

PABLO ESPANOLA, PETITIONER, VS. VICENTE T. SINGSON, ET AL., RESPONDENTS.

G.R. No. L-8724. April 13, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petitioner Pablo Espanola is the offended party in two criminal cases pending in the justice of the peace court of Aritao, Nueva Vizcaya, Nos. 120 and 121, for less serious physical injuries and oral defamation, respectively. The accused in said criminal cases are the municipal mayor, a councilor and some policemen of the town. When these two criminal cases were called for trial before the Justice of the Peace, respondent Vicente T. Singson, the accused challenged the right of counsel for petitioner to appear in the trial, alleging that petitioner had expressly reserved his right to present an independent civil action for damages arising from the offenses charged. Respondent Justice of the Peace sustained the objection of the accused, and upon denial by him of a motion for reconsideration, the petitioner instituted the present action for certiorari to annul the order of the respondent Justice of the Peace denying him the right to appear by counsel in the said criminal cases.

The petition must be denied following our recent decision in the case of Gorospe, et al. vs. Gatmaitan, et al., *supra*, p. 600, where we said through Mr. Justice Bautista:

"It therefore appears from the foregoing that an offended party loses his right to intervene in the prosecution of a criminal case, not only when he has waived the civil action or expressly reserved his right to institute it, but also when he has actually instituted the civil action even if he has not made the waiver or reservation above adverted to. This ruling is further strengthened by article 83 of the new Civil Code which provides that 'In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party', and that such action may proceed independently of the criminal and for its determination preponderance of evidence would suffice. The present case comes within the purview of this provision."

The petition is hereby denied, with costs against the petitioner.

Parás, C. J., Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

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