

## SECOND DIVISION

[ G.R. No. 181986, December 04, 2013 ]

**ELIZALDE S. CO, PETITIONER, VS. LUDOLFO P. MUÑOZ, JR.,  
RESPONDENT.**

### DECISION

**BRION, J.:**

Before us is a petition for review on *certiorari*<sup>[1]</sup> seeking to set aside the decision<sup>[2]</sup> dated January 31, 2007 and resolution<sup>[3]</sup> dated March 3, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 29355. The CA rulings reversed and set aside the decision<sup>[4]</sup> dated February 24, 2004 of the Regional Trial Court (RTC) of Legaspi City, Branch 5, in Criminal Case Nos. 9704, 9705 and 9737, and acquitted respondent Ludolfo P. Muñoz, Jr. (*Muñoz*) of three counts of libel.

#### **Factual Antecedents**

The case springs from the statements made by the respondent against the petitioner, Elizalde S. Co (Co), in several interviews with radio stations in Legaspi City. Muñoz, a contractor, was charged and arrested for perjury. Suspecting that Co, a wealthy businessman, was behind the filing of the suit, Muñoz made the following statements:

- (a) Co influenced the Office of the City Prosecutor of Legaspi City to expedite the issuance of warrant of arrest against Muñoz in connection with the perjury case;
- (b) Co manipulated the results of the government bidding involving the Masarawag-San Francisco dredging project, and;
- (c) Co received P2,000,000.00 from Muñoz on the condition that Co will sub-contract the project to Muñoz, which condition Co did not comply with.<sup>[5]</sup>

Consequently, Co filed his complaint-affidavit which led to the filing of three criminal informations for libel before the RTC.<sup>[6]</sup> Notably, Co did not waive, institute or reserve his right to file a separate civil action arising from Muñoz's libelous remarks against him.<sup>[7]</sup>

In his defense,<sup>[8]</sup> Muñoz countered that he revealed the anomalous government bidding as a call of public duty. In fact, he filed cases against Co before the Ombudsman involving the anomalous dredging project. Although the Ombudsman dismissed the cases, Muñoz claimed that the dismissal did not disprove the truth of his statements. He further argued that Co is a public figure considering his participation in government projects and his prominence in the business circles. He also emphasized that the imputations dealt with matters of public interest and are, thus, privileged. **Applying the rules on privileged communication to libel**

**suits, the prosecution has the burden of proving the existence of actual malice, which, Muñoz claimed, it failed to do.**

In its decision, the RTC found Muñoz **guilty** of three counts of libel. The RTC ruled that the prosecution established the elements of libel. In contrast, Muñoz failed to show that the imputations were true and published with good motives and for justifiable ends, as required in Article 361 of the Revised Penal Code (RPC).<sup>[9]</sup> In light of the Ombudsman's dismissal of Muñoz' charges against Co, the RTC also held that Muñoz' statements were baseless accusations which are not protected as privileged communication.<sup>[10]</sup>

In addition to imprisonment, Muñoz was ordered to pay P5,000,000.00 for each count of libel as moral damages, P1,200,000.00 for expenses paid for legal services, and P297,699.00 for litigation expense.<sup>[11]</sup> Muñoz appealed his conviction with the CA.

### **The CA Ruling**

The CA held that the subject matter of the interviews was impressed with public interest and Muñoz' statements were protected as privileged communication under the first paragraph of Article 354 of the RPC.<sup>[12]</sup> It also declared that Co was a public figure based on the RTC's findings that he was a "*well-known, highly-regarded and recognized in business circles.*"<sup>[13]</sup> As a public figure, Co is subject to criticisms on his acts that are imbued with public interest.<sup>[14]</sup> Hence, the CA **reversed** the RTC decision and **acquitted** Muñoz of the libel charges due to the prosecution's failure to establish the existence of actual malice.

### **The Petitioner's Arguments**

In the present petition, Co acknowledges that he may no longer appeal the criminal aspect of the libel suits because that would violate Muñoz' right against double jeopardy. Hence, he claims damages only on the basis of **Section 2, Rule 111 of the Rules of Court (ROC)**, which states that the extinction of the penal action does not carry with it the extinction of the civil action. He avers that this principle applies in general whether the civil action is instituted with or separately from the criminal action.<sup>[15]</sup> He also claims that the civil liability of an accused may be appealed in case of acquittal.<sup>[16]</sup>

Co further makes the following submissions:

*First*, the CA erred when it disregarded the presumption of malice under Article 354<sup>[17]</sup> of the RPC. To overcome this presumption, Muñoz should have presented evidence on good or justifiable motive for his statements.<sup>[18]</sup> On the contrary, the context of Muñoz's radio interviews reflects his evident motive to injure Co's reputation instead of a sincere call of public duty.<sup>[19]</sup>

*Second*, the CA erred in declaring Co as a public figure based on the RTC findings that he is known in his community. He claims this as a relatively limited community

comprising of his business associates.<sup>[20]</sup>

### **The Respondent's Arguments**

Muñoz argues that Co misunderstood **Section 2, Rule 111 of the ROC** because, as its title suggests, the provision presupposes the filing of a civil action *separately* from the criminal action. Thus, when there is no reservation of the right to separately institute the civil action arising from the offense, the extinction of the criminal action extinguishes the civil action. **Since Co did not reserve his right to separately institute a civil action arising from the offense, the dismissal of the criminal action bars him from filing the present petition to enforce the civil liability.**<sup>[21]</sup>

Muñoz further posits that Co is not entitled to recover damages because there is no wrongful act to speak of. Citing *De la Rosa, et al. v. Maristela*,<sup>[22]</sup> he argues that if there is no libel due to the privileged character of the communication and actual malice is not proved, there should be no award of moral damages.<sup>[23]</sup>

Lastly, Muñoz avers that Co is indirectly challenging the factual and legal issues which the CA has already settled in acquitting him. Muñoz explains that this Court may no longer overturn the CA's findings as the doctrine of double jeopardy has set in.<sup>[24]</sup>

### **The Issues**

The parties' arguments, properly joined, present to us the following issues:

1. whether a private party may appeal the judgment of acquittal insofar as he seeks to enforce the accused's civil liability; and
2. whether the respondent is liable for damages arising from the libelous remarks despite his acquittal.

### **The Court's Ruling**

We do not find the petition meritorious.

***The private party may appeal the judgment of acquittal insofar as he seeks to enforce the accused's civil liability.***

The parties have conflicting interpretations of the last paragraph of Section 2, Rule 111 of the ROC, which states:

**The extinction of the penal action does not carry with it extinction of the civil action.** However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. (Emphasis ours)

Muñoz claims that the last paragraph of Section 2, Rule 111 of the ROC applies only if the civil liability *ex delicto* is separately instituted or when the right to file it separately was properly reserved. In contrast, Co claims that Muñoz' acquittal of the

crime of libel did not extinguish the civil aspect of the case because Muñoz' utterance of the libelous remarks remains undisputed.

We reject Muñoz' claim. The last paragraph of Section 2, Rule 111 of the ROC applies to civil actions to claim civil liability arising from the offense charged, regardless if the action is ***instituted with*** or ***filed separately*** from the criminal action. Undoubtedly, Section 2, Rule 111 of the ROC governs situations when the offended party opts to institute the civil action separately from the criminal action; hence, its title "*When separate civil action is suspended.*" Despite this wording, the last paragraph, by its terms, governs all claims for civil liability ***ex delicto***. This is based on Article 100 of the RPC which states that that "[e]very person criminally liable for a felony is also civilly liable." Each criminal act gives rise to two liabilities: one criminal and one civil.

Reflecting this policy, our procedural rules provide for two modes by which civil liability *ex delicto* may be enforced: (1) through a civil action that is deemed impliedly instituted in the criminal action;<sup>[25]</sup> (2) through a civil action that is filed separately, either before the criminal action or after, upon reservation of the right to file it separately in the criminal action.<sup>[26]</sup> The offended party may also choose to waive the civil action.<sup>[27]</sup> This dual mode of enforcing civil liability *ex delicto* does not affect its nature, as may be apparent from a reading of the second paragraph of Section 2, Rule 120 of the ROC, which states:

Section 2. Contents of the judgment. – x x x

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, **the judgment shall determine if the act or omission from which the civil liability might arise did not exist.** (Emphasis ours)

If, as Muñoz suggests, the extinction of the penal action carries with it the extinction of the civil action that was *instituted with* the criminal action, then Section 2, Rule 120 of the ROC becomes an irrelevant provision. There would be no need for the judgment of the acquittal to determine whether "*the act or omission from which the civil liability may arise did not exist.*" The Rules precisely require the judgment to declare if there remains a basis to hold the accused civilly liable despite acquittal so that the offended party may avail of the proper remedies to enforce his claim for civil liability *ex delicto*.

In *Ching v. Nicdao and CA*,<sup>[28]</sup> the Court ruled that an appeal is the proper remedy that a party – whether the accused or the offended party – may avail with respect to the judgment:

If the accused is acquitted on reasonable doubt but the court renders judgment on the civil aspect of the criminal case, the prosecution cannot appeal from the judgment of acquittal as it would place the accused in double jeopardy. **However, the aggrieved party, the offended party or the accused or both may appeal from the judgment on the civil aspect of the case within the period therefor.**

**From the foregoing, petitioner Ching correctly argued that he, as**