

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. BENJAMIN LIGGAYU, ET AL., DEFENDANTS. ROY FRANCO, DEFENDANT AND APPELLEE, LEONCIO DYOGI, ET AL., COMPLAINANTS AND APPELLANTS.

G.R. No. L-8224. October 31, 1955

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal by the offended parties from an order of dismissal of the case as against one of the accused, Roy Franco.

The record discloses that the first complaint filed by a member of the police force in the Justice of the Peace Court of Caloocan, Rizal charged Benjamin Liggayu y Sion with homicide through reckless imprudence for having run over and caused the death of one Teresita Young de Dyogi. Two weeks after the presentation of this complaint Leoncio Dyogi, husband of the deceased, and his nine children filed another complaint charging not only Liggayu but also Roy Franco. The inclusion of Roy Franco as an accused was supported by the allegation that after the car driven by Liggayu had run over Teresita Young, Liggayu stopped the car and ordered his coaccused Franco to drive it forward, and Franco did so in such a negligent manner that the other wheel of the car hit Teresita Young and aggravated her injuries. The justice of the peace of Caloocan, after a preliminary investigation, remanded the case to the Court of First Instance for further proceedings. When the case reached the Court of First Instance, the fiscal filed a motion to dismiss the case as against the accused Roy Franco. The motion is worded as follows:

"On investigation of this case preparatory to the filing of the information, the undersigned believes that the accused Roy Franco has no criminal responsibility in the death of Teresita Young de Dyogi. The accused Benjamin Liggayu y Sion admitted being solely responsible for the incident and the undersigned believes he is. It appears from the evidence that at the time the deceased was run over the accused Benjamin Liggayu was on the wheel."

The court granted the motion and dismissed the case as against Roy Franco and the bond filed by him for his provisional release was cancelled. At the same time that the motion for dismissal was filed, the fiscal filed an information accusing Benjamin Liggayu alone. The offended parties, husband and children of the deceased, have appealed against the order of dismissal, alleging (1) that they were not notified of the hearing conducted by the provincial fiscal or of the motion for dismissal, and (2) that the court erred in not holding that a prima facie case exists against Roy Franco, and in dismissing the case against him.

The argument supporting the first alleged error assigned by the appellant is based on the cases of *Gonzales vs. Court of First Instance of Bulacan*, 63 Phil., 846 and *People vs. Bataller*, 66 Phil., 422, to the effect that an offended party has the right to be heard at all stages of the case and can appeal from any decision denying that right. The basis of the right is section 107 of the Code of Criminal Procedure, which provides:

"Sec. 107. The privileges now secured by law to the person claiming to be injured by the commission of an

offense to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same shall not be held to be abridged by the provisions of this order; but such person may appear and shall be heard either individually or by attorney at all stages of the case, and the court upon conviction of the accused may enter judgment against him for the damages occasioned by his wrongful act. It shall, however, be the duty of the promotor fiscal to direct the prosecution, subject to the right of the person injured to appeal from any decision of the court denying him a legal right."

The above provision is not carried in the revised Rules of Court. On the other hand, the new Rules contain the following provisions:

"SEC. 4. Who must prosecute criminal actions.—All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal." (Rule 106)

"Sec. 15. Intervention of the offended party in criminal action.— Unless the offended party has waived the civil action or expressly reserved the right to institute it after the termination of the criminal case, and subject to the provisions of section 4 hereof, he may intervene, personally or by attorney, in the prosecution of the offense." (Id.)

There is no room for doubt that while General Orders No. 58 was in force, it was the right of the offended party to be notified of the proceedings, including those on a motion of dismissal as to one of the accused. To this effect are decisions of this Court in cases brought before the new Rules took effect, like the case of *People vs. Bataller*, *supra*.

The situation seems to have been changed, however, because of the clear change in the law. The right to appeal from an order of dismissal granted by the court on motion of the fiscal may now be challenged under the theory that the right of an offended party to intervene is subject to the fiscal's right of control. 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. Granting that the right of appeal is recognized under the old law (Sec. 107, Gen. Orders No. 58), it would seem that under the new law, especially section 4 of Rule 106 which provides that the prosecution shall be "under the direction and control of the fiscal," without the limitation imposed by section 107 of General Orders 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 should no longer be recognized in the offended party. Under General Orders No. 58, the fiscal was merely to direct the prosecution and this direction is subject to the right of the offended party; under 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. Even under the old Code of Criminal Procedure (Gen. Orders No. 58) this Court has held that if the criminal action is dismissed by the court on motion of the provincial fiscal upon the ground of insufficiency of the evidence, the offended party has no right to appeal, his remedy being a separate civil action if the proper reservation is made therefor. (*People vs. Joaquin Lipana*, 72 Phil. 166.) To the same effect is the case of *People vs. Florendo*, 73 Phil., 679, decided under the new Rules of Court, wherein we said:

"It is thus evident, in the light of the history of the enactment of section 107 of General Orders No. 58, as reflected in the observations of one of its framers and the explanatory decisions of this Court, 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. This is the rule we have now embodied in section 15 of Rule 106 of the new Rules of Court, elsewhere quoted. But, as expressly provided in this same section, this right of intervention in appropriate cases is subject to the provision of section 4 of the same Rule which reads as follows:

" 'All criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of the fiscal.'

As a necessary corollary to this provision, we laid down the principle that even if the offense is one where civil indemnity might rightly be claimed, if the criminal action is dismissed by the court, on motion of the fiscal, on the ground of insufficiency of the evidence, the offended party cannot appeal from the order of dismissal because otherwise the prosecution of the offense would, in the last analysis, be thrown beyond the direction and control of the fiscal. (Gonzales vs. Court of First Instance of Bulacan, *supra*; People vs. Orais, *supra*; People vs. Moll, 40 Off. Gaz., 2d Supp., p. 231; People vs. Lipana, 40 Off. Gaz., 3456.) In the cases cited, statements were, however, made by this Court importing a grant of right to the offended party to appeal upon a question of law. We reaffirm these statements as a correct qualification of the rule, it being understood, however, that such right to appeal upon a question of law presupposes the existence of a rightful claim to civil indemnity and the offended party has neither waived nor reserved expressly his action therefor."

In a post-liberation case decided by us, with the concurrence of three of the present members of the Court, Justices Paras, Bengzon and Padilla and that of Chief Justice Moran, Justice Feria held:

"Besides, even if the offended party has not instituted a separate civil action nor reserved his right to do so, and has intervened in the prosecution of the criminal action, as his intervention is subject to the direction and control of the fiscal, that is, the provincial fiscal or the Solicitor General, the latter in the exercise of his authority to control the prosecution has the right to move for the dismissal of the appeal interposed by the offended party, if such dismissal would not affect the right of the offended party to civil indemnity. And in the present case the dismissal of the information or the criminal action does not affect the right of the offended party to institute or continue the civil action already instituted arising from the offense, because such dismissal or extinction of the penal action does not carry with it the extinction of the civil one under section 1 (d), Rule 107, Rules of Court, * * *." (People vs. Veles, 77 Phil., 1026, 1028.)

Although the above-mentioned portion of the decision seems to be only an additional ground for the judgment, not the ratio decidendi and, therefore, merely an obiter, it reflects the opinion that from the adoption of section 4 of Rule 106, granting the fiscal "the direction and control of prosecution," the right to appeal from an order of dismissal based on the motion of the fiscal, should be denied to the offended party, because such right of appeal will curtail or limit the control that the fiscal exercises over the prosecution of a criminal case, which control is now free from the old limitation contained in section 107 of General Orders No: 58.

Let us now apply the principles adopted in the various decision cited above. The reason stated in the motion for dismissal is that the fiscal was satisfied from the statement of the accused Benjamin Liggayu that the latter alone was responsible for the crime. There may have been statements contained in the affidavits of witnesses presented at the preliminary investigation to the effect that accused Roy Franco was responsible in part for the offense in that he supposedly was asked by Liggayu to drive the car after it had already run and passed over the body of the deceased. Evidently, the fiscal refused to believe these statements and preferred to believe the frank confession of Liggayu that it was he alone who drove the car. If the fiscal must have control of the prosecution of a criminal case, he must have the ultimate power to decide which as between two conflicting testimonies should be believed, otherwise said control would be subject to interference or dictation from the offended party.

However, appellants' objection is not directed against the unreasonableness of the fiscal's decision or opinion on the evidence, but against the supposed absence of notice to the offended party of the motion for dismissal, a technical unsubstantial objection. As the fiscal made an actual investigation and, thereafter, decided that there was no sufficient evidence against Roy Franco, notification of his motion to dismiss to the offended party would have served no purpose and would be mere idle ceremony, as the fiscal is supposed to have direct control. The decision of the fiscal that the evidence against the other accused is insufficient is not appealable, under the doctrines

pointed out in the cases of *People vs. Lipana* and *People vs. Florendo*, supra, as inconsistent with the fiscal's control of the criminal action.

The appeal is hereby dismissed, with costs against the appellants. So ordered.

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

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