

**LIM TEK GOAN, PETITIONER, VS. HONORABLE NICASIO YATCO,
PRESIDING JUDGE, COURT OF FIRST INSTANCE OF LAGUNA,
RESPONDENT.**

G.R. No. L-6286. December 29, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

In a case for grave threats instituted against Co Peng alias Tony Tan, et al., in the Court of First Instance of Laguna, presided over by respondent Judge, (Criminal Case No. 15664), petitioner herein put in his appearance as one of the offended parties.

The accused was arraigned on August 7, 1952 and the case set for hearing on September 19, 1952. On the latter date, after the first witness for the prosecution has testified, counsel for private prosecution moved for the postponement of the trial on the ground that their next witness was sick and unable to come to court. This motion was granted and the trial was postponed to October 17, 1952, this time to be held at Calamba, Laguna. When this date came, the private prosecution, through counsel, presented an urgent motion for continuance of the trial, which was granted with the conformity of the defense, the court setting it on November 13, 1952.

On said date, November 13, counsel for private prosecution, instead of going to trial, again filed a motion for postponement, this time seeking to transfer the case to the San Pablo branch alleging as reasons that his witnesses were all residents of San Pablo City and it would be to their convenience, as well as of the defendants, who were likewise residing in the same place, that the trial be continued there. This motion was objected to not only by the defense but also by Fiscal David Carreon who argued that he saw no reason for the transfer in view of the fact that the case had already been partially tried at the Calamba branch. In the course of the argument that ensued, counsel for the accused intervened and joined Fiscal David Carreon in his opposition to the transfer making the observation in passing that since the private prosecutor was acting under the direction and control of the fiscal and the latter had registered his objection, he found no reason for him to insist on his petition more so when his appearance in this case was not as a matter of right but merely by tolerance on the part of the court.

This observation came as a surprise to the counsel for private prosecution who then and there asked the court for a ruling as to whether his appearance in the case was a matter of right or a matter of tolerance as insinuated, intimating that if this should be resolved against him he would bring the matter to the Supreme Court for a definite ruling. Forthwith, the court ruled that in cases of this nature which do not involve any civil liability the appearance of a private prosecutor cannot be considered as a matter of right and if allowed it would only be upon tolerance of the court and of the parties. This conclusion notwithstanding, the court noted that counsel for the private prosecution cannot claim any prejudice on his part for he could continue appearing as such by tolerance of the court until after the final termination of the case. Not satisfied with this ruling, counsel interposed the present petition for certiorari.

The issue before us is whether in the prosecution of a criminal case commenced either by complaint or by

information an offended party may intervene, personally or by attorney, as a matter of right as claimed by petitioner, or upon mere tolerance, as ruled by respondent judge. The law on this point is clear. Section 4, Rule 106, provides that "all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal", and, as a corollary, it is also provided that "unless the offended party has waived the civil action or expressly reserved the right to institute it after the termination of the criminal case, * * * he may intervene, personally or by attorney, in the prosecution of the offense." (Section 15, Rule 106.) From these provisions we can clearly infer that while criminal actions as a rule are prosecuted under the direction and control of the fiscal, however, an offended party may intervene in the proceeding, personally or by attorney, specially in cases of offenses which cannot be prosecuted except at the instance of the offended party. (People vs. Dizon, 44 Phil., 267; Herrero vs. Diaz, 75 Phil., 489.) The only exception to this rule is when the offended party waives his right to civil action or expressly reserves his right to institute it after the termination of the case, in which case he loses his right to intervene upon the theory that he is deemed to have lost his interest in its prosecution. (People vs. Velez, 77 Phil., 1026, 44 Off. Gaz., [6], 1811; People vs. Capistrano, 90 Phil., 823.) And in any event, whether an offended party intervenes in the prosecution of a criminal action, his intervention must always be subject to the direction and control of the prosecuting official (*Idem.*).

Considering the foregoing observations, it is apparent that the ruling of respondent judge that in cases like the one under consideration which do not involve any civil liability an offended party can only appear upon tolerance on the part of the court is not well taken it being contrary to the law and precedents obtaining in this jurisdiction. In this respect, the law makes no distinction between cases that are public in nature and those that can only be prosecuted at the instance of the offended party. In either case the law gives to the offended party the right to intervene, personally or by counsel, and he is deprived of such right only when he waives the civil action or reserves his right to institute one. Such is not the situation in the present case. The case at bar involves a public crime and the private prosecution has asserted its right to intervene in the proceedings. The respondent judge, therefore, erred in considering the appearance of counsel merely as a matter of tolerance.

We believe, however, that the incident at bar is not of such a character as to give rise to a petition for certiorari for it does not involve grave abuse of discretion. While the ruling of the judge is erroneous, he has however caused no prejudice to counsel since he has expressly manifested in his order that he could continue representing the interest of his client. The action of the judge may at most be considered an error of judgment which can be remedied by appeal. We find therefore no reason for granting the relief now urged by counsel in his petition for certiorari.

Wherefore, the petition is denied, without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo and Labrador, JJ., concur.

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