in said court the fiscal filed a motion for dismissal on the ground that upon another detailed investigation, it was discovered that the funds were not misappropriated by the defendant but by Dioscorro Navarrete. The case was dismissed by the court and the fiscal filed against Dioscorro Navarrete an information for qualified theft. After the preliminary investigation, and the case having been elevated to the Court of First Instance, after the corresponding trial Navarrete was acquitted because of reasonable doubt. In view thereof, the acting provincial fiscal again filed an information against the herein defendant for malversation of the same public funds through negligence in the care and custody of the same which was the cause of their abstraction and loss. When this new criminal case reached the Court of First Instance and after the defendant had waived the preliminary investigation the provincial fiscal amended the information and filed another charging said defendant with the same crime but alleging therein that he himself misappropriated said funds. Trial having been held and all the evidence adduced, the court, in its decision of June 29, 1935 acquitted the defendant, with costs de oficio and cancelled the bond.

Upon his acquittal in the criminal case the defendant filed motions in the two civil cases which were then pending, praying that said cases be dismissed on the ground that the actions no longer lie in view of his acquittal in the said criminal case. The defendant contended that the court having found in its decision that he was not guilty of the crime of malversation, neither having misappropriated nor having been negligent in the custody of said funds, he did not therefore incur the civil liabilities alleged in the complaints. After considering the arguments adduced by the parties, the court in its order of August 24, 1935 granted the motions and dismissed the two civil cases, without costs, setting aside the preliminary attachment of the properties of the defendant. From this order the Province of Nueva Vizcaya and the Philippine National Bank, after their motions for new trial had been denied, and after excepting to the order denying the same, took this appeal.

The appellants attribute to the appealed order the following errors: In holding that the negligence of the appellee alleged in the complaints is already *res judicata*; in admitting as evidence the judgment of acquittal rendered in criminal case No. 850 instituted against the appellee; in lifting the preliminary attachment of the properties of the appellee; in dismissing the civil cases without trial and without having first received the evidence of the appellants; and in denying the motions for new trial filed by the appellants.

- The amended information filed in criminal case No. 850 against the appellee for malversation, contains the following allegations:

"That on or about the first day of January, 1934, in the municipality of Bayombong, Province of Nueva Vizcaya, the said accused, being then and there the cashier in the office of the provincial treasurer of Nueva Vizcaya and as such, accountable for the funds of the province and those of the agency of the Philippine National Bank, established in the said municipality of Bayombong, Nueva Vizcaya, with intent of gain and taking advantage of his position and as such cashier, did willfully, maliciously and criminally misappropriate, embezzle and carry away for his personal use and benefit, the amount of P6,328.04, P5,498.44 of which belonged to the funds of the provincial treasury of Nueva Vizcaya and the remaining P829.60 to the agency of the said Philippine National Bank, to the prejudice and damage of the Provincial Government of Nueva Vizcaya and the Philippine National Bank in the said amounts of P5,498.44 and P829.60, respectively."

In the decision rendered in said case, the court, among other conclusions, said:

"The accused is declared not guilty of the crime of malversation of public funds imputed to him in the information, nor of direct appropriation of the money lost, nor of negligence in the custody of the funds entrusted to his care and responsibility."

The trial court dismissed the said civil cases because according to said court, it could no longer pass upon the negligence of the appellee with respect to the misappropriation of said funds for the simple reason that in the decision rendered in the criminal case it was held and declared that said appellee did not act negligently in the custody of said funds. This conclusion of the trial court is undoubtedly based upon articles 100 and 104 of the Revised Penal Code and upon article 116 of the Spanish Law of Criminal Procedure, reading as follows:

"Art. 100. Civil liability of person guilty of felony.—Every person criminally liable for a felony is also civilly liable."

"Art. 104. What is included in civil liability.—The civil liability established in articles 100, 101, 102, and 103, of this Code includes:

"1. Restitution;

"2. Reparation of the damage caused;

"3. Indemnification for consequential damages."

"Art. 116. The extinction of the criminal action does not carry with it the extinction of the civil action, unless the extinction is by virtue of a declaration in a final judgment that the fact from which the civil action could have arisen did not exist.

"In the other cases, the person who has a right to the civil action may institute the same before the competent court and by the proper civil action, against whoever is under obligation to make restitution of the thing, reparation or indemnification of the damage suffered."

According to article 116 the civil action to demand an obligation arising from the commission of a crime is

extinguished when a final judgment is rendered in a criminal case declaring that the facts which could have given rise to civil liability did not exist. This provision of law as interpreted and applied by this court in the cases of Almeida Chan Tanco vs. Abaroa (8 Phil., 178); which decision was affirmed by the Supreme Court of the United States (218 U. S., 476; 54 Law. ed., 1116; 40 Phil., 1056); Berbari vs. Concepcion and Prosecuting Attorney of Manila (40 Phil., 837); Wise & Company vs. Larion (46 Phil., 314); and Francisco vs. Onrubia (46 Phil., 327).

But this ruling is not applicable to the present case because in the information which resulted in the defendant's acquittal of malversation it was not charged that the said defendant had been negligent in the custody of the funds and that by reason of his negligence said funds were lost or misappropriated by other persons, but it was therein charged that he himself misappropriated said funds which were under his care and responsibility. Consequently the trial court had no jurisdiction to make the pronouncement that the appellee did not commit the crime for not having been negligent in the custody of said funds. According to article 217 of the Revised Penal Code malversation of government funds or properties may be committed by direct appropriation of the same by the public officer or when through negligence or lack of care by the latter government funds or properties are unlawfully misappropriated by others. In the amended information under which the appellee was tried, the fiscal charged him with the first crime, wherefore, it is clear that the trial court could not have lawfully sentenced nor acquitted him of the second, nor could it make a finding of exemption from civil liability, which is invoked by the appellee and upon which the appealed order is based.

There is another reason which makes the appealed order untenable. Section 633 of the Revised Administrative Code provides that any public officer charged, by reason of his official duties, with the custody of government funds and properties is primarily responsible therefor to the government. Said provision reads as follows:

"Sec. 633. Persons accountable for Government funds or property.—Every officer of the Government of the Philippine Islands whose duties permit or require the possession or custody of Government funds or property shall be accountable and responsible therefor and for the safekeeping thereof in conformity with the provisions of this law."

The civil liability established by this section is distinct and independent of the responsibility arising from the crime defined by article 100 of the Revised Penal Code, wherefore, the extinction of civil liability mentioned in article 116 of the Spanish Law of Criminal Procedure is not here applicable.

In conclusion we hold that, the civil actions instituted by the plaintiffs lie against the defendant, first, because the appellee was not acquitted of the crime of malversation which gave rise to the civil liability sought in said actions, and, second, because such liabilities come under section 633 of the Revised Administrative Code, wherefore, article 116 of the Spanish Law of Criminal Procedure has no application thereto.

- The trial court did not err in admitting as evidence the Judgment rendered in criminal case No. 850. The motion for dismissal was based upon the acquittal of the appellee and upon the finding made in the decision of the court to the effect that the appellee was not guilty of the crime of malversation nor of negligence in the custody of said funds. Said decision is the best proof of the allegations of the motion and it was the duty of the court to admit the same during the trial thereof.

- As we have declared null and void the order dismissing the two cases, the lifting of the attachment of the appellee's properties, based upon said dismissal, is likewise unjustified.

- When a motion to dismiss a case, on the ground that the action has prescribed or that for any reason it does not lie, is presented, the court must hear the parties with respect to said motion and receive the evidence, if any be offered, and it does not commit any error if in considering and resolving said motion it does not at the same time

hear and try the case on the merits. The motion, in such a case, raises a question which must first be acted upon.

- The last assignment of error is a corollary of the preceding ones. The appealed order being null and void, for the reasons above-stated, the court should have granted the motion for new trial tiled by the appellants and reopened the case.

Wherefore, the order appealed from is hereby reversed, the two civil cases are reinstated, and the trial court is ordered to hear and thereafter decide the same in accordance with the evidence and the law; with the costs of this instance against the appellee. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

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