

JORGE P. TAN, JR., CESAR TAN, LIBRADO SODE, TEOFANIS BONJOC, OSMUNDO TOLENTINO AND MARIANO BARTIDO, PETITIONERS, VS. JUDGE PEDRO GALLARDO, IN HIS CAPACITY AS PRESIDING JUDGE OF ...*G.R. Nos. L-41213-14. October 05, 1976*

Ponente: ANTONIO, J.

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In this Special Civil Action for Certiorari with Prohibition, petitioners seek the annulment of respondent Judge's Orders in Criminal Cases Nos. CCC-XIII-50-L-S'72 and CCC-XIII-51-L-S'72,[1] to wit: (a) Order of July 21, 1975, denying petitioners' motion for respondent Judge to disqualify or to inhibit himself from hearing and acting upon their Motion for New Trial and/or Reconsideration and Supplemental Motion for New Trial; (b) Order of July 23, 1975, denying petitioners' Motion for New Trial and/or Reconsideration and Supplemental Motion for New Trial; and (c) Order of July 25, 1975, ordering the transfer of the accused (petitioners herein) from Camp Bumpus, PC headquarters, Tacloban City, to the National Penitentiary, New Bilibid Prisons, Muntinlupa, Rizal. It is likewise sought, by way of prohibition, to compel respondent Judge to desist from further proceeding with the afore-mentioned criminal cases.

By Resolution of this Court dated August 27, 1975, the respondent Judge was required to file his answer within ten (10) days from notice, and in connection therewith, a temporary restraining order was issued to enjoin the respondent from further proceeding with the afore-mentioned criminal cases. The petition was subsequently amended to include the People of the Philippines and thereafter, on January 14, 1976, the Solicitor General, on behalf of the People of the Philippines, submitted his Comment to the petition. The Solicitor General informed this Court, thus: that they are "persuaded that there are bases for stating that the rendition of respondent Judge's decision and his resolution on the motion for new trial were not free from suspicion of bias and prejudice * * *. Considering the circumstances of the instant case, the seriousness of the charges and counter-charges and the nature of the evidence on hand to support them, we feel that respondent Judge 'appeared to have been heedless of the oft-reiterated admonition addressed to trial judges to avoid even the impression of the guilt or innocence of the accused being dependent on prejudice or prejudgment'" and, therefore, it was the submission of said official "that the case should be remanded to the trial court for the rendition of a new decision and with instruction to receive additional evidence proffered by the accused with the right of the prosecution to present rebuttal evidence as may be warranted" and, therefore, they interpose no objection to the remand of the afore-mentioned criminal cases "for the rendition of a new decision by another trial judge, after the parties shall have adduced such additional evidence as they may wish to make, under such terms and conditions as this Honorable Court may deem fit to impose." [2]

On January 30, 1976, private prosecutors submitted their Comment in justification of the challenged Orders of the respondent Judge and objected to the remand of this case.

On February 12, 1976, the petitioners moved to strike out the "Motion to Admit Attached Comment" and the "Comment" of the private prosecutor on the ground that the latter has "absolutely no standing in the instant proceedings before this Honorable Court and, hence, without any personal-ity to have any paper of his entertained by this Tribunal * * *".

The private prosecutors now contend that they are entitled to appear before this Court, to take part in the proceedings, and to adopt a position in contravention to that of the Solicitor General.

The issue before Us is whether or not the private pro-secutors have the right to intervene independently of the Solicitor General and to adopt a stand inconsistent with that of the latter in the present proceedings.

There are important reasons which support the view that in the present proceedings, the private prosecutors cannot intervene independently of and take a position in-consistent with that of the Solicitor General.

To begin with, it will be noted that the participation of the private prosecution in the instant case was delimited by this Court in its Resolution of October 1, 1975, thus: "to collaborate with the Solicitor General in the preparation of the Answer and pleadings that may be required by this Court." To collaborate means to cooperate with and to as-sist the Solicitor General. It was never intended that the private prosecutors could adopt a stand independent of or in contravention of the position taken by the Solicitor General.

There is no question that since a criminal offense is an outrage to the sovereignty of the State, it is but natural that the representatives of the State should direct and control the prosecution. As stressed in *Suarez v. Platon et al.*,^[3] the prosecuting officer "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor --- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Thus, it was stressed in *People v. Esquivel, et al.*,^[4] that there is an absolute necessity for prosecuting attorneys to lay "before the court the pertinent facts at their disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in their evidence, to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished. Obvious to all, this is the prosecution's prime duty to the court, to the accused, and to the state." It is for the purpose of realizing the afore-mentioned objectives that the prosecution of offenses is placed under the direction, control, and responsibility of the prosecuting officer.

The role of the private prosecutors, upon the other hand, is to represent the offended party with respect to the civil action for the recovery of the civil liability arising from the offense. This civil action is deemed instituted with the criminal action, unless the offended party either expressly waives the civil action or reserves to institute it separately.^[5] Thus, "an offended party may intervene in the proceedings, personally or by attorney, spe-cially in case of offenses which can not be prosecuted except at the instance of the offended party.^[6] The only exception to this 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 lost his right to intervene upon the theory that he is deemed to have lost his interest in its prosecution.^[7] 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."^[8] As explained in *Herrero v. Diaz*, *supra*, the "intervention of the offended party or his attor-ney is authorized by sections 15 of Rule 106 of the Rules of Court, subject to the provisions of section 4 of the same

Rule that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the Fiscal." (*Italics supplied.*)

Therefore, although the private prosecutors may be permitted to intervene, they are not in control of the case, and their interests are subordinate to those of the People of the Philippines represented by the Fiscal.[9] The right which the procedural law reserves to the injured party is that of intervening in the prosecution for the sole purpose of enforcing the civil liability for the criminal action and not of demanding punishment of the accused.[10] As explained in *People v. Orais*: [11]

""* * * the position occupied by the offended party is subordinate to that of the promotor fiscal because, as the promotor fiscal alone is authorized to represent the public prosecution, or the People of the Philippine Islands, in the prosecution of offenders, and to control the proceeding, and as it is discretionary with him to institute and prosecute a criminal proceeding, being at liberty to commence it or not or to refrain from prosecuting it or not, depending upon whether or not there is, in his opinion, sufficient evidence to establish the guilt of the accused beyond a reasonable doubt, except when the case is pending in the Court of First Instance, the continuation of the offended party's intervention depends upon the continuation of the proceeding. Consequently, if the promotor fiscal desists from pressing the charge or asks the competent Court of First Instance in which the case is pending for the dismissal thereof, and said court grants the petition, the intervention of the person injured by the commission of the offense ceases by virtue of the principle that the accessory follows the principal. Consequently, as the offended party is not entitled to represent the People of the Philippine Islands in the prosecution of a public offense, or to control the proceeding once it is commenced, and as his right to intervene therein is subject to the promotor fiscal's right of control, it cannot be stated that an order of dismissal decreed upon petition of the promotor fiscal himself deprives the offended party of his right to appeal from an order overruling a complaint or information, which right belongs exclusively to the promotor fiscal by virtue of the provisions of section 44 of General Orders, No. 58. To permit a person injured by the commission of an offense to appeal from an order dismissing a criminal case issued by a Court of First Instance upon petition of the promotor fiscal, would be tantamount to giving said offended party the direction and control of a criminal proceeding in violation of the provisions of the above-cited section 107 of General Orders, No. 58.""

Consequently, where from the nature of the offense, or where the law defining and punishing the offense charged does not provide for an indemnity, the offended party may not intervene in the prosecution of the offense.[12]

There is no question that the Solicitor General represents the People of the Philippines or the State in criminal proceedings pending either in the Court of Appeals or in this Court. Thus, Section 1 of Presidential Decree No. 478, "Defining the Powers and Functions of the Office of the Solicitor General", provides:

"SECTION 1. Function and Organization. (1) The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. * * * The office of the Solicitor General shall constitute the law office of the Government, and as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(a) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is the party.

* * * * *

(k) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may

re-quire.

* * * * *

It is evident, therefore, that since the Solicitor General alone is authorized to represent the State or the People of the Philippines the interest of the private prosecutors is subordinate to that of the State and they cannot be allowed to take a stand inconsistent with that of the Solicitor General, for that would be tantamount to giving the latter the direction and control of the criminal proceedings, contrary to the provisions of law and the settled rules on the matter.

Moreover, the position taken by the Solicitor General in recommending the remand of the case to the trial court is not without any plausible justification. Thus, in support of his contention that the rendition of the decision and the resolution on the subsequent motions by the respondent Judge were not free from suspicion of bias and prejudice, the Solicitor General stated:

"In alleging bias and manifest partiality on the part of respondent judge, petitioners assert that:

(a) Respondent judge kept improper contact with and was illegally influenced by the Larrazabals in connection with the decision of the two cases against petitioners herein;

(b) In the latter part of 1973, with the trial of the Tan cases still in progress, respondent judge received, through one of his court stenographers, two bottles of whisky from Mayor Iñaki Larrazabal, brother and uncle of the deceased victims Feliciano and Francisco Larrazabal;

(c) On one occasion, Mayor Larrazabal had a short talk with respondent judge, after which the latter received from one of the private prosecutors a bottle of wine wrapped in a newspaper which was 'thick' and 'bulky' and which allegedly contained 'something else inside';

(d) Respondent judge prepared the decision in the Tan cases based on the memorandum of the prosecution which was literally copied in said decision although with some corrections; and

(e) After an alleged meeting with Mayor Iñaki Larrazabal, respondent judge amended his already prepared decision in the two criminal cases involved herein by changing the penalty of double-life sentence for the double murder charge against the petitioners to the death penalty.

"The foregoing alleged irregularities are mainly supported by an affidavit executed on June 26, 1975 by Gerardo A. Makinano, Jr., court stenographer of the Circuit Criminal Court, Tacloban City (Annex 'E', Petition). The truth of the charges made in such affidavit are denied by respondent judge (in his answer to the instant petition dated October 11, 1975), who in turn claims that it was petitioners who tried to bribe him into acquitting them in the aforesaid criminal cases, after they were illegally furnished a copy of the draft of his decision of conviction by the same court stenographer Gerardo A. Makinano, Jr. (please see Answer of respondent judge, pp. 12-13). Unlike in the cases of Mateo vs. Villaluz, 50 SCRA 191 (1973), and Castillo vs. Juan, 62 SCRA 124 (1974) relied upon mainly by herein petitioners, the facts alleged as constituting the grounds for disqualifying the respondent judge in the instant petition are disputed.

"Apart from the sworn statements submitted before this Court in support or in denial of the alleged bribery of respondent judge, we have been informed of evidence obtained by the National Bureau of Investigation when it conducted an investigation on the aforesaid charges. It is not appropriate for us at this time, however, and we are unable to do so, to submit to this Court definite conclusions on the charges and counter-charges. An exhaustive inquiry and open hearing should perhaps precede the making of categorical conclusions. But we are persuaded that there are bases for stating that the rendition of respondent Judge's decision and his resolutions on the motions for new trial were not free from suspicion of bias and prejudice (See Martinez vs. Gironella, 65 SCRA 245 [July 22, 1973]).

"Considering the circumstances of the instant case, the seriousness of the charges and counter-charges and the nature of the evidence on hand to support them, we feel that respondent Judge 'appeared to have been heedless to the oft-reiterated admonition addressed to trial judges to avoid even the impression of the guilt or innocence of the accused being dependent on prejudice or prejudgment' (Fernando, J., Concurring opinion, *Martinez vs. Gironella* supra, at 252. * * *)"

It is undisputed that the sole purpose of courts of justice is to enforce the laws uniformly and impartially without regard to persons or their circumstances or the opinions of men. A judge, according to Justice Castro, now Chief Justice of this Court, should strive to be at all times "wholly free, disinterested, impartial and independent. Elementary due process requires a hearing before an impartial and disinterested tribunal. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity." [13] Thus, it has always been stressed that judges should not only be impartial but should also appear impartial. For "impartiality is not a technical conception. It is a state of mind" [14] and, consequently, the "appearance of impartiality is an essential manifestation of its reality." [15] It must be obvious, therefore, that while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave in such a manner that the parties before them should have confidence in their impartiality.

It appears, however, that respondent Judge is no longer in the judicial service, hence, the question as to whether or not he should be disqualified from further proceeding with the afore-mentioned criminal cases has already become moot.

WHEREFORE, this Court grants the petition and hereby remands the case to the trial court in order that another Judge may hear anew petitioners' motion for new trial and to resolve the issue accordingly on the basis of the evidence. No special pronouncement as to costs.

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

[1] Entitled "People of the Philippines, Plaintiff, versus Jorge P. Tan, Jr., Cesar Tan, Teofanis Bonjoc, Osmundo Tolentino, Mariano Bartido, and Librado Sode, Accused, for Frustrated Murder and Double Murder."

[2] Comments of the Solicitor General, pp. 6-8, Rollo, pp. 295-297.

[3] 69 Phil. 556, 564-565.

[4] 82 Phil. 453, 459.

[5] *People v. Evia*, 62 Phil 546; *Tan. v. Standard Vacuum Oil Co., et al.*, 91 Phil. 672.

[6] *People v. Dizon*, 44 Phil. 267; *Herrero v. Diaz*, 75 Phil. 489.

[7] *People v. Velez*, 77 Phil. 1026; *People v. Capistrano*, 90 Phil. 823.

[8] *Lim Tek Goan v. Yatco, etc.*, 94 Phil. 197, 200. Italics supplied.

[9] *Lerum v. Cruz*, 87 Phil. 652.

[10] *People v. Maceda*, 73 Phil. 679.

[11] 65 Phil. 744, 746-747; *Gonzales v. Court First Instance*, 63 Phil. 846, 855-856.

[12] *People v. Maceda*, supra.

[13] *Geotina v. Gonzales*, 41 SCRA 66.

[14] *U.S. v. Wood*, 299 U.S. 123, 245.

[15] *Dennis v. United States*, 339 U.S. 162, 182.

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