

OTILLO R. GOROSPE AND VITALIANO GOROSPE, PETITIONERS, VS. MAGNO S. GATMAITAN, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, CEFERINA SAMU, FRANCISCO DE LA FUENTE, ET AL., R...

G.R. No. L-9609. March 09, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari which seeks to set aside an order of respondent judge rendered, on August 2, 1955 in criminal case No. 29736 entitled People of the Philippines vs. Cef erina Samu, et al., pending in the Court of First Instance of Manila, granting the motion of defendants to disqualify the, counsel for the private 'prosecution to intervene in behalf of the offended party.

On October 6, 1954, petitioners filed an action in the Court of First Instance of Pangasinan against respondents Ceferina Samu, Ester Campus alias Rosa Lopez, Carmelita de la Cruz alias Josefina Dizon, and the General Indemnity Co., Inc., to annul certain contracts entered into by the latter and to recover the damages they suffered as a consequence thereof. Upon the initiative of petitioners, an action for estafa through falsification of a private document was filed in the Court of First Instance of Manila against the same respondents, with the exception of the insurance company, who, upon arraignment, pleaded not guilty to the charge.

Ester Campus filed a petition in the criminal case praying that the counsel for the offended parties be prevented from intervening on the ground that the latter have already filed a civil action for the annulment of the same documents involved in the criminal case and for the recovery of damages resulting therefrom, and as such they have no right nor authority to assist the fiscal, in the prosecution of the case. The trial court found the petition meritorious and disauthorized the private prosecutor to intervene in behalf of the oil ended parties. A motion to reconsider the order was filed which was denied in an order entered on August 2, 1955. To set aside this order, the present petition for certiorari has been interposed.

It appears that, upon the instance of petitioners, an action for estafa through falsification of a private document was filed by the city fiscal of Manila against respondents Ceferina Samu, Ester Campus, Carmelita de la Cruz and Francisco de la Fuente who, upon arraignment, pleaded not guilty to the charge. It likewise appears that before the institution of the criminal case petitioners filed an action against the same respondents for annulment of the same documents involved in the criminal case for damages resulting from their execution. The attorneys for the offended parties entered their appearance in the criminal case but, upon petition of respondent Ester Campus, they were prevented from doing so on the ground that, the offended parties having already instituted a civil action, they have no right nor authority to be represented in the criminal case. Has respondent judge abused his discretion in issuing the order of disqualification?

Section 15, Rule 106 provides 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." The wording of the law is clear. It states that an offended party may intervene, personally or by attorney, in the prosecution of the offense if he has not waived the civil action or expressly reserved his right to institute it. The reason of the law in not permitting the offended party to intervene in the prosecution of the offense if he has waived or reserved his right to institute the civil action is that by such action his interest in the criminal case has disappeared. Its prosecution becomes the sole function of the public prosecutor. This is our ruling in the decisions hitherto rendered in this jurisdiction interpreting the above provision of our rules of court.

In *People vs. Maceda*, 73 Phil., 676, this court said that "the offended party may, as of right, intervene in the prosecution of a criminal action, but then only when, from the nature of the offense, he is entitled to indemnity and his action therefor has not by him been waived or expressly reserved." (*Italics supplied.*) The same ruling was reiterated in *People vs. Velez*, 77 Phil., 1026 and *People vs. Capistrano*, 90 Phil., 823. In the former case, we said, "The reason of the law in not permitting the offended party to intervene in the prosecution of a criminal case if he has waived his right to institute a civil action arising from the criminal act, or has reserved or, a fortiori, already instituted the said civil action, is that he has no special interest in the prosecution of the criminal action." (*Italics supplied.*) And in another case we likewise said that since the offended party has already filed a civil action arising from the criminal act, "he has no right to intervene in the prosecution of the case" (*People vs. Olavides*, 80 Phil., 280; 45 Off. Gaz., 3834).

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 33 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.

Petition is denied,, with costs against petitioners.

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

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