

**MACARIO LAGMAN AND MICHAEL LAGMAN, PETITIONERS, VS.
HONORABLE INTERMEDIATE APPELLATE COURT AND ANTONIO
FERNANDEZ, RESPONDENTS.**

G.R. No. 72281. October 28, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is a petition for review on certiorari of the Resolution promulgated by respondent appellate court[1] on September 18, 1985 granting the motion for reconsideration filed by herein private respondent Antonio Fernandez and setting aside its decision dated October 15, 1984 in AC-G.R. CV No. 69233. By virtue of the aforesaid resolution, private respondent was exonerated from liability for moral, actual and compensatory damages, attorney's fees and costs originally awarded in favor of herein petitioners by the then Court of First Instance (now Regional Trial Court) of Quezon City in Civil Case No. Q-20591 and affirmed by respondent appellate court in the abovementioned decision of October 15, 1984.

Records show that petitioner Michael Lagman was employed as janitor of Puzon Building where private respondent Antonio Fernandez was a tenant.

On April 19, 1975, at about 10:00 in the morning, Michael Lagman went down from the Puzon Building to the parking lot behind it where he met Eduardo Liputan, driver of private respondent. The latter offered for a valuable consideration to teach him how to drive using private respondent's car.

In the course of the instructions, Michael Lagman bumped two cars parked on the parking lot causing damages thereto. Eduardo Liputan thereafter went up the building and reported the incident to his employer. Antonio Fernandez in turn reported the matter to the Quezon City Police Department Traffic Bureau which dispatched an investigator to the scene of the accident.

Michael Lagman was requested by the investigator to go with him to the Traffic Bureau for investigation where his written statements were taken. The matter was subsequently referred by the Quezon City Police Department Investigation Division to the Metrocom Staff Judge Advocate, Camp Crame, in a referral letter which denominated the offense committed as "Qualified Theft" or "Carnapping." On the basis of such referral, Camp Crame authorities caused the detention of Michael Lagman. He was later transferred to Sampaguita Station, Muntinlupa where he languished in jail for more than four months his whereabouts initially unknown to his father and co-petitioner, Macario Lagman who had to look for him at different places until he was finally located at said place of confinement.

Upon referral of the case to the fiscal's Office of Quezon City for preliminary investigation, the qualified theft or carnapping aspect of the case was dismissed on the ground that Michael Lagman could not commit carnapping because he cannot even drive and that it was actually while trying to learn how to drive that he caused damage to the two cars in the parking lot of the Puzon Building, using a car which belongs to a person who knew him well, he being the janitor of the Puzon Building. A case for damage to property through reckless imprudence has

instead filed against Michael Lagman by the Fiscal's office.

Because of Michael's detention for four months in the jail, the anxiety suffered by his father and the expenses incurred in trying to locate and have him released from detention, petitioners filed Civil Case No. Q-20591 before the then Court of First Instance of Quezon City against private respondent for damages suffered by them as a consequence of the alleged malicious prosecution instituted against Michael Lagman by private respondent Antonio Fernandez.

In the course of the trial, it was revealed that Atty. Pablito Roxas was instrumental in the preparation of the affidavits as well as the referral of the case to the Quezon City Police Department where a charge for carnapping was recommended against Michael Lagman. Consequently, Atty. Pablito Roxas was impleaded as defendant in the damage suit.

On September 24, 1979, the lower court rendered judgment exonerating Atty. Pablito Roxas but finding private respondent liable for damages. The dispositive portion of said decision reads:

WHEREFORE, in view of the foregoing discussions, the Court renders judgment requiring the defendant Antonio Fernandez to pay both the plaintiffs Macario Lagman and Michael Lagman the amount of P40,000.00 as moral damages, to pay the plaintiff Macario Lagman the sum of P1,600.00 as compensatory damages in looking for his son, unaware that he was under detention; to pay the plaintiff Michael Lagman the sum of P960.00 as actual damages plus three (3) years salary at the rate of P240.00 a month and the sum of P200.00 representing the loss of articles belonging to said plaintiff Michael Lagman while he was under detention plus attorney's fees amounting to P5,000.00 and costs of this suit.

"SO ORDERED."[2]

Private respondent Antonio Fernandez appealed to respondent appellate court alleging as errors the finding of (a) malice on his part when he initiated the criminal proceedings against Michael Lagman; (b) the absence of probable cause for initiating the criminal proceedings against Michael Lagman, at least for the crime of damage to property thru reckless imprudence; and (c) liability for damages arising from malicious prosecution.

On October 15, 1984, the Fourth Civil Cases Division of the Intermediate Appellate Court (now Court of Appeals) rendered a decision affirming in toto the decision of the trial court.

Private respondent moved for a reconsideration of the said decision and on September 18, 1985, a resolution was promulgated granting the motion for reconsideration. The decision of October 15, 1984 was set aside and another one entered dismissing the complaint with costs against herein petitioners.

Petitioners come to Us by way of petition for review on certiorari assigning as errors on the part of respondent appellate court its conclusion that not all the elements of malicious prosecution are present in the instant case and its ruling that the private respondent is not liable for damages to petitioners.

Based on the foregoing assignment of errors, We narrow down the issue to a determination of whether or not all the elements of malicious prosecution are present so as to entitle herein petitioners to an award of damages consequential to the filing by private respondent of a criminal case for qualified theft or carnapping against petitioner Michael Lagman.

Statutory recognition of an action for damages based on malicious prosecution (false accusation or denuncia falsa) is found in article 2219(8) of the Civil Code which allows recovery of moral damages for malicious prosecution. Articles 21 and 2176 of the same Code may also be invoked to justify the action.[3]

To support such action, the plaintiff must prove the fact of prosecution, that the defendant was himself the

prosecutor or that he instigated its commencement; that it finally terminated in his acquittal; that in bringing it the prosecutor acted without probable cause, and that he was actuated by legal malice, that is, by improper and sinister motives.[4]

Petitioners contend that the conclusion of respondent appellate court is contrary to the facts of the case as the findings of the trial court is that there was actual institution of a criminal proceeding against Michael Lagman at the instance of private respondent which resulted in the temporary incarceration of the former at Camp Crame and later in Muntinlupa for more than four months. Further, petitioners contend that there was improper motive on the part of private respondent in instituting the criminal proceedings against Michael Lagman, the charge being grossly disproportionate to the actual fault of the latter.

We find petitioners' contentions untenable.

We agree with respondent appellate court's finding that not all the elements of a malicious prosecution are present in this case. In its assailed resolution, the appellate court correctly found that while it is not disputed that it was private respondent who complained to the authorities, such action was apparently for purposes of investigation only. It was the investigating officer and not private respondent who charged petitioner Michael Lagman with qualified theft.

The mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution for generally, it is the Government or representative of the State that takes charge of the prosecution of the offense. There must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person for if the rule were otherwise, every acquitted person can turn against the complainant in a civil action for damages.[5]

The acquittal of petitioner Michael Lagman did not discount the presence of probable cause nor would it be a ground to impute malice upon private respondent in filing charges against Michael because such acquittal was not based on his innocence of any wrongdoing but on the erroneous charging of the offense of carnapping or qualified theft. As earlier stated, the fiscal dismissed the complaint for carnapping or qualified theft and instead filed a case for damage to property thru reckless imprudence. This goes to show that there was probable cause for private respondent to file charges against Michael for the use of his car without his knowledge and permission resulting in damage not only to his car but also to two more cars parked in the premises of the Puzon Building.

The foregoing facts show that in filing the criminal charge against petitioner Michael Lagman, private respondent was not actuated by malice. He had been the victim of a wrong committed by Michael Lagman and whether such wrong constituted qualified theft or carnapping was a legal question properly submitted to the police authorities and subsequently referred to the fiscal for preliminary investigation. The very fact that a charge for damage to property thru reckless imprudence was filed in place of the carnapping charge demonstrates that private respondent was justified in submitting his grievance to the said authorities for ruling and possible redress.

The detention of petitioner Michael Lagman for more than four months is indeed lamentable. For this sad experience, however, private respondent cannot be held accountable since his act in instituting a complaint against petitioner Michael Lagman was done in the exercise of a right to seek redress for a wrong without any ill-motive on his part.

When an action is filed in good faith, there should be no penalty on the right to litigate. One may have erred but error alone is not a ground for moral damages.[6]

WHEREFORE, in view of the foregoing, the resolution appealed from is hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

Bidin, J., no part. I participated in the appealed decision.

[1] Penned by Justice Porfirio V. Sison, concurred in by Justices Abdulwahid A. Bidin, Marcelino R. Veloso and Ramon B. Britanico.

[2] Petition, Annex "C", CFI Decision, Rollo, pp. 26-27, penned by Judge Lino L. Anover.

[3] *Madera v. Lopez*, 102 SCRA 700, 705 (1981), citing *Ventura v. Bernabe*, 38 SCRA 587.

[4] *Ibid*, at 705, citing *Buchanan v. Viuda de Esteban*, 32 Phil. 363; *RFC v. Koh et al.*, 114 Phil. 456.

[5] *Buenaventura et al. v. Sto. Domingo and Ignacio*, 103 Phil. 239.

[6] *Filinvest Credit Corporation v. Mendez*, 152 SCRA 593, 601 (1987)

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