

SPOUSES DR. FIDEL CALALANG AND DRA. MARIA GENER CALALANG, AND FERDINAND CALALANG, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT (FOURTH CIVIL CASES DIVISION), AND HEIRS OF ERLIN...

G.R. No. 74613. February 27, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari which seeks to reverse, nullify and set aside: (a) the June 28, 1985 decision[1] of the Intermediate Appellate Court (now Court of Appeals) in AC-G.R. No. CV-04384 entitled "Heirs of Erlinda Gruta vs. Ferdinand Calalang, et al." setting aside the decision of the trial court in Civil Case No. 83-18019 (for damages) between the same parties. The trial court had dismissed the case on the ground of lack of cause of action but the Court of Appeals ordered the case to be remanded to the lower court for further proceedings; and (b) the resolution dated April 28, 1986 denying the motion for reconsideration.

As gathered from the records, the facts of the case are as follows:

Erlinda Gruta, 15 years old, from the province of Samar, was employed as househelper in the household of petitioners spouses Dr. Fidel Calalang and Dra. Maria Gener Calalang and their son Ferdinand Calalang, in Bulacan (Rollo, pp. 357; 393).

On October 31, 1981, Erlinda Gruta died of malathion poisoning. Ferdinand Calalang, son of the spouses Calalang, who brought Erlinda first to the Calalang's Clinic and then to Jose Reyes Memorial Hospital where she died, was charged with murder for allegedly poisoning her (Rollo, pp. 164; 393).

The case was investigated by the National Bureau of Investigation (NBI). Then the case was referred to the Office of the Provincial Fiscal, Malolos, Bulacan, for preliminary investigation (Rollo, p. 164).

When the parents of the deceased arrived from Samar and after obtaining the Necropsy Report from the NBI, a complaint for Murder was filed against Ferdinand Calalang with the Provincial Fiscal of Malolos, Bulacan. Complainant Juanita Gruta, mother of the deceased, presented the sworn statement of Dolores Ayuste, the aunt of the deceased maid who was summoned during the incident and who was able to see her before she died, the death certificate and the necropsy report (Rollo, p. 393).

Respondent Ferdinand Calalang never appeared nor presented his counter affidavit, instead his mother Maria Gener Calalang presented a counter affidavit and two affidavits of her maids who saw the deceased take a lethal dose of malathion and the report of Pat. Bernabe (Rollo, p. 394).

After clarificatory questioning, the parties submitted their memoranda and later the Investigating Fiscal Liberato Reyes dismissed the complaint on the ground of failure to prove a prima facie case of the offense charged (Rollo, Annex "F" of request, pp. 74-80). Complainant Juanita Gruta did not file a motion for reconsideration nor appeal

to the Ministry (now Department) of Justice.

On June 8, 1983, nearly two (2) years after the death of Erlinda Gruta and over a year after the resolution of the Assistant Fiscal dated May 27, 1982, dismissing the murder charge, a complaint for damages was filed by the private respondents against Ferdinand Calalang impleading the spouses Calalang docketed as Civil Case No. 83-18019 in the Regional Trial Court of Manila on the claim that they are jointly and severally liable (Rollo, Annex "A", pp. 42-45; 163) for actual and compensatory damages in the amount of P50,000.00 for moral damages; P72,000.00 for loss of earnings; and finally P30,000.00 for attorney's fees aside from incidental expenses of P10,000.00 (Rollo, Annex "A", p. 44).

"Plaintiffs, the heirs of Erlinda Gruta, Rogelio Gruta and Juanita Gruta in their own rights and co-heirs of the late Erlinda Gruta, are all with capacity to sue and be sued and are residents of 617 Carbajal Street, Binondo, Manila; while defendants are likewise with capacity to sue and be sued and are residents of 41 A. Fernando St., Valenzuela, Metro Manila, where they all may be served with summons, writs and other court processes;

"Erlinda Gruta is a 15 years old girl and one of the children of Rogelio Gruta and Juanita Gruta;

"Erlinda Gruta is now demise, she died on October 31, 1981 at Jose Reyes Memorial Hospital of poisoning, per necropsy report of the NBI.

"Erlinda Gruta at that time of her death was a domestic helper or servant of Dra. Maria G. Calalang, of Marulas, Valenzuela, Metro Manila, receiving a salary wage of P200.00 a month;

"On October 30, 1981, she was poisoned by defendant Ferdinand Calalang, son of the other defendants Spouses Calalang, resulting in her death on October 31, 1981;

"The case was investigated by the NBI, after which the case was referred to the fiscal's office for preliminary investigation;

"Subsequently later, a case of Murder by poisoning was filed against defendant Ferdinand Calalang with the fiscal's office of Bulacan, which was however dismissed on the alleged ground of failure to prove a prima facie case of the offense charged;

"As a resulting consequences of the death of Erlinda Gruta, the parents and relatives suffered actual and compensatory damages in the amount of P50,000.00 more or less, resulting from burial expenses and others;

"Also as a result of the death of Erlinda Gruta, the parents and relatives suffered mental anguish, wounded feelings, anxiety and shock and for which plaintiff demand P50,000.00 in Moral Damages from defendants jointly and solidarily;

"The parents of the late Erlinda Gruta, who received the meager salary of P200.00 a month, lost such earning as a direct result of her untimely death, which if computed to the age of 30 years old, the parents would be deprived of at least P72,000.00 in earnings;

"In prosecuting this case, plaintiffs obligated themselves to pay their lawyer the sum of P30,000.00 contingent attorney's fee and will probably incur consequential expenses and costs to the tune of P10,000.00 more or less.

"WHEREFORE, after hearing, judgment issue:

"1. Ordering defendants to jointly and severally pay plaintiffs the sum of P50,000.00 as actual or compensatory damages;

"2. Ordering defendants to jointly and severally pay plaintiffs the sum of P50,000.00 as Moral Damages;

"3. Ordering defendants to jointly and severally pay P72,000.00 as loss of earnings to the plaintiffs;

"4. Ordering defendants to jointly and severally pay plaintiffs the sum of P40,000.00 for attorney's fee and consequential expenses and costs;

"5. Praying for such other reliefs which are just and equitable under the premises." (pp. 42-45, Rollo)

On August 2, 1983, petitioners filed their Answer with Affirmative Defenses and Counterclaim (Annex "B"). As the issues were joined, petitioners submitted a Request for Admission (Annex "C"), under Rule 26. Private respondents, however, filed an Opposition to the Motion for Admission (p. 123, CA's Original Record) which was not resolved by the trial court.

On February 27, 1984, a preliminary hearing was conducted by the trial court on the affirmative defenses of the defendants. Thereafter, on March 30, 1984, Hon. Judge Antonio M. Martinez, RTC-Manila, Branch 20, issued an Order dismissing the case, the dispositive portion of which reads:

"WHEREFORE, finding merit to the prayer for dismissal of the case at bar on the ground of lack of cause of action, based on the affirmative defenses in the answer, this complaint should be, as it is hereby, DISMISSED.

"No pronouncement as to cost.

"SO ORDERED."

(Rollo, Annex "D", p. 84)

However, on appeal, the Intermediate Appellate Court rendered its decision dated June 28, 1985, reversing the order of the lower court, the dispositive portion of which reads:

"WHEREFORE, the order of the trial court dismissing this case, dated March 30, 1984, is hereby SET ASIDE and the original records are ordered remanded to the court below for further proceedings. With costs against the defendants-appellees.

"SO ORDERED." (Rollo, Annex "G", p. 174)

A motion for reconsideration was filed by petitioners on August 1, 1985 (Rollo, Annex "H", pp. 175-201) and a resolution was rendered on April 28, 1986, denying the motion for reconsideration (Rollo, Annex "M", pp. 241-245).

Hence, this petition.

Under Section 5, Rule 16 "Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and preliminary hearing may be had thereon as if a motion to dismiss had been filed." This is to save the expense involved in the preparation and trial when the case can be otherwise disposed of. The preliminary hearing should be conducted as ordinary hearings: the parties should be allowed to present evidence and the evidence recorded (*Asejo vs. Leonosa*, 78 Phil., 467), except when the affirmative defense is based on par. g., Section 1, Rule 16 "that the complaint states no cause of action." In determining sufficiency of cause of action, only the facts alleged in the complaint should be considered. (*De Jesus, et al., vs. Belarmino, et al.*, 95 Phil., 365; *Dimayuga vs. Dimayuga*, 96 Phil., 859).

It is a well-settled rule that in a motion to dismiss based on the failure of the complaint to state a cause of action, the question submitted for determination is sufficiency of allegation in the complaint itself. The sufficiency of the cause of action must appear on the face of the complaint itself in order to sustain a dismissal on the ground. (*Clavano vs. Genato*, 80 SCRA 217). This rule applies when the only affirmative defense is the failure of the complaint to state a cause of action. It does not apply when the grounds relied upon by way of affirmative defenses state other matters. Thus the trial court, in the case at bar, did not commit any error in conducting a preliminary hearing on the affirmative defenses of herein petitioners.

The finding of IAC that there was no preliminary hearing (tsn., February 27, 1984) has no basis that can be verified from the records. The trial court set the case for preliminary hearing on February 27, 1984 as per Order dated February 3, 1984; and the records bear "minutes" of the preliminary hearing conducted on February 27, 1987. The rule that the findings of fact of the Court of Appeals (formerly IAC) are entitled to great respect is not inflexible. They are subject to some established exceptions. (*Layugan vs. IAC*, 167 SCRA 363). And one of these exceptions is when judgment is based on misapprehension of facts (*Castillo vs. CA.*, G.R. No. 48541, August 21, 1989). IAC relied solely on the statement of the Clerk of Court that "this case was decided on the basis of pleadings, memorandum, motion for reconsideration and opposition. No oral or documentary evidence was presented" (Decision of IAC, p. 3; Rollo, Annex "G", p. 163) without going to the records of the case.

A perusal of the preliminary hearing indicates that the cause of action of respondents (plaintiffs in the Civil Case) is based on the crime of murder allegedly committed by Ferdinand Calalang.

"Court

So you are basing your claim on the murder case?

"Atty. Aguilar

Yes, your Honor.

(tsn., February 27, 1984, p. 12)

The alleged ambiguity of the cause of action in the complaint was clarified by the admission of the respondents' counsel. Thus, the trial court concluded:

"Court

So you are basing this case on the murder case. That is what I want to make clear (in) this case, and I wanted to have all the facts clear because your complaint, based on par. 7, states: subsequently, later, a case of murder by poisoning was filed against defendant Ferdinand Calalang with the fiscal's office of Bulacan, which was however dismissed on the alleged ground of failure to prove a prima facie case of the offense charged; and then on par. 8, states that as a resulting consequence of the death of Erlinda Gruta, her parents and relatives suffered actual and compensatory damages to the tune of P50,000 more or less, resulting from burial expenses and others; loss of income in the amount of P72,000 and in the total amount more or less P220,000. So we may now have a clear case, that is whether or not it is a murder case which lead to the filing of civil case for damages." (tsn., February 27, 1984, pp. 12-13)

Since the only cause of action of the case is based on the criminal act, there is no reason to implead the Calalang spouses. In their Memorandum in Support of Affirmative Defenses, the Calalang spouses reiterated that:

"xxx the complaint does not show any legal, statutory basis as to why and under what law are they being included as defendants since the complaint admits that Ferdinand Calang has the capacity to sue; the truth is he (Ferdinand Calalang) is of age xxx." (Underscoring supplied) (Memorandum in Support of Affirmative Defenses, p. 1; Rollo, p. 135)

Thus, We find merit in the finding of the trial court that:

"xxx There is no valid legal ground for impleading the spouses Dr. and Mrs. Maria Calalang. The complaint shows that except for the fact that the spouses Calalang are said to be the employer of the deceased Erlinda Gruta; and, that the other defendant Ferdinand Calalang is their son, there is nothing in the complaint which would connect them to the untimely death of Erlinda Gruta. xxx

"It is further observed that the complaint alleges that all of the defendants (Ferdinand Calalang and spouses

Calalang) are said to have the 'capacity to sue and be sued.' Therefore, Ferdinand Calalang has the 'capacity to sue and be sued,' then the spouses Calalang can no longer be held civilly liable for any of his misdeeds, if any. xxx There being no legal ground to implead the defendants-spouses Calalang, the case against them should be dismissed."

(Order, p. 2; Rollo, Annex 'D', p. 82)

A close scrutiny of the Order of Dismissal of the Regional Trial Court indicates that the present case was not dismissed solely on the ground that the complaint failed to state a cause of action, but also on the ground that there is no valid cause of action against Ferdinand Calalang, upon considering the "pleadings, memorandum, motion for reconsideration and opposition" therein.

Generally, the basis of civil liability from crime is the fundamental postulate of our law that "every person criminally liable for a felony is also civilly liable" (Art. 100, Revised Penal Code). In other words, criminal liability will give rise to civil liability only if the same felonious, act or omission results an damage or injury to another and is the direct and proximate cause thereof. (Banal vs. Tadeo, Jr., 156 SCRA 325)

In the case at bar, counsel for private respondents admitted that his complaint for damages is based on the commission of the crime. Stress must be made, however, that under the circumstances, it is a fundamental rule that the facts upon which the civil liability might arise must exist to warrant the filing of a civil action.

Thus, "the acquittal of the accused from the criminal charge will not necessarily extinguish the civil liability unless the Court declares in the judgment that the fact from which the civil liability might arise did not exist." (Tan vs. Standard Vacuum Oil Co., et al., 97 Phil. 672). Similarly, "extinction of the penal action does not carry with it the extinction of civil liability unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist." (De Mesa vs. Priela, 24 SCRA 582; par. (b), Sec. 2, Rule 111, Rules of Court)

Verily, the dismissal of this criminal case as found by IAC is only by resolution of the provincial fiscal and does not proceed from a declaration in a final judgment that the fact from which the civil case might arise did not exist, so that said case may be refiled anytime without the effect of double jeopardy. (Rollo, p. 173). We held as early as the case of *People v. Velez*, 77 Phil. 1026, that the dismissal of the information or the criminal action (upon motion of the fiscal) does not affect the right of the offended party to institute or continue the civil action already instituted arising from the offense, because such dismissal or extinction of the penal action does not carry with it the extinction of the civil action. The reason most often given for this holding is that the two proceedings are not between the same parties. Different rules as to the competency of witnesses and weight of evidence necessary to the findings in the two proceedings also exist. In a criminal action the State must prove its case by evidence which shows the guilt of the defendant beyond reasonable doubt, while in a civil action it is sufficient for the plaintiff to sustain his cause by preponderance of evidence only. (*Ocampo vs. Jenkins*, 14 Phil. 681). Therefore, the insufficiency of evidence to support a murder charge does not imply that there is no sufficient evidence to support the civil case based on the same alleged act.

It is highly speculative to conclude that the plaintiffs' cause of action would stand or fall on the strength of the testimony of Dolores Ayuste who was convicted of perjury on such alleged testimony. A decision should be based on facts not on mere speculations or beliefs.

Finally, the trial court dismissed the case against Ferdinand Calalang *motu proprio* based on the ground that there is no valid cause of action against him. This is not a ground for dismissal of action under Rule 16; but the failure of the complaint to state a cause of action. The pleadings, memorandum and motion for reconsideration and opposition, thereto, might show that there is no valid cause of action against Ferdinand Calalang; still, the court is

not allowed by law to dismiss the case motu proprio. As long as there is a cause of action in the complaint itself, procedural due process demands that there must be a hearing on the merits with the complaint as "prima facie evidence of the facts therein stated." (People vs. Dy, 158 SCRA 111). Therefore, the plaintiffs should be given their day in court to vindicate their claim to the fullest.

WHEREFORE, the appealed decision remanding this case to the court a quo for further proceedings is hereby AFFIRMED with the MODIFICATION that the case against Dr. and Mrs. Fidel Calalang is hereby DISMISSED.

SO ORDERED.

Melencio-Hererra, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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

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