

SECOND DIVISION

[G.R. No. 151931, September 23, 2003]

**ANAMER SALAZAR, PETITIONER, VS. THE PEOPLE OF THE
PHILIPPINES AND J.Y. BROTHERS MARKETING CORPORATION,
RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Criminal Procedure of the Order^[1] of the Regional Trial Court, 5th Judicial Region, Legazpi City, Branch 5,^[2] dated November 19, 2001, and its Order^[3] dated January 14, 2002 denying the motion for reconsideration of the decision of the said court on the civil aspect thereof and to allow her to present evidence thereon.

On June 11, 1997, an Information for estafa was filed against herein petitioner Anamer D. Salazar and co-accused Nena Jaucian Timario with the Regional Trial Court of Legazpi City, docketed as Criminal Case No. 7474 which reads as follows:

That sometime in the month of October, 1996, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above named-accused, conspiring and confederating with each other, with intent to defraud by means of false pretenses or fraudulent acts executed simultaneously with the commission of the fraud, did then and there wilfully, unlawfully and feloniously, on the part of accused NENA JAUCIAN TIMARIO, drew and issue[d] PRUDENTIAL BANK, LEGASPI CITY BRANCH CHECK NO. 067481, dated October 15, 1996, in the amount of P214,000.00 in favor of J.Y. BROTHERS MARKETING CORPORATION, represented by its Branch Manager, JERSON O. YAO, and accused ANAMER D. SALAZAR endorsed and negotiated said check as payment of 300 cavans of rice obtained from J.Y. BROTHERS MARKETING CORPORATION, knowing fully well that at that time said check was issued and endorsed, Nena Jaucian Timario did not have sufficient funds in or credit with the drawee bank to cover the amount called for therein and without informing the payee of such circumstance; that when said check was presented to the drawee bank for payment, the same was consequently dishonored and refused payment for the reason of "ACCOUNT CLOSED"; that despite demands, accused failed and refused and still fail and refuse to pay and/or make arrangement for the payment of the said check, to the damage and prejudice of said J.Y. BROTHERS MARKETING CORPORATION.

CONTRARY TO LAW.^[4]

Upon arraignment, the petitioner, assisted by counsel, entered a plea of not guilty. Trial thereafter ensued.

The Evidence of the Prosecution

On October 15, 1996, petitioner Anamer Salazar purchased 300 *cavans* of rice from J.Y. Brothers Marketing Corporation, through Mr. Jerson Yao. As payment for these *cavans* of rice, the petitioner gave the private complainant Check No. 067481 drawn against the Prudential Bank, Legazpi City Branch, dated October 15, 1996, by one Nena Jaucian Timario in the amount of P214,000. Jerson Yao accepted the check upon the petitioner's assurance that it was a good check. The *cavans* of rice were picked up the next day by the petitioner. Upon presentment, the check was dishonored because it was drawn under a closed account ("Account Closed"). The petitioner was informed of such dishonor. She replaced the Prudential Bank check with Check No. 365704 drawn against the Solid Bank, Legazpi Branch, which, however, was returned with the word "DAUD" (Drawn Against Uncollected Deposit).

After the prosecution rested its case, the petitioner filed a Demurrer to Evidence with Leave of Court^[5] alleging that she could not be guilty of the crime as charged for the following reasons: (a) she was merely an indorser of the check issued by Nena Timario, and Article 315, paragraph 2(d) on estafa penalizes only the issuer of the check and not the indorser thereof; (b) there is no sufficient evidence to prove that the petitioner conspired with the issuer of the check, Nena Jaucian Timario, in order to defraud the private complainant; (c) after the first check was dishonored, the petitioner replaced it with a second one. The first transaction had therefore been effectively novated by the issuance of the second check. Unfortunately, her personal check was dishonored not for insufficiency of funds, but for "DAUD," which in banking parlance means "drawn against uncollected deposit." According to the petitioner, this means that the account had sufficient funds but was still restricted because the deposit, usually a check, had not yet been cleared.

The prosecution filed its comment/opposition to the petitioner's demurrer to evidence.

On November 19, 2001, the trial court rendered judgment acquitting the petitioner of the crime charged but ordering her to remit to the private complainant the amount of the check as payment for her purchase. The trial court ruled that the evidence for the prosecution did not establish the existence of conspiracy beyond reasonable doubt between the petitioner and the issuer of the check, her co-accused Nena Jaucian Timario, for the purpose of defrauding the private complainant. In fact, the private complainant, Jerson Yao, admitted that he had never met Nena Jaucian Timario who remained at large. As a mere indorser of the check, the petitioner's breach of the warranty that the check was a good one is not synonymous with the fraudulent act of falsely pretending to possess credit under Article 315(2)(d). The decretal portion of the trial court's judgment reads as follows:

WHEREFORE, premises considered, the accused Anamer D. Salazar is hereby ACQUITTED of the crime charged but is hereby held liable for the value of the 300 bags of rice. Accused Anamer D. Salazar is therefore ordered to pay J.Y. Brothers Marketing Corporation the sum of P214,000.00. Costs against the accused.^[6]

Within the reglementary period therefor, the petitioner filed a motion for reconsideration on the civil aspect of the decision with a plea that he be allowed to present evidence pursuant to Rule 33 of the Rules of Court. On January 14, 2002, the court issued an order denying the motion.

In her petition at bar, the petitioner assails the orders of the trial court claiming that after her demurrer to evidence was granted by the trial court, she was denied due process as she was not given the opportunity to adduce evidence to prove that she was not civilly liable to the private respondent. The petitioner invokes the applicability of Rule 33 of the Rules of Civil Procedure in this case, contending that before being adjudged liable to the private offended party, she should have been first accorded the procedural relief granted in Rule 33.

The Petition Is Meritorious

According to Section 1, Rule 111 of the Revised Rules of Criminal Procedure –

SECTION 1. *Institution of criminal and civil actions.* – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action.

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check

involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions.

The last paragraph of Section 2 of the said rule provides that the extinction of the penal action does not carry with it the extinction of the civil action. Moreover, 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.^[7]

The criminal action has a dual purpose, namely, the punishment of the offender and indemnity to the offended party. The dominant and primordial objective of the criminal action is the punishment of the offender. The civil action is merely incidental to and consequent to the conviction of the accused. The reason for this is that criminal actions are primarily intended to vindicate an outrage against the sovereignty of the state and to impose the appropriate penalty for the vindication of the disturbance to the social order caused by the offender. On the other hand, the action between the private complainant and the accused is intended solely to indemnify the former.^[8]

Unless the offended party waives the civil action or reserves the right to institute it separately or institutes the civil action prior to the criminal action, there are two actions involved in a criminal case. The first is the criminal action for the punishment of the offender. The parties are the People of the Philippines as the plaintiff and the accused. In a criminal action, the private complainant is merely a witness for the State on the criminal aspect of the action. The second is the civil action arising from the delict. The private complainant is the plaintiff and the accused is the defendant. There is a merger of the trial of the two cases to avoid multiplicity of suits.

The quantum of evidence on the criminal aspect of the case is proof beyond reasonable doubt, while in the civil aspect of the action, the quantum of evidence is preponderance of evidence.^[9] Under Section 3, Rule 1 of the 1997 Rules of Criminal Procedure, the said rules shall govern the procedure to be observed in action, civil or criminal.

The prosecution presents its evidence not only to prove the guilt of the accused beyond reasonable doubt but also to prove the civil liability of the accused to the offended party. After the prosecution has rested its case, the accused shall adduce its evidence not only on the criminal but also on the civil aspect of the case. At the