

JULIANA P. YAP, PETITIONER, VS. MARTIN PARAS AND ALFREDO D. BARCELONA, SR., JUDGE OF THE 3RD MTC OF GLAN MALAPATAN, SOUTH COTABATO, RESPONDENTS.

G.R. No. 101236. January 30, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

This is still another dispute between brother and sister over a piece of property they inherited from their parents. The case is complicated by the circumstance that the private respondent's counsel in this petition is the son of the judge, the other respondent, whose action is being questioned.

Petitioner Juliana P. Yap was the sister of private respondent Martin Paras.[*]

On October 31, 1971, according to Yap, Paras sold to her his share in the intestate estate of their parents for P300.00. The sale was evidenced by a private document. Nineteen years later, on May 2, 1990, Paras sold the same property to Santiago Saya-ang for P5,000.00. This was evidenced by a notarized Deed of Absolute Sale.

When Yap learned of the second sale, she filed a complaint for estafa against Paras and Saya-ang with the Office of the Provincial Prosecutor of General Santos City[1] . On the same date, she filed a complaint for the nullification of the said sale with the Regional Trial Court of General Santos City.[2]

After investigation, the Provincial Prosecutor instituted a criminal complaint for estafa against Paras with the Municipal Circuit Trial Court of Glan-Malapatan, South Cotabato, presided by Judge Alfredo D. Barcelona, Sr.

On April 17, 1991, before arraignment of the accused, the trial judge motu proprio issued an order dismissing the criminal case on the ground that:

x x x after a careful scrutiny of the statements of complainant, Juliana P. Yap and of the respondent Martin Paras and his witnesses, the Court holds and maintained (sic) that there is a prejudicial question to a civil action, which must be ventilated in the proper civil court. In the case of *Ras vs. Rasul*, 100 SCRA 125, the Supreme Court had already made a pronouncement that "a criminal action for Estafa for alleged double sale of property is a prejudicial question to a civil action for nullity of the alleged Deed of Sale and defense of the alleged vendors of forgeries of their signatures to the Deed." [3]

The petitioner moved for reconsideration, which was denied on April 30, 1991. She then came to this Court for relief in this special civil action for certiorari.

The Court could have referred this petition to the Court of Appeals, which has concurrent jurisdiction under BP 129, but decided to resolve the case directly in view of the peculiar circumstances involved.

The petitioner's contention is that where there is a prejudicial question in a civil case, the criminal action may not be dismissed but only suspended. Moreover, this suspension may not be done motu proprio by the judge trying the criminal case but only upon petition of the defendant in accordance with the Rules of Court. It is also stressed that

a reversal of the order of dismissal would not bar the prosecution of the accused under the double jeopardy rule because he has not yet been arraigned.

The Court notes that the counsel for private respondent Paras who filed the comment in his behalf is the son and namesake of Judge Barcelona. Atty. Alfredo L. Barcelona, Jr. is employed in the Public Attorney's Office. He has made it of record that he was not the counsel of Paras at the time the questioned order of dismissal was issued by his father. He thus impliedly rejects the charge of bias against his father.

Perhaps out of filial loyalty, Atty. Barcelona suggests there may have been a basis for the order in view of the alleged double sale of the property which was being litigated in the regional trial court. He concedes, however, that the order may have been premature and that it could not have been issued *motu proprio*. Agreeing that double jeopardy would not attach because of the lack of arraignment, he asks that his Comment be considered a motion for the suspension of the criminal action on the ground of prejudicial question.

The Court has deliberated on the issues and finds that the respondent judge did indeed commit grave abuse of discretion in *motu proprio* issuing the order of dismissal.

Section 6, Rule 111 of the 1985 Rules on Criminal Procedure as amended by this Court on July 7, 1988, provides as follows:

Section 6. Suspension by reason of prejudicial question. A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the fiscal or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.

Judge Barcelona's precipitate action is intriguing, to say the least, in light of the clear provision of the above-quoted rule. The rule is not even new, being only a rewording of the original provision in the Rules of Court before they were amended. It plainly says that the suspension may be made only upon petition and not at the instance of the judge alone, and it also says suspension, and not dismissal. One also wonders if the person who notarized the disputed second sale, Notary Public Alexander C. Barcelona, might be related to the respondent judge.

But more important than the preceding considerations is the trial judge's misapprehension of the concept of a prejudicial question.

Section 5, Rule 111 of the 1985 Rules on Criminal Procedure as amended provides:

Section 5. Elements of prejudicial question. — The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

A prejudicial question is defined as that which arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve the question must be lodged in another court or tribunal.[4] It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused.[5]

We have held that "for a civil case to be considered prejudicial to a criminal action as to cause the suspension of the criminal action pending the determination of the civil action, it must appear not only that the civil case involves the same facts upon which the criminal prosecution is based, but also that the resolution of the issues raised in said civil action would be necessarily determinative of the guilt or innocence of the accused." [6]

It is the issue in the civil action that is prejudicial to the continuation of the criminal action, not the criminal action that is prejudicial to the civil action.

The excerpt quoted by the respondent judge in his Order does not appear anywhere in the decision of *Ras v. Rasul*.^[7] Worse, he has not only misquoted the decision but also wrongly applied it. The facts of that case are not analogous to those in the case at bar.

In that case, Ras allegedly sold to Pichel a parcel of land which he later also sold to Martin. Pichel brought a civil action for nullification of the second sale and asked that the sale made by Ras in his favor be declared valid. Ras's defense was that he never sold the property to Pichel and his purported signatures appearing in the first deed of sale were forgeries. Later, an information for estafa was filed against Ras based on the same double sale that was the subject of the civil action. Ras filed a "Motion for Suspension of Action" (that is, the criminal case), claiming that the resolution of the issues in the civil case would necessarily be determinative of his guilt or innocence.

Through then Associate Justice Claudio Teehankee, this Court ruled that a suspension of the criminal action was in order because:

On the basis of the issues raised in both the criminal and civil cases against petitioner and in the light of the foregoing concepts of a prejudicial question, there indeed appears to be a prejudicial question in the case at bar, considering that petitioner Alejandro Ras' defense (as defendant) in Civil Case No. 73 of the nullity and forgery of the alleged prior deed of sale in favor of Luis Pichel (plaintiff in the civil case and complaining witnesses in the criminal case) is based on the very same facts which would be necessarily determinative of petitioner Ras' guilt or innocence as accused in the criminal case. If the first alleged sale in favor of Pichel is void or fictitious, then there would be no double sale and petitioner would be innocent of the offense charged. A conviction in the criminal case (if it were allowed to proceed ahead) would be a gross injustice and would have to be set aside if it were finally decided in the civil action that indeed the alleged prior deed of sale was a forgery and spurious.

x x x

The petitioner Alejandro Ras claims in his answer to the complaint in Civil Case No. 73 that he had never sold the property in litigation to the plaintiff (Luis Pichel) and that his signatures in the alleged deed of sale and that of his wife were forged by the plaintiff. It is, therefore, necessary that the truth or falsity of such claim be first determined because if his claim is true, then he did not sell his property twice and no estafa was committed. The question of nullity of the sale is distinct and separate from the crime of estafa (alleged double sale) but so intimately connected with it that it determines the guilt or innocence of herein petitioner in the criminal action.

In the Ras case, there was a motion to suspend the criminal action on the ground that the defense in the civil case -- forgery of his signature in the first deed of sale - had to be threshed out first. Resolution of that question would necessarily resolve the guilt or innocence of the accused in the criminal case. By contrast, there was no motion for suspension in the case at bar; and no less importantly, the respondent judge had not been informed of the defense Paras was raising in the civil action. Judge Barcelona could not have ascertained then if the issue raised in the civil action would determine the guilt or innocence of the accused in the criminal case.

It is worth remarking that not every defense raised in the civil action will raise a prejudicial question to justify suspension of the criminal action. The defense must involve an issue similar or intimately related to the same issue raised in the criminal action and its resolution should determine whether or not the latter action may proceed.

The order dismissing the criminal action without a motion for suspension in accordance with Rule 111, Section 6, of the 1985 Rules on Criminal Procedure as amended, and even without the accused indicating his defense in the

civil case for the annulment of the second sale, suggests not only ignorance of the law but also bias on the part of the respondent judge.

Judge Alfredo D. Barcelona, Sr. is sternly reminded that under the Code of Judicial Conduct, "a judge shall be faithful to the law and maintain professional competence" and "should administer justice impartially." He is hereby reprimanded for his questionable conduct in the case at bar, with the warning that commission of similar acts in the future will be dealt with more severely.

WHEREFORE, the petition is GRANTED. The Order issued by Judge Alfredo D. Barcelona, Sr. dated April 17, 1991, dismissing Criminal Case No. 1902-G, and the Order dated April 30, 1991, denying the motion for reconsideration, are REVERSED and SET ASIDE. Criminal Case No. 1902-G is ordered REINSTATED for further proceedings, but to be assigned to a different judge.

SO ORDERED.

Narvasa, C.J., Griño-Aquino, and Medialdea, JJ., concur.

[*] She died pendente lite on September 2, 1991, and was by resolution of the Court dated January 13, 1991, substituted by her children, Ruperto, Rustico, Ignacio, Rogelio, Arsenio, Jr., all surnamed Yap, Rainilda Yap Breta, and the children of the deceased Teodora Yap Cuaycong.

[1] Rollo, p. 8.

[2] Ibid, p. 13.

[3] Id., pp. 30-31.

[4] People vs. Aragon, 94 Phil. 357; Merced vs. Diez, 109 Phil. 155; Zapanta vs. Montesa, 114 Phil. 428; Fortich-Celdran vs. Celdran, 19 SCRA 502.

[5] De Leon vs. Mabanag, 70 Phil. 202; Mendiola vs. Macadaeg, 1 SCRA 593.

[6] Ras vs. Rasul, 100 SCRA 125; Mendiola vs. Macadaeg, supra.

[7] Supra.

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