

EUGENIO CABRAL, PETITIONER, VS. HON. BENIGNO M. PUNO, JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, PROVINCIAL FISCAL OF BULACAN, AND SILVINO SAN DIEGO, RESPONDENTS.

G.R. No. L-41692. April 30, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

Certiorari and prohibition to nullify the Order of respondent Judge dated May 21, 1975, reviving the Information in Criminal Case No. B-537-74 of the Court of First Instance of Bulacan, Baliwag Branch, and to prohibit said court from conducting further proceedings on the case.

On the complaint of private respondent Silvino San Diego, the Provincial Fiscal filed an Information on September 24, 1974 with respondent court, accusing petitioner Eugenio Cabral of the crime of Falsification of Public Document for allegedly falsifying on August 14, 1948 the signature of Silvino San Diego in a deed of sale of a parcel of land. Before arraignment, petitioner moved to quash the Information on the ground of prescription of the crime charged, as the said document of sale of lot No. 378-C was notarized on August 14, 1948, registered with the Register of Deeds of Bulacan on August 26, 1948 and as a consequence the original certificate of title was cancelled and a new transfer certificate of title issued, and since then Eugenio Cabral had publicly and continuously possessed said property and exercised acts of ownership thereon, which facts are apparently admitted in the letter of San Diego's lawyer to Cabral on September 17, 1953. After hearing said motion, Judge Juan F. Echiverri, in a Resolution dated March 25, 1975, granted the motion to quash and dismissed the Information on the ground of prescription. The order of dismissal was predicated upon said court's finding that the factual averments contained in the motion to quash were supported by the evidence. Private prosecutor, who was not present during the hearing of the motion to quash, filed a motion dated April 8, 1975, for the reconsideration of said Resolution. This was opposed by petitioner on the ground that San Diego can no longer intervene in the criminal case, having filed a civil action in April 1974 against the same accused (Eugenio Cabral) on the basis of the same factual averments contained in the criminal Information. Acting on the motion for reconsideration, respondent Judge Benigno M. Puno, now presiding, ordered on May 12, 1975 the Fiscal to "make known his position to the Court." In compliance with said Order, the Fiscal submitted his comment dated May 19, 1975, expressing the view that the crime has not prescribed as Silvino San Diego, stated that he only discovered the crime sometime in October 1970, and "* * * that, in the interest of justice, arraignment and trial is proper to ventilate the respective evidence of both parties in their total meaning and import in determining once and for all the direction and thrust of these evidence of both parties."

Two (2) days later on, or on May 21, 1975, respondent Judge set aside the Resolution of March 25, 1975, and reinstated the Information. Petitioner moved for reconsideration of the Order on the ground that (a) "the judgment of acquittal which became final immediately upon promulgation and could not, therefore, be recalled for correction or amendment"; and (b) by instituting Civil Case No. 120-V-74, respondent San Diego lost his right to intervene in the prosecution of the criminal case. This motion was denied, as well as the second motion for

reconsideration, hence this petition, raising the issue of whether or not the trial court had jurisdiction to set aside its Resolution of March 25, 1975.

The issue being purely legal and considering that the matter has been amply discussed in the pleadings,[1] this case was deemed submitted for decision without need of memoranda.

The Solicitor General was required to appear in this case, and he recommends giving due course to the petition and the reversal of the challenged order. According to the Solicitor General, the Resolution of March 25, 1975 dismissing the Information on the ground of prescription of the crime became a bar to another charge of falsification, including the revival of the Information. This is more so, because said Resolution had already become final and executory, inasmuch as the Fiscal neither sought its reconsideration nor appealed therefrom within the reglementary period of fifteen (15) days after his receipt of a copy thereof on March 31, 1975. When the Fiscal moved to reinstate the case on May 21, 1975, or about two (2) months from receipt of a copy of the order of dismissal, the same had already long been final.

We agree with the Solicitor General. The Rules of Court is explicit that an order sustaining a motion to quash based on prescription is a bar to another prosecution for the same offense.[2] Article 89 of the Revised Penal Code also provides that "prescription of the crime" is one of the grounds for "total extinction of criminal" liability." Petitioner was charged with the crime of falsification under Article 172, sub-paragraphs (1) and (2) of the Revised Penal Code, which carries an imposable penalty of prision correccional in its medium and maximum periods and a fine of not more than P5,000.00. This crime prescribes in ten (10) years.[3] Here, San Diego had actual if not constructive notice of the alleged forgery after the document was registered in the Register of Deeds on August 26, 1948.

In *Pangan v. Pasicolan*,[4] where the trial court set aside its own order dismissing the criminal case nine (9) months thereafter, this Court held that the order was null and void for want of jurisdiction, as the first order had already become final and executory.

"Petition for certiorari to set aside the order of the Court of First Instance of Pampanga setting aside its order of September 10, 1956 dismissing the case against petitioners nine months thereafter, or on June 11, 1957. The issue is whether or not the court had jurisdiction to enter that order. While the court may find it necessary to hear the views of a private prosecutor before acting on a motion to dismiss filed by the fiscal, it does not follow that it can set aside its order dismissing the case even if the same has already become final. There is no law which requires notice to a private prosecutor, because under the rules all criminal actions are prosecuted 'under the direction and control of the fiscal' (Section 4, Rule 106). It appearing that the order in question was already final, the court acted without jurisdiction in issuing the subsequent order."

And likewise, in *People v. Sanchez*,[5] it was held that "a judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, * * *. Under the circumstances, the sentence having become final, no court, not even this high Tribunal, can modify it even if erroneous * * *". We hold that these rulings are applicable to the case at bar.

While it is true that the offended party, Silvino San Diego, through the private prosecutor, filed a motion for reconsideration within the reglementary fifteen-day period, such move did not stop the running of the period for appeal. He did not have the legal personality to appeal or file the motion for reconsideration on his behalf. The prosecution in a criminal case through the private prosecutor is under the direction and control of the Fiscal, and only the motion for reconsideration or appeal filed by the Fiscal could have interrupted the period for appeal.[6]

"The right of the offended party to appeal is recognized under the old Code of Criminal Procedure. Under Section 4 of Rule 110 which provides that the prosecution shall be 'under the direction and control of the fiscal'

without the limitation imposed by section 107 of General Order No. 58 subjecting the direction of the prosecution to the right 'of the person injured to appeal from any decision of the court denying him a legal right', said right to appeal by an offended party from an order of dismissal is no longer recognized in the offended party. * * * (U)nder the new Rules of Court, the fiscal has the direction and control of the prosecution, without being subject to the right of intervention on the part of the offended party. To permit an offended party to appeal from an order dismissing a criminal case upon petition of the fiscal would be tantamount to giving said party as much right to the direction and control of a criminal proceeding as that of the fiscal." [7]

More important, he lost his right to intervene in the criminal case. Prior to the filing of the criminal case on September 24, 1974, the spouses Silvino San Diego and Eugenia Alcantara, on the basis of the same allegations that San Diego's signature on the deed of August 14, 1948 was a forgery, filed on May 2, 1974 an action against Eugenio Cabral and Sabina Silvestre, with the Bulacan Court of First Instance (Civil Case No. 120-V-74) for the recovery of the same property and damages. It appearing, therefore, from the record that at the time the order of dismissal was issued there was a pending civil action arising out of the same alleged forged document filed by the offended party against the same defendant, the offended party has no right to intervene in the prosecution of the criminal case, and consequently cannot ask for the reconsideration of the order of dismissal, or appeal from said order. [8]

WHEREFORE, the petition is hereby granted, and the Orders of May 21, 1975, August 4, 1975 and September 3, 1975, of respondent Judge are hereby set aside. No pronouncement as to costs.

Fernando, Acting C.J., Barredo, (Acting Chairman), Aquino, and Concepcion, Jr., JJ., concur.

[1] Comments of Respondents were considered their answer to the petition.

[2] Secs. 2(f) and 8, Rule 117, Revised Rules of Court.

[3] Article 90, Revised Penal Code.

[4] 103 Phil. 1143.

[5] 101 Phil. 745, 748.

[6] See *People v. Atoza*, 100 Phil. 533; *People v. Velez*, 77 Phil. 1026; *Ricafort v. Fernan*, 101 Phil. 575; *People v. Florendo*, 77 Phil. 16; *People v. de Moll*, 68 Phil. 626.

[7] Francisco, Revised Rules of Court, Criminal Procedure, Second Edition, 1969, p. 904.

[8] *People v. Velez*, supra; *People v. Capistrano*, 90 Phil. 823.

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