

95 Phil. 759

**[ G.R. No. L-6647. September 02, 1954 ]**

**THE PEOPLE OF THE PHILIPPINES, COMPLAINANT AND APPELLEE VS. MANUEL VIROLA AND JUANITO ALLA, ACCUSED AND APPELLANTS.**

**D E C I S I O N**

**BENGZON, J.:**

In the municipal court, City of Cabanatuan, a criminal Complaint was filed charging Manuel Virola and others with the crime of serious slander by deed. At the preliminary investigation the defendants moved to quash the case because the complaint was signed by the offended party Eugenio Reyes, but the offense was a public crime to be prosecuted by the corresponding officials. The judge up<sup>4</sup> held the contention, and dismissed the case by an order dated November 23, 1952. On appeal to the Court of First Instance, the Hon. M. M. Mejia, reversed the appealed order and "remanded the case to the court of origin for further proceedings."

From this reversal, the appellants took exception and brought the matter to this Supreme Court, contending that the lower court erred: (1) in not dismissing the case for lack of personality of the private prosecutor (2) in not declaring the complaint invalid and (3) in deciding that the Fiscal in effect adopted the complaint when he appeared in court on the side of the complainant.

We find this appeal to be premature. It is practically appealing an order of the Court of First Instance that overrules defendant's motion to quash the information. We recently held that such appeal is too early to be entertained here:

“In March 1953 the defendant submitted a motion to quash both cases, contending that the assistant provincial fiscal had no authority to formulate the charges, nor to hold the preliminary investigation.

“Denial of such motion, cause the instant appeal, which we find to be premature, inasmuch as the order overruling the motion was not appealable.

‘SECTION 1. *Appeal*.—From all final judgments of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Court of Appeals or to the Supreme Court as hereinafter prescribed.’ (Rule 118 sec. 1).

‘Under section 1, in order that a judgment may be appealed from, it is necessary that it be final in the sense that it completely disposes of the cause, so that no further question affecting the merits remain for adjudication. An order overruling a motion to dismiss presented by the defendant against the information does not dispose of the cause upon its merits and is thus merely interlocutory and not a final order within the meaning of the above section. But an order sustaining a motion to dismiss is appealable for it leaves nothing to be done in the trial court.’ (Moran Rules of Court [1952 Ed.] Vol. 2 p. 880, citing *Fuster v. Johnson*, 1 Phil., 670.)

“And in line with the above view, the Rules specifically direct that if defendant moves to quash before pleading, and the motion is overruled, “he shall immediately plead”; (sec. 1 Rule 113) which means, obviously, that trial shall go on. As stated in *Collins vs. Wolfe*, 4 Phil., 534, the appellant Domingo Manuel, after the denial of his motion, “should have proceeded with the trial of the causes in the court below, and if final judgment is rendered against him he can then appeal, and upon such appeal present the question which he is now seeking to have

decided" (1)" (a).

What herein appellants should do is to defend themselves as best they can, in the courts below, without waiving the point they have raised and *if convicted*, they may appeal and then discuss the questions they are now submitting beforehand.

Appeal dismissed, with costs. So ordered.

*Paras, C.J., Pablo, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion and Reyes, J.B L., JJ., concur.*

---

Date created: July 26, 2017