

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO BERIALES, BENEDICTO CUSTODIO AND PABLITO CUSTODIO, ACCUSED-APPELLANTS.

G.R. No. L-39962. March 03, 1977

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

The Court's attention has been called to the fact that the decision in this case has been interpreted in prosecution circles in such manner as may cause the obstruction of the administration of justice. Hence, a clarification and a restatement of some of the principles therein involved are in order.

In this case, which involved a prosecution in the Court of First Instance, the Court ruled, *inter alia*, that the fiscal's duty to direct and control the prosecution of criminal cases requires that he must be present during the proceedings; and that evidence presented by the private prosecutor at a hearing, at which neither the fiscal nor his assistant or duly authorized special counsel was officially present, cannot be considered as evidence for the People of the Philippines. This pronouncement, as can be clearly deduced therefrom, applies to the trial and prosecution of criminal cases before the Courts of First Instance, Criminal Circuit Courts, and City Courts (which are provided by law with their own City Fiscals) only, and not to the municipal courts.

The procedure in the trial of criminal cases before the municipal courts and City Courts which do not have their own City Fiscals has not in any way been altered or modified by the pronouncement in this case. Under Sec. 2, Rule 110[1] of the Revised Rules of Court, and in the light of the ruling in the cases of *P. P. I. vs. Alvarez* and *P. P. I. vs. Perez, et al.*, [2] police, constabulary, and other peace or law enforcement officers and private prosecutors may prosecute criminal cases in the said courts, but this authority ceases upon actual intervention of the provincial or City Fiscal or their assistants, or upon the elevation of the case to the Court of First Instance.

Fernando, (Chairman), and Antonio, JJ., concur.

Barredo, J., would like to add that there is no prohibition against the offended party undertaking prosecution of the case.

Aquino, J., Concur. It should be noted that the rule in sec. 4, Rule 110 that "all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal" was taken from *U.S. vs. Despabiladeras*, 32 Phil. 442, an adultery case prosecuted in the Court of First Instance, Rule 123 prescribes the procedure in inferior courts. Section 4 of Rule 110 might have been based on the assumption that criminal cases tried in inferior courts are appealable to the Court of First Instance, where a trial *de novo* is held and where the fiscal shall take charge of the cause in behalf of the prosecution (Secs. 6 and 7, Rule 123).

[1] Sec. 2. Complaint defined. Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated.

[2] 74 Phil. 20

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