

INTERPACIFIC TRANSIT, INC., PETITIONER, VS. RUFO AVILES AND JOSEPHINE AVILES, RESPONDENTS.

G.R. No. 86062. June 06, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

This case hinges on the proper interpretation and application of the rules on the admissibility of documentary evidence and the viability of a civil action for damages arising from the same acts imputed to the defendant in a criminal action where he has been acquitted.

In the information filed against Rufo and Josephine Aviles, the private respondents herein, it was alleged that being then sub-agents of Interpacific Transit, Inc. and as such enjoying its trust and confidence, they collected from its various clients payments for airway bills in the amount of P204,030.66 which, instead of remitting it to their principal, they unlawfully converted to their own personal use and benefit.[1]

At the trial, the prosecution introduced photocopies of the airway bills supposedly received by the accused for which they had not rendered proper accounting. This was done in the course of the direct examination of one of the prosecution witnesses.[2] The defense objected to their presentation, invoking the best evidence rule. The prosecution said it would submit the original airway bills in due time. Upon such undertaking, the trial court allowed the marking of the said documents as Exhibits “B” to “OO.” The prosecution never did submit the original airway bills nor did it prove their loss to justify their substitution with secondary evidence. Nevertheless, when the certified photocopies of the said bills formally were offered,[3] in evidence, the defense interposed no objection.

In acquitting the accused, Judge Herminio I. Benito of the Regional Trial Court of Makati rejected the agency theory of the prosecution and held that the relationship between the petitioner and Rufo Aviles was that of creditor and debtor only. “Under such relationship,” it declared, “the outstanding account, if any, of the accused in favor of ITI would be in the nature of an indebtedness, the non-payment of which does not constitute estafa.”[4]

The court also held that the certified photocopies of the airway bills were not admissible under the rule that “there can be no evidence of a writing the content of which is the subject of inquiry other than the original writing itself.” Loss of the originals had not been proved to justify the exception to the rule as one of the prosecution witnesses had testified that they were still in the ITI bodega. Neither had it been shown that the originals had been “recorded in an existing record a certified copy of which is made evidence by law.”

In its order denying the motion for reconsideration, the trial court declared that it “had resolved the issue of whether the accused has civil obligation to ITI on the basis of the admissibility in evidence of the xerox copies of the airway bills.”[5]

Right or wrong, the acquittal on the merits of the accused can no longer be the subject of an appeal under the double jeopardy rule. However, the petitioner seeks to press the civil liability of the private respondents, on the

ground that the dismissal of the criminal action did not abate the civil claim for the recovery of the amount. More to the point, ITI argues that the evidence of the airways bills should not have been rejected and that it had sufficiently established the indebtedness of the private respondents to it.

The Court of Appeals[6] affirmed the decision of the trial court in toto, adding that the existing record spoken of in Section 2(c) and (d) of Rule 130 of the Rules of Court must be in the custody of a public officer only. It also declared that:

Since no evidence of civil liability was presented, no necessity existed on the part of the private respondents to present evidence of payment of an obligation which was not shown to exist.

The petitioner now asks this Court to annul that judgment as contrary to law and the facts established at the trial. As in the courts below, it is insisting on the admissibility of its evidence to prove the civil liability of the private respondents.

We agree with the petitioner. The certified photocopies of the airway bills should have been considered.

In assessing this, evidence, the lower courts confined themselves to the best evidence rule and the nature of the documents being presented, which they held did not come under any of the exceptions to the rule. There is no question that the photocopies were secondary evidence and as such were not admissible unless there was ample proof of the loss of the originals; and neither were the other exceptions allowed by the Rules applicable. The trouble is that in rejecting these copies under Rule 130, Section 2, the respondent court disregarded an equally important principle long observed in our trial courts and amply supported by jurisprudence.

This is the rule that objection to documentary evidence must be made at the time it is formally offered as an exhibit and not before. Objection prior to that time is premature.

It is instructive at this point to make a distinction between identification of documentary evidence and its formal offer as an exhibit. The first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit. The second is done only when the party rests its case and not before. The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all. In the latter event, the trial court is, under Rule 132, Section 35, not authorized to consider it.

Objection to the documentary evidence must be made at the time it is formally offered, not earlier. The identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What really matters is the objection to the document at the time it is formally offered as an exhibit.

In the case at bar, the photocopies of the airway bills were objected to by the private respondents as secondary evidence only when they were being identified for marking by the prosecution. They were nevertheless marked as exhibits upon the promise that the original airway bills would be submitted later. It is true that the originals were never produced. Yet, notwithstanding this omission, the defense did not object when the exhibits as previously marked were formally offered in evidence. And these were subsequently admitted by the trial court.[7]

In *People v. Teodoro*,[8] a document being identified by a prosecution witness was objected to as merely secondary, whereupon the trial judge ordered the testimony stricken out. This Court, in holding the objection to be premature, said:

It must be noted that the Fiscal was only identifying the official records of service of the defendant preparatory to introducing them as evidence. x x x The time for the presentation of the records had not yet come; presentation was to be made after their identification. For what purpose and to what end the Fiscal would introduce them as evidence was not yet stated or disclosed. x x x The objection of counsel for the defendant was, therefore, premature, especially as the Fiscal had not yet stated for what purpose he would introduce the said records. x x x

The time for objecting the evidence is when the same is offered. (Emphasis supplied).

The objection of the defense to the photocopies of the airway bills while they were being identified and marked as exhibits did not constitute the objection it should have made when the exhibits were formally offered in evidence by the prosecution. No valid and timely objection was made at that time. And it is no argument to say that the earlier objection should be considered a continuing objection under Sec. 37 of Rule 132, for that provision obviously refers to a single objection to a class of evidence (testimonial or documentary) which when first offered is considered to encompass the rest of the evidence. The presumption is, of course, that there was an offer and a seasonable objection thereto. But, to repeat, no objection was really made in the case before us because it was not made at the proper time.

It would have been so simple for the defense to reiterate its former objection, this time seasonably, when the formal offer of exhibits was made. It is curious that it did not, especially so since the objections to the formal offer of exhibits was made in writing. In fact, the defense filed no objection at all not only to the photocopies but to all the other exhibits of the prosecution.

The effect of such omission is obvious. The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[9] This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.

The records certainly would have been the best proof of such former conviction. The certificate was not the best proof. There seems to be no justification for the presentation of proof of a secondary character. x x x Under an objection upon the ground that the said certificate was not the best proof, it should have been rejected. Once admitted, however, without objection, even though not admissible under an objection, we are not inclined now to reject it. If the defendant had opportunely presented an objection to the admissibility of said certificate, no doubt the prosecution would have presented the best proof upon the questions to which said certificate relates.[10]

(It) is universally accepted that when secondary or incompetent evidence is presented and accepted without any objection on the part of the other party, the latter is bound thereby and the court is obliged to grant it the probatory value it deserves.[11]

We hold therefore that it was erroneous for the lower courts to reject the photocopies of the airway bills to prove the liability of the private respondents to the petitioner. While we may agree that there was really no criminal liability that could attach to them because they had no fiduciary relationship with ITI, the rejected evidence sufficiently established their indebtedness to the petitioner. Hence, we must reverse the ruling below that “on account of the inadmissibility of the prosecution’s Exhibits ‘B’ and ‘OO,’ coupled with the denial made by the accused, there appears to be no concrete proof of such accountability.”

According to Rule 120, Section 2, of the Rules of Court:

In case of acquittal, unless there is a clear showing that the act from which the civil liability might arise did not exist, the judgment shall make a finding on the civil liability of the accused in favor of the offended party.

With the admission of such exhibits pursuant to the ruling above made, we find that there is concrete proof of the

defendant's accountability. More than this, we also disbelieve the evidence of the private respondents that the said airway bills had been paid for. The evidence consists only of check stubs corresponding to payments allegedly made by the accused to the ITI, and we find this insufficient.

As it is Aviles who has alleged payment, it is for him to prove that allegation. He did not produce any receipt of such payment. He said that the canceled payment checks had been lost and relied merely on the check stubs, which are self-serving. The prosecution correctly stressed in its motion for reconsideration that the accused could have easily secured a certification from the bank that the checks allegedly issued to ITI had been honored. No such certification was presented. In short, the private respondents failed to establish their allegation that payment for the airway bills delivered to them had been duly remitted to ITI.

In *Padilla v. Court of Appeals*,^[12] we held:

There appear to be no sound reasons to require a separate civil action to still be filed considering that the facts to be proved in the civil case have already been established in the criminal proceedings where the accused was acquitted. He was, in fact, exonerated of the criminal charge. The constitutional presumption of innocence called for more vigilant efforts on the part of prosecuting attorneys and defense counsel, a keener awareness by all witnesses of the serious implications of perjury, and a more studied consideration by the judge of the entire records and of applicable statutes and precedents. To require a separate civil action simply because the accused was acquitted would mean needless clogging of court dockets and unnecessary duplication of litigation with all its attendant loss of time, effort, and money on the part of all concerned.

By the same token, we find that remand of this case to the trial court for further hearings would be a needless waste of time and effort to the prejudice of the speedy administration of justice. Applying the above ruling, we hereby declare therefore, on the basis of the evidence submitted at the trial as reflected in the records before us, that the private respondents are liable to the petitioner in the sum of P204,030.66, representing the cost of the airway bills.

WHEREFORE, the petition is GRANTED. The challenged decision of the Court of Appeals is SET ASIDE and a new one is rendered ORDERING the private respondents to pay to the petitioner the sum of P204,030.66, with 6% interest from November 16, 1981, plus the costs of this suit.

SO ORDERED.

Narvasa, (Chairman), Gancayco, and Medialdea, JJ., concur.
Griño-Aquino, J., on leave.

[1] Original Records, p. 1.

[2] TSN, May 23, 1984.

[3] Original Records, pp. 178-184.

[4] *Ibid.*, p. 265.

[5] Rollo, pp. 67-69.

[6] Penned by De Pano, Jr., J., with Fule and Torres, JJ., concurring.

[7] Original Records, p. 352.

[8] 98 Phil. 569.

[9] *Marella v. Reyes*, 12 Phil. 1; *US v. Choa Tong*, 22 Phil. 562.

[10] *US v. Ong Shin*, 28 Phil. 242.

[11] *Hodges v. Salas, et al.*, 63 Phil. 567.

[12] 129 SCRA 559.

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