

**JUANITO SUAREZ, PETITIONER, VS. HON. DAMASO S. TENGCO,
JUDGE OF THE COURT OF FIRST INSTANCE OF BATANGAS,
DOMINGO DE LA ROCA, BENEDICTA UMALI AND DANILO DE LA
ROCA, RESPONDENTS.**

G.R. No. 17113. May 23, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Juanito Suarez petitions for a writ of prohibition against the Honorable Damaso S. Tengco, as Judge of the Court of First Instance of Batangas, to restrain him from compelling petitioner to testify in Civil Case No. 1058 of said court.

It would appear that a jeep in which plaintiffs in the civil case (the other respondents herein De la Roca and Umali) were riding, had collided with an automobile driven by petitioner, and as a sequel thereto, Criminal Case No. 1458 was filed against petitioner in the Court of First Instance of Batangas. On August 28, 1959, Civil Case No. 1058 was also filed against petitioner to collect damages allegedly suffered by the plaintiffs as a result of his reckless negligence in the same incident involved in the criminal case. On the first day of trial of the civil case, and while Criminal Case No. 1458 was also pending in the same court, plaintiffs therein required defendant Suarez (petitioner herein) to take the stand and testify as their first witness. Petitioner objected, averring that there was a pending criminal case (Criminal Case No. 1458) against him for the very acts upon which the civil action was based; that the purpose of plaintiffs was merely to fish for evidence to be utilized in the pending criminal suit; and that for him to be compelled to testify in the civil case was violative of the constitution guaranty against self-incrimination. Petitioner's objections, which were later set in writing in a motion for reconsideration, were overruled by the respondent judge, who directed petitioner to take the stand and testify.

We think the lower court did not err in directing petitioner to take the witness stand. No legal impediment exists against a litigant calling any of the adverse parties to be his witness. In fact, Section 83, Rule 123 of the Rules provides—

"A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party * * *, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject-matter of his examination in chief." (Italics supplied)

True, an accused in a criminal case may not be compelled to testify, or to so much as utter a word, even for his own defense (U.S. vs. Junio, 1 Phil., 50; U.S. vs. Luzon, 4 Phil., 344; U.S. vs. Binayoh, 35 Phil., 23; Sec. 1 (c), Rule 111, Rules of Court). But while the constitutional guaranty against self-incrimination protects a person in all types of cases, be they criminal, civil, or administrative (Art. III, sec. 1, No. 18, Phil. Constitution; Bermudez vs. Castillo, 64 Phil., 483), said privilege, in proceedings other than a criminal case against him who invokes it, is

considered an option of refusal to answer incriminating questions, and not a prohibition of inquiry.

"Except in criminal cases, there is no rule prohibiting a party litigant from utilizing his adversary as a witness. As a matter of fact, section 83 of Rule 123, Rules of Court, expressly authorizes a party to call an adverse party to the witness stand and interrogate him. This rule is, of course, subject to the constitutional injunction not to compel any person to testify against himself. But it is established that the privilege against self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for a criminating answer is propounded. This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in *Jones on Evidence* (Vol. 6, pp. 4926-4927), a person who has been summoned to testify 'cannot decline to appear, nor can he decline to be sworn as a witness' and 'no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and, generally speaking, at that time only, the claim of privilege may properly be interposed.'" (*Gonzales vs. Sec. of Labor*, 94 Phil., 325; 50 Off. Gaz., 1080, cit. in *Navarro, Criminal Procedure*, p. 302).

Here, petitioner invoked the privilege even prior to any question, and simply declined to take the witness stand. Note that in the *Gonzales* case, above-cited, the adverse party was directed to take the witness stand in proceedings to investigate an alleged failure to pay overtime compensation, which, under the corresponding special laws, carries a penal sanction. Here, petitioner was being directed to take the stand, not in a criminal case where he is an accused, but in an independent civil action which, although arising from the same facts involved in a criminal case pending before the same court, is still regarded by law as an "entirely separate and distinct" action, governed by a correspondingly different set of rules (*Civil Code of the Phil.*, Art. 2177).

Wherefore, the petition to prohibit the respondent judge from directing petitioner to take the witness stand and testify is denied, without prejudice to petitioner's properly invoking the guaranty against self-incrimination when and as questions are propounded to him on the stand. Costs against petitioner.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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