

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LEONOR DE MOLL, DEFENDANT. FRANCISCO ANCHUELO,
COMPLAINANT AND APPELLANT.**

G.R. No. 46252. September 30, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

There are two questions to be decided in this case, by virtue of the appeal taken by the person claiming to be the offended party, Francisco Anchuelo, to wit: (1) whether or not the order of the Court of First Instance of Camarines Sur, dated March 28, 1938, dismissing said case while it was pending therein, at the instance of the provincial fiscal who filed a motion to that effect on account of insufficiency of evidence and for the reason that the proper action is a civil and not a criminal action, is in accordance with law, and (2) whether or not said offended party could appeal from said order.

The appellant contends that said order is not in accordance with law and supports his opinion by the reasons stated by him in his brief.

The case in question was filed by the appellant in the court of origin to charge Leonor de Moll with the crime of estafa. The complaint filed by him alleged as follows:

"That during the month of October, 1936, in the Municipality of Tigaon, Camarines Sur, and within the jurisdiction of this court, said accused, alleging herself to be the owner of shares of stock completely released by the San Rafael Mambulao Mining, Inc., for the purpose of defrauding the complainant and his predecessors in interest, sold 5,000 shares to Natividad Mateo, 5,000 shares to Emilia Tiongson and 1,000 shares to the undersigned, having received from the above-named two persons and from the undersigned, respectively, the sum of P240, as advance payment therefor.

"That said Emiliana Tiongson and Natividad Mateo endorsed their shares bought of Leonor de Moll to the complainant, but the latter afterwards found out that the shares in question had not been paid for by Mrs. Moll to the aforesaid company and are not duly released by the latter in favor of said Leonor de Moll, to the prejudice of the undersigned in the sum of P240.

"Contrary to law.

"Naga, Camarines Sur, February 14, 1938.

(Sgd.) "FRANCISCO ANCHUELO

"Complainant"

As soon as the court received the above-quoted complaint, it endorsed the same to the fiscal for the latter to conduct the necessary investigation, and said official, after having done so, later filed his motion for dismissal on March 26, 1938, couched in the following terms:

"The undersigned Acting Provincial Fiscal has investigated this case. The complainant presented the following

documents, to wit:

" 'Received from Mrs. Emiliana T. de Austria the sum of one hundred pesos (P100) Philippine currency on account of the sum of two hundred pesos (P200) representing the value of five thousand (5,000) completely released shares of the San Rafael Mambulao Mining, Inc. sold by me to said lady at P0.04 per share, which form part of the shares purchased by me from said Corporation, as evidenced by Receipt No. 202 issued to me by said San Rafael Mambulao Mining, Inc. The balance will be paid by the purchaser within the period of 30 days from this date, after which I shall execute the corresponding document for the transfer of the shares sold to the purchaser.—Tigaon, Camarines Sur, October 10, 1936.—(Sgd.) LEONOR DE MOLL.'

" 'Received from Mrs. Natividad Mateo, the sum of one hundred pesos (P100) on account of the sum of two hundred pesos (P200) representing the value of five thousand (5,000) completely released shares of the San Rafael Mambulao Mining, Inc. sold by me to said lady at P0.04 per share, which form part of the shares purchased by me from said Corporation, as evidenced by Receipt No. 202 issued to me by said San Rafael Mambulao Mining, Inc. The balance will be paid by the purchaser within the period of 30 days from this date, after which I shall execute the corresponding document for the transfer of the shares sold to the purchaser.—Tigaon, Camarines Sur, October 10, 1936.—(Sgd.) LEONOR DE MOLL.'

" 'Know All Men By These Presents: That I, Leonor de Moll, P.Mlipino citizen, married to Mr. Sebastian Moll, of age, native, resident of and with post-office address in the municipality of Tigaon, Province of Camarines Sur, Philippine Islands, with ample powers, by marital authority, to enter into contracts, hereby state: that in consideration of the sum of forty pesos (P40) Philippine currency received by me to my complete satisfaction from Mr. Francisco Anchuelo, married to Marcela Reyes, Filipino, citizen, of age, native, resident of and with post-office address in Naga, Camarines Sur, Philippine Islands, hereby SELL, ASSIGN and convey to said Mr. Francisco Anchuelo, his heirs, assignees and successors in interest, one thousand (1,000) completely released shares of the San Rafael Mambulao Mining, Inc., which form part of the shares purchased by me from said corporation, as evidenced by Receipt No. 202 issued to me by said San Rafael Mambulao Mining, Inc.—I hereby confer upon the corresponding official of the San Rafael Mambulao Mining, Inc. ample powers required by law to make the necessary transfer of said one thousand (1,000) shares in his books in the name of the purchaser Mr. Francisco Anchuelo.—And in witness whereof, I hereunto affix my signature in the municipality of Tigaon, Camarines Sur, P. I., this 5th day of October, 1936.—(Sgd.) LEONOR DE MOLL.—Signed in the presence of: (Sgd.) PABLO (Illegible).—(Sgd.) MARCELO Y. GARCHITORENA.—United States of America.—Philippine Islands.—In the municipality of Tigaon, Camarines Sur, P. I., on this 5th day of October, 1936, personally appeared before me Dona Leonor de Moll, whom I certify to be known to me as the same person who executed the foregoing deed of sale of one thousand shares of the San Rafael Mambulao Mining, Inc., composed of only one page, and acknowledged this same document to be her own free and voluntary act and deed. She is exempt from cedula certificate by reason of her sex.—Before me.—(Sgd.) Marcelo Y. Garchitorena.—Notary public.—Until December 31, 1936.—Book 5.—Document No. 53.—Page 85.—Series of 1936.'

" 'COMMONWEALTH OF THE PHILIPPINES.—DEPARTMENT OF JUSTICE.—SECURITIES AND EXCHANGE COMMISSION.—MANILA COMMISSIONER.—September 27, 1937.—Mr. F. ANCHUELO,—Naga, Camarines Sur.—Sir: For your information and in reply to your communication of September 1, 1937, I am quoting hereunder the following pertinent explanations given by the San Rafael Mambulao Mining Co. in connection with the subscriptions of Mrs. Leonor de Moll:—Our record shows that said Mrs. Moll has subscription to the capital stock of this corporation amounting to P7,300 as per Provisional Receipt No. 202. On this subscription only 25 per cent or P1,825 has been paid. Such being the case, any transfer made by Mrs. Moll to a third party cannot be recognized by us inasmuch as, so long as the full par value of her subscription is not fully paid up, no valid transfer can be effected in our books. The pertinent provision of law regarding this point reads as follows:—"No share of stock against which the corporation holds any unpaid claim shall be transferable on the books of the corporation." (Par. 2, sec. 35, Act No. 1459, as

amended.)—At the same time, please be informed that there is a pending garnishment against the subscription of Mrs. Moll by a third party, for which reason even if the balance of her subscription is fully paid up, no transfer can be made by this Company, until garnishment is lifted.— In view of the foregoing, this Office regrets its inability to intervene in this case.—Very respectfully, For the Commissioner:—(Sgd.) N. ROXAS, Technical Assistant.'

" 'SEBASTIAN MOLL.—TIGAON, CAMARINES SUR.—July 2, 1937.—Mr. FRANCISCO ANCHUELO.—Naga.—My DEAR SIR: I received your only letter just yesterday and I assure you that upon my return from Manila I shall bring you your certificate corresponding to the one thousand shares of San Rafael Mambulao. Your attentive (illegible).— (Sgd.) LEONOR DE MOLL.

" 'We, Emiliana Tionson and Natividad Mateo, hereby state: That the ten thousand (10,000) San Rafael Mambulao shares sold to us by Mrs. Moll, for which we have advanced the sum of two hundred pesos (P200), have been endorsed by us to Mr. Francisco Anchuelo from the month of September, 1936, and for the consequent legal effects, we subscribe this document at Naga, Camarines Sur, this 18th day of February, 1938.—(Sgd.) EMILIANA TIONGSON.— (Sgd.) NATIVIDAD MATEO.'"

The facts stated in the above-quoted motion of the provincial fiscal of Camarines Sur, which are unreservedly admitted by the appellant himself in his brief, clearly show that the dismissal of the case in the court of its origin was justified. With such evidence as that mentioned in the aforesaid motion of the fiscal, it is not only doubtful but certain that the outcome of the proceeding, had it been continued, would have been adverse to the prosecution, the accused would have been acquitted, and the fiscal would have lost the case, since, in every criminal proceeding, the criminal liability of the accused must be established by conclusive evidence beyond reasonable doubt.

The second question is: Was the disputed order of the lower court appealable as to Francisco Anchuelo? This question has already been decided by this court in the case of Gonzalez vs. Court of First Instance of Bulacan (G. R. No. 45233, 36, Off. Gaz., 2059), and there is no reason to decide it again, much less, to decide it differently, because the law on the matter continues to be the same as before.

In said case we stated and held, and we again do so now in the present case, that the offended party in a criminal action is not entitled to appeal from an order of dismissal rendered or issued by the court in a preliminary investigation, upon motion of the fiscal based on the insufficiency of evidence. If the offended party appeals under the said circumstances, he does so undoubtedly not for the main purpose of seeking the punishment of the accused, but to enforce his alleged right to an indemnity for damages. This action, to which he is entitled for the purpose of seeking indemnity; is subordinate to that of the fiscal, which is to ask for the punishment of the accused, and the said officer is the one charged with the prosecution and punishment of said accused, and, of course, with the direction and control of said action or proceeding. After all, the offended party has the remedy of bringing a civil action independently of the criminal action, as this is in perfect accord with the provisions of article 111, in connection with article 117, of the Spanish Code of Criminal Procedure of September 14, 1882, which must be understood to be still in force as a supplement to the Code of Criminal Procedure, as expressly provided by article 1 of said Code, the same not being in conflict with any of its provisions.

The fiscal should be the only judge to determine whether the prosecution of a case should go forward after a preliminary investigation, or another one conducted by the fiscal himself, taking into consideration the evidence he has at his disposal in support of his information. It is of no avail to insist that instead of this practice, the one indicated in the case of Baes vs. Court of First Instance of Laguna, (G. R. No. 45780), decided on December 29, 1937), should be followed, because there is no parity between the facts proved in said case and those proved in the Gonzalez case. In the Baes case, the question raised was whether or not the facts alleged in the information were

sufficient to constitute an offense, while the question raised herein, as the one raised in the Gonzalez case, *supra*, is whether or not the evidence in the possession of the fiscal was sufficient to secure the conviction of the accused.

It is not prudent or even permissible for a court to compel the fiscal to prosecute to its termination a proceeding initiated by him by means of an information, or by another, by means of a complaint, if after the preliminary investigation said official finds that the evidence relied upon by him to justify such step is insufficient. To compel the fiscal to do so, ignoring his opinion relative to the insufficiency of his evidence and his recommendation to dismiss the case in the meantime, would be tantamount to urging the acquittal of the accused. Instead of the appeal that may be interposed by the offended party from the dismissal of the criminal proceeding sought by the fiscal for insufficiency of the evidence, there is open to him the course provided by the law itself for the purpose of enforcing his rights (arts. 111 and 117 of the Spanish Code of Criminal Procedure, *supra*), without impairing the action of the fiscal, and that is to bring the necessary civil action separately, because an adverse judgment or an absolution in a civil action does not imply or later constitute a defense of *res judicata*, nor can it be a bar to a subsequent prosecution of the accused, if after the civil action, said fiscal succeeds in completing his evidence to assure the conviction of the accused in a criminal proceeding.

Section 107 of General Orders No. 58, contains this provision, which is pertinent to this case:

"The privileges now secured by law to the person claiming to be injured by the commission of an offense to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same shall not be held to be abridged by the provisions of this order; but such person may appear and shall be heard either individually or by attorney at all stages of the case, and the court upon conviction of the accused may enter judgment against him for the damages occasioned by his wrongful act. It shall, however, be the duty of the promoter fiscal to direct the prosecution, subject to the right of the person injured to appeal from any decision of the court denying him a legal right"

The part purposely italicized by us should be noted because it is of special significance to the question under consideration.

With the dismissal of the case ordered by the lower court, no right was denied the appellant. He is still entitled to demand enforcement of the civil liability of the accused in a separate case, and this is the proper thing for him to do, because were he to insist in the prosecution of the case and should the accused be acquitted therein, his efforts would have been completely in vain, since acquittal of a crime necessarily implies exemption from all liability, including the civil one, if the latter is a necessary consequence of or arises from the former.

For all the foregoing considerations, it is held that the order in question is in accordance with law and was not appealable by Francisco Anchuelo, either as offended party or as a complainant.

Wherefore, it is hereby affirmed, with the costs to the appellant. So ordered.

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

Concepcion and Imperial, JJ., see dissenting opinion.

DISSENTING OPINION

CONCEPCION, J.:

I dissent from the majority opinion as to the second question discussed therein, for the reasons set forth in my dissenting opinion against the decision and resolution on the motion for reconsideration rendered in the case of *People vs. Vivencio Orais et al.* (G. R. No. 45431).

DISSENTING OPINION**IMPERIAL, J.:**

I dissent from the majority opinion for the reasons set forth in my dissenting opinion in criminal case G. R. No. 45233, which I consider as reproduced herein.

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