Notes and Comments

The Effects of a Motion to Quash or Dismiss a Case on the Ground of Insufficiency of Evidence

THE right of a suitor to test the legal sufficiency of the evidence offered against him has always been recognized under Anglo-American common law and the authority and power of the court to pass on the issue thus presented has generally been conceded. (53 American Jurisprudence 248). In the Philippines, after the "plaintiff has rested his case, the defendant may move for the dismissal of the action, on the ground of insufficiency of evidence. This motion is also called demurrer to the evidence." (I, Moran, Comments on the Rules of Court, [1947], 546.)

The Code of Civil Procedure did not contain any provision on the subjects of motion to dismiss, motions for non-suit, demurrer to the evidence, and analogous subjects. Sec. 132 thereof merely provided for the order of trial. (Moody, Aronson & Co. v. Hotel Bilbao [1927], 50 Phil. 198, 199.) Neither did Sections 31 to 41 of General Orders No. 58, s. of 1900, which governed trials in criminal cases, provide for any rule on any particular mode of testing the legal sufficiency of the evidence of the prosecution. And our present Rules of Court, which superseded the Code of Civil Procedure and General Orders No. 58, are silent on this particular phase of procedure. It would not surprise us, therefore, to find that our courts have not adopted a single procedure in the course of their attempts to solve this procedural deficiency whenever the problem confronted them in actual cases.

The subject was first considered in this jurisdiction in criminal cases. As early as 1903, in U.S. v. Abaroa, 3 Phil 116, our Supreme Court expressed its disapproval of the practice adopted by the trial court in discharging the accused upon the latter's motion for dismissal of the case on the ground of insufficiency of the prosecution's evidence. The Court, speaking through Justice McDonough, said:

> Such practice should not be followed for the reasons (1) if this Court should not agree with the conclusion reached by the court below it would be authorized to reverse the judg-

> ment and enter judgment convicting the accused upon the facts proved by the prosecution, and thus depriving the accused of making a defense below, if he had a defense and (2) if this court, on disapproval of the judgment below, should order a new trial the result would be that the prosecution would be obliged to place the defendant on trial twice, when all the evidence could have been obtained in one trial; and the defendant would have the benefit of delay and the possible death or disappearance of witnesses for the prosecution.

In the above case, the Supreme Court laid down the principle that after the prosecution has rested, the trial court should not dismiss the case upon motion of the defendant for dismissal on the ground of insufficiency of evidence, but should require the accused to present his evidence. However, this principle was subsequently abrogated by our Supreme Court in U.S. v. Romero (1912), 22 Phil. 565 and U.S. v. de la Cruz (1914) 28 Phil. 279. It is to be noted that when the Abaroa case was decided in 1903, it was possible in conformity with the provisions of General Orders No. 58, to appeal from an order sustaining the motion to dismiss at the close of the plaintiff's evidence on the ground of insufficiency thereof; but the United States Supreme Court held in Kepner v. U.S. (1904), 195 U.S. 100, 49 L. ed. 114; 24 Sup. Ct. Rep. 797, 11 Phil. 669, reversing U.S. v. Kepner (1903), 1 Phil. 727, that the prosecution can not appeal from a decision of the lower court when the latter's decision is based upon the merits of the case, so that the situation assumed and disposed of in the Abaroa case would no longer obtain in subsequent criminal cases.

In the light of the Kepner decision, our Supreme Court declared that there seemed to be no more reason for requiring the defendant to adduce his proof, if, at the close of the prosecution's evidence, there is no sufficient proof to show that the defendant is guilty beyond a reasonable doubt of the offense charged in the complaint. But, however, the question of "whether or not the evidence presented by the prosecuting attorney, at the time he rests his case, is sufficient to convince the court that the defendants are guilty, beyond a reasonable doubt, rests entirely within the sound discretion and judgment of the trial court. The error, if any be committed by denial of such a motion, can only be corrected on appeal by showing that the evidence was, in fact, insufficient, and then the sentence of the lower court will be reversed for failure of evidence only." (U.S. v. Romero, *supra;* U.S. v. Choa Chiok [1917] 36 Phil. 831.)

Consequently, the lower court has the right to dismiss a case at the close of the plaintiff's evidence, if at that moment there is no

proof sufficient to make out a prima facie case against the accused. But if the trial court believes that there is sufficient evidence to establish a prima facie case against the defendant, the denial of a motion to dismiss made by the accused is proper. (U.S. v. Romero, *supra;* U.S. v. Choa Chiok, *supra;* U.S. v. Kilayco [1915] 32 Phil. 619; U.S. v. Alviar [1917] 36 Phil. 804; and U.S. v. Balotan [1923] 45 Phil. 573). Therefore, notwithstanding the Kepner case it is still not a ground for error that the lower court denied the motion for dismissal, because it lies entirely within the discretion of the court to judge for itself whether the evidence is sufficient or not. (U.S. v. de la Cruz, *supra.*)

The problem was next considered in an election case where the Court held:

> x x x the practice followed in the courts of these Islands is to permit the defendant to present a motion for dismissal in ordinary cases after the plaintiff has rested, reserving the right to present his evidence if the ruling on the motion is adverse to him either in the first instance or on appeal. In an election protest proceeding, however, which is a summary one, and in which the periods are short and fatal, and trials rapid and preferential as the peremptory nature of the litigation so requires the proceeding must be considered as a demurrer to the evidence, presented by the protestant, with implied waiver by the protestee to present his evidence, either in the first instance or on appeal, the court of origin or appellate court having the power to definitely decide the protest. If, in the prosecution of election protests the ordinary practice were to be followed in regard to the presentation of motions for dismissal or of demurrers to the evidence, in the majority of cases, if not always, the law would be frustrated and the will of the electorate defeated, to the great detriment of the underlying principles of representative government, because, in case of revocation of a ruling sustaining the motion for dismissal or the demurrer on appeal, the case would be remanded to the court below for the continuation of the trial and the introduction of evidence by the protestee, thus causing the proceeding to continue during the term of the office in question, with the possible result that the defeated, and not the elected, candidate would be discharging the office.
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> In election protests, therefore, the protestee should not be permitted to present a motion for dismissal or a demurrer to the evidence of the protestant, unless he waives the introduction of his own evidence in case the ruling on his motion or demurrer is adverse to him, in which case the court that tries the case must definitely decide it. (Demeterio v. Lopez (1927), 50 Phil. 45, 51-52.)

The subject was also considered in civil cases beginning with the case of Moody, Aronson & Co. v. Hotel Bilbao, *supra*, where the Court announced the ruling that "The defendant who, after the plaintiff has submitted his evidence, makes a motion to dismiss which the trial court in a decision grants, and who, on appeal of the plaintiff, has the judgment reversed, cannot then be permitted to produce evidence in defense. The defendant in offering a motion to dismiss in effect elects to stand on the insufficiency of the plaintiff's case. Otherwise, the result will be to invite unnecessary litigation." The Court stated that the aim of courts should be directed at avoiding lengthy and expensive litigations by observing consistently the rules intended for the speedy disposition of cases.

The Court, however, refused to apply the principle announced in the Moody case in an action where the motion for dismissal was made on the ground of non-joinder of a party-defendant. It ruled that upon the dismissal of such motion, the defendant should be permitted to present his evidence. (Ortiz v. Balgos [1929] 54 Phil. 171.)

The principle announced in the Moody case was affirmed in Castro v. Azaola (1936), 63 Phil. 841, and the Court would had applied the procedure it had set out in the Moody case "were it not for the fact that the defendant, in formulating his motion to dismiss the complaint after the presentation of the evidence for the plaintiff, reserved for himself the right to present his evidence." But the Supreme Court declared that in cases of a similar nature as the Castro case, the trial court should had required the defendant "to present his evidence instead of acting upon his motion to dismiss so that should the Court find the decision to be erroneous, it would not have to remand the case to the court of origin for further proceedings, by virtue of the defendant's reservation, which he should not have been permitted to make, upon presenting his motion to dismiss."

Before the outbreak of World War II, the prevailing procedure on the subject was succinctly stated by our Supreme Court in Municipality of Abucay v. Abucay Plantation Co. & Green (1937), 64 Phil. 69, 74:

> It is a practice sanctioned by the jurisprudence in this jurisdiction to permit both in criminal and civil cases the presentation of motions to dismiss or demurrers to the evidence based upon the insufficiency of the evidence of the prosecution or of the plaintiff, and it has been invariably held that when the accused or the defendants do not reserve their right to adduce evidence, the courts may decide the case upon the evidence only thus submitted, and on appeal, should the evi-

> dence be sufficient to affirm the appealed decision, the case will not be remanded for a new trial to receive the evidence suppressed.

The Court also stated in this case that "the same rule applies in election cases," as was held in Demeterio v. Lopez, "except that when the protestee reserves his right to adduce his evidence, it is the duty of the court to deny the motion to dismiss and to require him to introduce his evidence in support of his defense or counterprotest if any."

Finally, the subject has been considered lately in two recent cases: Arroyo v. Azur (1946), 43 O. G., No. 1, p. 54, and People v. Mamacol, G. R. No. L-1748, prom. Sept. 29, 1948. In the Arroyo case, it appears that the defendants moved for a dismissal on the ground that the evidence was insufficient to establish the plaintiff's case, making however at the same time, a reservation of their right to adduce their evidence in case of denial. The trial court granted the motion. On appeal interposed by the plaintiff, the Supreme Court found that the lower court erred in its judgment of the evidence and consequently, it was confronted with the problem of whether it should decide the case from the facts appearing on the record or it should remand the case to the lower court to give opportunity for the defendants to present their evidence.

The Court said in the above case that the Moody and Castro cases "no admite más que una inferencia o interpretación y es que en adelate ya no se permitiría ninguna reserva, pero que si por error se permitiese, la misma ya no podría invocarse como motivo legal para que el asunto de devolviera al tribunal inferior para los efectos de la articulación de las pruebas reservadas x x x La intención de la Corte era clara, terminante y decisiva: evitar la multiplicación y la prolongación de los pleitos, cosa siempre odiosa no sólo por la perturbación y la anomalía que ocasionan en la vida y en los negocios del individuo, sino también por lo que cuestan en dinero y en energías tanto al ciudadano como al Estado."

The Supreme Court found that there was sufficient evidence on the record from which a proper judgment could be rendered and consequently, it gave plaintiff judgment in his favor. The Court justified the procedure adopted on the ground that if the case were to be remanded to the lower court for further proceedings there would be a possibility that at some future time the case would again be appealed to it. It took account of the fact that the cause of action started way back in 1932 and if the case were sent back, "probable-

mente transcura algún tiempo más, sin que el demandante vea el final de sus afanes, como, si en su caso se repitiera hasta cierto punto el suplicio de Tántalo, es decir, que cuando parece que la meta está al alcance de sus manos, ella se desvanece como un espejismo, como una ilusión engañosa de los ojos. Ciertamente un procedimiento judicial que puede dar lugar a las angustias de este tormento no se debe tolerar por más tiempo."

The Supreme Court finally announced in the Arroyo case the following principle:

> Nuestra conclusión, pues, es que la regla debe reafirmarse e implementarse con todo rigor. Cuando el demandado interpone lo que se llama **demurrer** a la suficiencia de las pruebas del demandante presentando una moción de sobreseimiento por la razón de que tales pruebas son insuficientes o ineficaces para substanciar la demanda, no tiene derecho a reservarse la presentación de sus pruebas sino que debe atenerse a las resultancias de dicho **demurrer** tanto para lo favorable como lo adverso. Si la moción prospera y la decisión fuere sostenida en apelación, el asunto termina definitivamente; pero también termina del mismo modo si la decisión fuere revocada y el Tribunal de alzada hallare que hay pruebas y motivos suficientes para dictar una sentencia en el fondo a favor del demandante. Naturalmente el efecto de todo esto es eliminar en estos casos la llamada **reserva de pruebas** obligando a las partes a que liquiden todas sus controversias en una sola vista.

In the light of the foregoing decision, the point may be raised as to whether the utility of a motion to quash or dismiss a case based on the insufficiency of evidence would be diminished. On this point, Justice Briones who delivered the opinion of the Court in the above case, said:

> Acaso se diga que esto convierte en puramente académico el **demurrer** a la suficiencia de las pruebas permitido en nuestras reglas y prácticas procesales. Entendemos que no. Porque siempre habrá casos en que la parte que opte por utilizar ese recurso confie y descanse en él enteramente, estimando superfluo el articular pruebas. Sólo que ya se sabe que bajo la regla que nos ocupa el recurso no tiene ningún valor táctico, para fines de tanteo, sino que es directo y final.

In People v. Mamacol, *supra*, the defendant who was sentenced by the lower court to *reclusion perpetua* for the killing of another Moro, assigned as an error the lower court's action "in not allowing defendant to present evidence after denying a motion for dismissal made when the prosecution rested, without reserving the right to present said evidence in the event the motion is denied." The Soli-

citor-General argued that "whether the accused reserves or fails to reserve his right to adduce evidence in making the motion to dismiss, if the action is denied, he can no longer do so, having elected to stand or fall on the evidence submitted by the prosecution, and the court should decide the case on the evidence submitted by the prosecution, and the only question to be resolved on appeal is whether such evidence is sufficient to sustain a conviction or not." The Solicitor-General, however, admitted that with or without a reservation having been made by the defense, the ordinary and commonday procedure adopted by the trial courts is that they have been and are allowing the defense to put evidence after a motion to dismiss has been denied. The Court, speaking through Justice Perfecto, held:

> We are of opinion that the procedure which has been practiced and is generally practiced in trial courts for a long number of years, is based on sound reason. There are criminal cases in which because of the insufficiency of the evidence for the prosecution, the presentation of defense's evidence will only entail waste of time. Where the motion to dismiss is denied, there is no harm to the interest of the administration of justice to allow defendant to present evidence, while to bar him to present said evidence, which might show his innocence, may lead to a miscarriage of justice. We rule that the denial of a motion to dismiss made by an accused, with or without a reservation to present his evidence, will not impair his right to present it. The substantial rights of an accused should not be impaired because of his counsel's anxiousness to have him promptly acquitted. The need of applying the rule appears to be more emphatic in a case like this where life or death or perpetual imprisonment of the accused are at stake.

In American federal courts, the denial of a motion for a directed verdict does not carry with it the waiver of trial by jury or of the right to offer evidence and the rule has been "changed to the extent that an express reservation of rights against waiver is unnecessary." (See 53 American Jurisprudence 274; Rule 50(a), Rules of Civil Procedure for the District Courts of the U.S.; I, Moran, *supra*, Appendix A, 858.) But "the making of such a motion followed by the introduction of evidence, may constitute a waiver of any right to the motion, and may be reviewed on appeal only if the motion is renewed at the close of the evidence." (53 American Jurisprudence 274.) "In a few states this right of the opponent to proceed to introduce his own evidence, after the motion refused, was formerly denied, probably on the analogy of a demurrer to evidence; but this has usually been changed by statute," (IX, Wigmore, A Treatise on the Anglo-American System of Evidence at p. 314, Footnote 2; See also I, Moran, *supra*, 518 et seq.)

It is submitted that the following are the effects of a motion to quash or dismiss a case on the ground of insufficiency of evidence presented by the prosecution or the plaintiff:

(a) When the motion is submitted to the court, the immediate effect is a request to the court to determine whether the evidence offered by the plaintiff or the prosecution is sufficient to justify further the consideration of the case. The Court examines the truth of so much of it as supports the plaintiff's case, together with all reasonable inferences, to find out if it is consistent with a right in the plaintiff to recover or to sustain a judgment against the movant. (See 53 American Jurisprudence 338 et seq.)

(b) The court weighs the evidence most strongly against the movant and considers the same most favorably from the standpoint of the plaintiff or the prosecution. (See 53 American Jurisprudence 344 et seq.)

(c) Whether or not the evidence presented is sufficient or not rests entirely within the sound discretion and judgment of the trial court. "The error, if any be committed by denial of such a motion, can only be corrected on appeal by showing that the evidence was, in fact, insufficient, and then the sentence of the lower court will be reversed for failure of evidence only." (See U.S. v. Romero and U.S. v. Choa Chiok.)

(d) It is deemed that the case is submitted for the decision of the court whenever the defendant moves for a dismissal of the case on the ground that the evidence is insufficient and the movant does not reserve his right to present evidence in case his motion is denied. (See Municipality of Abucay v. Abucay Plantation Co. & Green.)

(e) In civil actions, the court will not entertain a motion for dismissal made with a reservation to present evidence in behalf of the movant in case the motion is denied. (See Moody, Aronson & Co. v. Hotel Bilbao and Arroyo v. Azur.)

(f) In criminal cases, the court may entertain a motion for dismissal and in case the motion is denied, the accused does not lose his right to present evidence in his behalf, even if the defendant did not make a reservation of such right. (See People v. Mamacol.)

(g) In election contests, the movant is not permitted to present a motion for dismissal, unless he waives the introduction of his own evidence in case the ruling on the motion is adverse to him. (See Demeterio v. Lopez.)

(h) In case the motion is granted:

1. In a criminal case, the prosecution cannot appeal since the order of dismissal is on the merits and the defendant would be placed in double jeopardy. (See Kepner v. U.S. and U.S. v. Kilayco; also Rule 30, Sec. 4 and Rule 113, Secs. 8, 9 of the Rules of Court.)

2. In a civil action, the plaintiff may appeal. If on appeal, the appellate court sustains the order of dismissal, judgment will be rendered accordingly. On the other hand, if the appellate court is of the opinion that the ruling of the trial court on the motion should be reversed, the appellate court will act on the case without regard to any reservation made by the movant. If there are sufficient facts appearing on record from which a judgment could be rendered for plaintiff, it will render such judgment accordingly. (See Arroyo v. Azur.)

3. In election cases, the protestant may appeal. If the ruling on the motion is affirmed, the case will be decided accordingly on its merits. But if the ruling on the motion is reversed, the appellate court will decide the case on the facts appearing on the record, and it would not remand the case to the trial court even if the protestee had reserved his right to adduce his evidence. Where the "protestee reserves his right to adduce his evidence, it is the duty of the court to deny the motion to dismiss and to require him to introduce his evidence in support of his defense or counterprotest, if any." (See Demeterio v. Lopez.)

(i) In case the motion is denied and the trial court does not allow the defendant to present his evidence:

1. In a criminal case, the defendant may appeal. If the appellate court reverses the ruling on the motion of the trial court, the appellate court may reverse or modify the judgment accordingly on its merits. On the other hand, if the appellate court affirms the ruling on the motion, the case will have to be remanded to the trial court to give the accused a chance to adduce his evidence, regardless of whether or not the accused had reserved his right.

The procedure adopted herein is reasonable for the reason that the evils sought to be avoided in election contests and civil cases are not present in criminal cases, and "there is no harm to the interest of the administration of justice to allow de-

fendant to present evidence, while to bar him to present said evidence, which might show his innocence, may lead to a miscarriage of justice." (See People v. Mamacol.)

2. In a civil action, the defendant may appeal. If the trial court's ruling on the motion is affirmed, the case will be decided on its merits accordingly. But if the appellate court reverses the ruling on the motion, then it may render judgment accordingly on the facts as they appear on the record without remanding the case. (See Arroyo v. Azur.)

3. In election cases, the protestee may appeal and if the ruling on the motion is sustained or reversed, the appellate court will simply render judgment according to the facts appearing on record, without remanding the case to the court of origin. In election protests, "the protestee should not be permitted to present a motion for dismissal or a demurrer to the evidence of the protestant, unless he waives the introduction of his own evidence in case the ruling on his motion or demurrer is adverse to him, in which case the court that tries the case must definitely decide it." (See Demeterio v. Lopez.)

—L. L. R.

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