

**LUIS TAN AND ESPERANZA ANG, IN THE LATTER'S CAPACITY
AS OWNER AND SOLE PROPRIETOR OF THE UNITED BAZAAR,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND
HORACIO YAPTINCHAY, R...**

G.R. No. 62408. August 24, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Petition for review of the Decision of the then Court of Appeals[1] in CA-G.R. No. 52783-R, entitled "Horacio Yaptinchay vs. Luis Tan, et al.", which modified the judgment of the former Court of First Instance of Rizal in Pasig, Branch XXV, in a damage suit for malicious prosecution by reducing the award of moral damages from P100,000.00 to P20,000.00, but affirming the appealed judgment in all other respects.

Sometime between 8 and 10 December 1969, petitioner Luis TAN, the General Manager of the United Bazaar, a business enterprise in Baguio City, owned by and under the sole proprietorship of his co-petitioner, Esperanza ANG, purchased goods in Manila worth P2,712.00. The merchandise was delivered to Highway Express, Inc., a common carrier, for transport to Baguio City. The President of Highway Express is private respondent Horacio YAPTINCHAY.

On 12 December 1969, the expected date of arrival of the goods, TAN inquired from the Highway Express Branch Office in Baguio City about the goods, but he was informed that the truck loading the merchandise had not yet arrived. The following day, TAN left for Manila and inquired from the traders from whom he bought the goods whether they had made shipment. The reply was in the affirmative, as shown by bills of lading (Exhibits "5", "6", "7" & "8"). Upon further inquiry from Highway Express, a receiving clerk told him that the goods had already been shipped to Baguio City. Verification in Baguio City, however, revealed that the goods had not arrived. After shuttling back and forth between Baguio and Manila, and failing to see respondent YAPTINCHAY and to obtain definite information regarding the fate of the merchandise, TAN sought the assistance of the Filipino-Chinese Chamber of Commerce in Baguio City, which addressed a letter, dated 21 December 1969, to the Highway Express Manager (Exhibit "A") demanding the recovery or refund of the cost of the undelivered cargo or their substitution with the same or identical articles. No reply having been received, petitioners wrote a demand letter dated 5 January 1970 (Exhibit "B"). On 14 January 1970, Highway Express replied asking for sufficient time to investigate the cause of the alleged loss of the goods (Exhibit "10").

On 26 February 1970, TAN filed a criminal complaint for Estafa before the City Fiscal's Office in Baguio City (I.S. No. 9711) against YAPTINCHAY. After preliminary investigation, the complaint was amended to include Juan Estacio (Assistant Manager), Primo Visperas (Dispatcher) and Manuel Labayne (Receiving Clerk) all of Highway Express.

On 16 November 1970, the criminal accusation was dismissed as against YAPTINCHAY and Juan Estacio for lack of probable cause, but an Information for Estafa was filed against the dispatcher, Visperas, and the receiving

clerk, Labayne. They were eventually acquitted by the City Court of Baguio, which found the element of misappropriation or conversion wanting, it appearing that the goods were robbed or hijacked while in transit.

About a year after the dismissal of the criminal case, or on 20 February 1971, YAPTINCHAY commenced a damage suit (Civil Case No. 14430) in the then Court of First Instance of Rizal, Branch VIII (later transferred to Branch XXV) against petitioners, Luis TAN and Esperanza ANG, for having lodged an allegedly malicious criminal charge.

Petitioners, as defendants below, traversed the Com-plaint alleging, in essence, that YAPTINCHAY's imputation of malicious prosecution was without basis considering that petitioners had no personal knowledge of the facts and circumstances surrounding the loss of the goods while in transit prior to the filing of their complaint for estafa because neither YAPTINCHAY nor his representative bothered to apprise them of the true cause of the loss of the goods while in transit. They then counterclaimed for actual, moral, and exemplary damages, as well as attorney's fees and costs of litigation.

In a Decision rendered on 5 July 1972, the Trial Court awarded damages to YAPTINCHAY, as follows:

"WHEREFORE, judgment is hereby rendered ordering defendants to pay plaintiff the sum of:

"1. P100,000.00 as and by way of moral damages;

"2. P10,000.00 as and by way of attorney's fees; and

"3. Costs of suit.

SO ORDERED"[2]

On appeal, respondent Appellate Court, in a Decision promulgated on 11 August 1982, modified the appealed judgment by reducing the award of moral damages to P20,000.00 but affirmed it in all other respects. Reconsideration of the judgment sought by petitioners was denied by that Court.

Hence, petitioners' availment of this Petition to which we gave due course.

The issues raised by the petitioners may be compressed into the primary question of whether or not petitioners had imputed the estafa against YAPTINCHAY before the prosecuting officer maliciously, and without probable cause, thereby rendering them liable for damages.

We find in the negative.

In a damage suit based on malicious prosecution, there are essential elements that must be proven:

"To support an action for malicious prosecution under American law the plaintiff must prove, in the first place, the fact of the prosecution and the fact that the defendant was himself the prosecutor, or that he instigated its commencement, and that it finally terminated in his acquittal; that, in bringing it, the prosecutor had acted without probable cause, and that he was actuated by legal malice, i.e., by improper or sinister motives. These three elements must concur; and there is no distinction between actions for criminal prosecution and civil suits. Both classes require substantially the same essentials. Malice is essential to the maintenance of an action for malicious prosecution and not merely to the recovery of exemplary damages. But malice alone does not make one liable for malicious prosecution, where probable cause is shown, even where it appears that the suit was brought for the mere purpose of vexing, harassing and injuring his adversary. In other words, malice and want of probable cause must both exist in order to justify the action."[3]

In pronouncing the petitioners liable for damages, respondent Appellate Court sustained the lower Court's finding that petitioner-defendant TAN had instituted the estafa charge against YAPTINCHAY without probable cause as

evidenced by its dismissal by the Fiscal, and with malice, as TAN had prior knowledge of the loss of his goods while in transit by robbery-hijacking before he filed the estafa charge.

The existence of malice is negated by the facts. Clear and preponderant evidence is wanting to prove that petitioners had knowledge that the criminal charge was false, that they had acted in bad faith^[4], and that they were actuated by improper and sinister motives.^[5] The evidence discloses, contrary to the Trial Court's deductions, that TAN had not been informed of the cause of the loss of his merchandise while he was making repeated inquiries regarding the same. In its reply letter to petitioners' demand to make good the loss, Highway Express merely asked for time to investigate without advancing any cause for the disappearance of the goods. TAN learned for the first time about the robbery-hijacking at the preliminary investigation of the complaint for estafa at the Fiscal's Office when the police report on the robbery-hijacking was presented by the accused. The inclusion of YAPTINCHAY in the criminal complaint must have been prompted by TAN's reasonable belief that, as President of the company in whose custody the goods were lost, he was responsible for such loss. Moreover, the evidence shows that TAN had, in fact, sought the advice of his friend Fiscal Salvador Valdes, Jr., after narrating to the latter the facts and circumstances surrounding the loss of his goods. Relying upon said advice TAN signed the Affidavit prepared by the said prosecuting officer. Such advice of counsel negates malice and is a complete defense to an action for malicious prosecution.

"It is the general rule, in the absence of any statutory provision to the contrary, that advice of counsel is a complete defense to an action for malicious prosecution where it appears that the prosecution was instituted in reliance in good faith on such advice, given after a full and fair statement of all the facts to the attorney. This is true whether the advice was sought in respect of a civil action or a criminal prosecution. Moreover, it is immaterial that the attorney's advice was unsound or erroneous; if the defense is worth anything to a party it must be available when through error of law, as well as of fact, his action has failed; the lawyer's error will not deprive his client of the defense."^[6]

The dismissal by the Fiscal of the complaint for estafa as against YAPTINCHAY neither rules out probable cause in so far as TAN was concerned. The circumstances surrounding the loss of the merchandise, as they appeared to TAN, were such as to excite reasonable belief in his mind that YAPTINCHAY was guilty of the crime for which he (TAN) had charged him (YAPTINCHAY). This is the essence of probable cause which further eliminates herein the element of malice essential in making out a case of malicious prosecution.^[7] Moreover, the action of the Fiscal in filing the Information for estafa against the other employees of Highway Express shows that he believed in the existence of probable cause for TAN's charge notwithstanding the defense of robbery-hijacking.

Overall, paramount is the consideration that free resort to Courts for redress of wrongs is a matter of public policy. The law recognizes the right of everyone to sue for that which he honestly believes to be his right without fear of standing trial for damages.

"While Courts must look upon the plight of hapless victims of unfounded and malicious prosecution with tolerance and sympathy, sound principles of justice and public policy dictate that persons shall have free resort to the courts for redress of wrongs and vindication of their rights without fear of later on standing trial for damages where by lack of sufficient evidence, legal technicalities or a different interpretation of the laws on the matter, the case would lose ground and therein defendants are acquitted. Proof and motive that the prosecution or institution of the action was prompted by a sinister design to vex and humiliate a person and to cast dishonor and disgrace must be clearly and preponderantly established to entitle the victims to damages and other rights granted by law; otherwise, there would always be a civil action for damages after every prosecution's failure to prove its cause resulting in the consequent acquittal of the accused therein."^[8]

WHEREFORE, respondent Appellate Court's judgment is hereby REVERSED and SET ASIDE, and the suit for damages (Civil Case No. 14430) is hereby ordered DISMISSED. Petitioners' counterclaims are likewise

DISMISSED for insufficiency of evidence. No costs.

SO ORDERED.

Teehankee, Acting C.J., Plana, Relova, and Gutierrez, Jr., JJ., concur.

De la Fuente, J., took no part.

[1] Division of Five composed of J. Milagros A. German, ponente; concurred in by JJ. B.S. de la Fuente, Mariano A. Zosa and Jose C. Colayco; J. Carolina C. Griño-Aquino, dissenting.

[2] Record on Appeal, pp. 25-26.

[3] Rehabilitation Finance Corporation vs. Koh, et als., 4 SCRA 535, cited in Martinez vs. United Finance Corporation, 34 SCRA 527, 528 (1970).

[4] Sison vs. David, 1 SCRA 60 (1961).

[5] Buchanan vs. Vda. De Esteban, 32 Phil. 363 (1915).

[6] Rehabilitation Finance Corp. vs. Koh, et als., supra.

[7] Almendra vs. Alvero, 15 SCRA 63 (1965).

[8] Buenaventura, et al vs. Sto. Domingo, et al, 103 Phil. 239 (1958).

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