

DANILO WAJE, PETITIONER, VS. HON. COURT OF APPEALS, ALEXANDER ADRIANO, AND VERLINDA ADRIANO, RESPONDENTS.

G.R. No. 83206. August 17, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an appeal by certiorari from the decision[1] rendered by the Court of Appeals, dated March 2, 1988, entitled, "Danilo Waje, plaintiff-appellee, vs. Alexander Adriano and Verlinda Adriano, defendants-appellants," and its resolution, dated May 13, 1988, denying the motion for reconsideration of the plaintiff-appellee, the present petitioner.

The respondent court had set aside the decision[2] of the Regional Trial Court of Pampanga awarding damages in favor of petitioner Danilo Waje and ordered the dismissal of his complaint against the private respondents Adrianos.

The facts of the case are as follows:

On or about midnight of January 10, 1978, three unidentified men broke into the residence of the spouses Alexander and Verlinda Adriano at the San Agustin Village Subdivision, San Agustin, San Fernando, Pampanga and took with them the Adriano spouses' television set worth P2,000.00 and thermos bottle valued at P200.00.

On January 11, 1978, Sgt. Galodo of the Pampanga Philippine Constabulary (PC) sent two (2) investigators from the Pampanga PC Command to the house of the Adrianos. The investigators took with them three jalousies from the house of the Adrianos for the purpose of lifting fingerprints.

Several weeks later Alexander Adriano was called by the PC and was shown the formal report of the PC crime laboratory, Camp Olivas, San Fernando, Pampanga. The report concluded that the fingerprints lifted from the jalousies matched the fingerprints of a certain Danilo Waje who had been previously charged with theft before the Municipal Court of San Fernando, Pampanga. Adriano was told that a case was going to be filed against Danilo Waje.

From March 18 to 21, 1978, the Adrianos conducted an inquiry in their neighborhood and were informed that a barriomate of theirs by the name of Danilo Waje had been previously accused of the crime of theft before the Municipal Court of San Fernando, Pampanga.

Thinking that this must be the culprit, Alexander Adriano and Verlinda Adriano then executed sworn statements identifying Danilo Waje as one of the malefactors who robbed them of their appliances.

On the basis of the Adrianos' sworn statements, the PC authorities of Pampanga filed a criminal complaint (Criminal Case No. 78-2723) with the Municipal Court of San Fernando, Pampanga, on March 22, 1978. The court, after conducting a preliminary investigation, issued a warrant of arrest for the apprehension of Danilo Waje, and thereafter elevated the case to the Court of First Instance of Pampanga. Subsequently, the Office of the

Provincial Fiscal of Pampanga filed, on October 23, 1978, the corresponding information (Criminal Case No. 1333) for "Robbery With Force Upon Things" against Waje and two other John Does.

As Waje was a poor man, with a wife and two children to support, he could not afford to post bail for his provisional liberty; accordingly, Waje was incarcerated from August 8, 1978 up to November 13, 1978.

It was only on November 13, 1978 when, through the help of his friends, Waje was able to pay for the premium needed for his bail bond and so was provisionally released from detention.

Meanwhile, the investigators from the PC crime laboratory found out that the fingerprints of the detained Waje did not match those lifted from the windows of the Adrianos' house. After realizing the error, Alexander Adriano executed an affidavit of desistance, acknowledging that the arrest had been a mistake, and requesting the Provincial Fiscal to move for the dismissal of the criminal case filed. In view of this, the municipal court dismissed the case against the petitioner on November 15, 1978.

The unfortunate Danilo Waje then filed an action for damages against the Adrianos, alleging malicious prosecution, but later amended that to negligence on their part.

In their answer to the complaint, the Adriano couple denied all the material averments of the complainant and alleged that the filing of the criminal complaint against Waje had been based on the findings of a fair and just investigation conducted by the proper authorities, and that they had filed the case motivated by just and lawful purposes. They also set up a counterclaim for damages.

The Regional Trial Court of Pampanga, in its judgment, declared:

After a careful analysis of the evidence presented by the plaintiff and that adduced by the defendants, the Court finds that the spouses Alexander Adriano and Verlinda Adriano are liable to the plaintiff Danilo Waje for damages for having executed sworn statements wherein they negligently pointed to plaintiff Danilo Waje as one of the malefactors who robbed them of their television set and thermos between midnight of January 10, 1978 and dawn of January 11, 1978 in their residence at San Agustin Village, San Agustin, San Fernando, Pampanga, without first ascertaining whether the herein plaintiff Danilo Waje, who is a barriomate of the defendants, is the same Danilo Waje who had a previous case before the Municipal Court of San Fernando, Pampanga, for theft.[3]

Dissatisfied with the trial court's decision, the Adrianos appealed to the respondent court. After reviewing the records, the Court of Appeals reversed the lower court's judgment. Its decision is partially hereunder quoted:

In this case, while there was an apparent want of probable cause because the basis of the filing of the criminal cases against Waje were the fingerprints found on the glass jalousies of the windows of the Adrianos' residence which when carefully examined later, did not match the accused's fingerprints; the defendants, however, presented the matter to the fiscal, who should have verified first the identity of Danilo Waje and his fingerprints compared with those of another person with a police record of previous theft cases also named Danilo Waje. The fiscal failed to take this precautionary measure.

However, the mistake was not only on the part of the Adrianos but also on the part of the prosecuting fiscal. While We sympathize with plaintiff Waje, We cannot make defendants Adrianos liable for malicious prosecution where in fact they were not. (Underscoring ours).[4]

The petitioner now assigns the following errors[5] committed by the respondent court.

I

RESPONDENT COURT CATEGORICALLY ERRED AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION IN APPLYING THE LAW AND JURISPRUDENCE ON MALICIOUS PROSECUTION IN CIVIL CASE NO. G-761, WHICH WAS PREDICATED UPON THE LAW AND JURISPRUDENCE ON NEGLIGENCE.

II

RESPONDENT COURT CATEGORICALLY ERRED AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION IN CONSIDERING THE ISSUE OF MALICIOUS PROSECUTION RAISED IN THE PETITIONER'S ORIGINAL COMPLAINT DATED FEBRUARY 17, 1979, WHICH HAD ALREADY BEEN ABANDONED AND BECAME "FUNCTUS OFFICIO," UPON THE FILING OF THE PETITIONER'S AMENDED COMPLAINT DATED APRIL 23, 1979, PREDICATED ON NEGLIGENCE.

III

RESPONDENT COURT CATEGORICALLY ERRED AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION IN RULING THAT THE NON-INCLUSION OF THE PROSECUTING FISCAL AS A PARTY DEFENDANT IN CIVIL CASE NO. G-761 WAS FATAL TO PETITIONER'S CAUSE OF ACTION THEREIN.

As shown by the petitioner's assignment of errors, the petitioner raises the question of whether or not the respondent court has dealt with the correct issue. The issue raised before and decided by the trial court was whether or not the private respondents were liable for damages because of their negligence as specifically alleged in the petitioner's Amended Complaint.[6]

The respondent court's decision (CA-G.R. C.V. No. 08650) found the private respondents not liable for malicious prosecution[7] when they filed robbery charges against petitioner Waje.

It appears that the respondent court applied the law on malicious prosecution instead of using as a basis, Article 20 of the New Civil Code which provides:

x x x Every person who, contrary to law, wilfully or negligently causes damages to another, shall indemnify the latter for the same.

which was the provision relied upon by the trial court in determining the liability of the Adrianos for damages.

In effect, the respondent court had considered the claim of malicious prosecution alleged in the petitioner's original complaint dated February 17, 1989. Such complaint, however, had already been abandoned and had become "functus officio"[8] upon the filing of the petitioner's Amended Complaint,[9] dated April 23, 1979.

We agree with the position taken by the petitioner: "When a pleading is amended, the original pleading is deemed abandoned. The original ceases to perform any further function as a pleading. The case stand for trial on the amended pleading only." [10] Therefore, the respondent court should have not used the law on malicious prosecution as its weighing scale to determine if there was indeed fault on the part of the Adrianos but, rather, examined if there was negligence committed under Article 20 of the New Civil Code.

Any fundamental change of issue is not permissible on appeal.[11]

We deem it now necessary to approach the matter in its proper perspective. After going over the records of the case, we still can not come to the conclusion that the Adrianos are liable for damages because of negligence on their part.

The Adrianos were merely disclosing fairly and truthfully to the officers of the law matters within their knowledge, matters that would have a material bearing upon the innocence or guilt of the person under suspicion.

It was the duty of the PC authorities, the judge of the municipal court of San Fernando, Pampanga, and the Provincial Fiscal to ascertain the allegations of the Adrianos so as to determine if the case warranted criminal prosecution.

As stated by respondent court:

. . . the defendants, however, presented the matter to the fiscal, who should have verified first the identity of Danilo Waje and his fingerprints compared with those of another person with a police record of previous theft cases also named Danilo Waje. The fiscal failed to take this precautionary measure.[12]

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.[13]

While we sympathize with the petitioner, we can not, however, hold the private respondents liable for negligence when in fact they were not.

WHEREFORE, with the foregoing modifications, the judgment of the Court of Appeals is AFFIRMED. Petition DENIED.

No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Campos, Jose Jr. C., J., ponente; Francisco, Ricardo J. and Benipayo, Alfredo L., JJ., concurring, CA-G.R. C.V. No. 08650.

[2] Promulgated on May 30, 1984.

[3] Rollo, 38.

[4] Id., 23-24.

[5] Id., Petition for Review, 12.

[6] Id., 26.

[7] Id., 24.

[8] 71 C.J.S., 716-717.

[9] Id., 26.

[10] *Megaspi vs. Remolete*, 115 SCRA 193, 1 Moran, Rules of Court, 361-362, citing *Reynes v. Compania General de Tabacos de Filipinas*, 21 Phil. 417; *Reyman vs. Director of Lands*, 34 Phil. 428.

[11] *Republic vs. Venturanza*, L-20417, May 30, 1966.

[12] Rollo, 23-24, last par.

[13] *Lagman vs. Hon. Intermediate Appellate Court*, G.R. No. 72281, promulgated October 28, 1988; citing

Filinvest Credit & Corporation vs. Mendez, 152 SCRA 593, 601 (1987).

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