

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ONG ENG, COMPLAINANT AND APPELLANT. UY CHIN CHI, CHUN SIN, TAN TUA (ALIAS TAN Y CUAN), TIN CO AND LIM TAN, DEFE...

G.R. No. 30991. September 17, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an appeal from an order of dismissal jointly entered in this case and another bearing G. R. No. 30992[1] of this court.

The appeal is taken by the offended party, who assigns as error of the lower court the dismissal of the case upon motion of the fiscal without sufficient ground.

Said motion of the fiscal is as follows:

"1. That the undersigned has always opposed the dismissal of either of these two cases, and has given his tacit consent to the date set for a joint hearing thereof by Judge Paredes, in the bona fide belief that such procedure adopted by said judge is not anomalous and irregular; and, furthermore, that the interested parties were agreeable to said hearing;

"2. That judging by the order issued yesterday, this honorable court is not agreeable that these two cases be tried jointly as ordered by said Judge Paredes;

"3. That according to the tenor of said order, it appears that this honorable court is not disposed to designate which of the two cases is to be tried first;

"4. That the undersigned is of the humble opinion that the setting of a date for the hearing of the two cases is incumbent upon the clerk of this honorable court,

"Wherefore, and in conformity with the aforesaid order of this honorable court, the undersigned respectfully prays for the dismissal of both cases in order to make a reinvestigation thereof for the purposes of presenting only one criminal action for the crime resulting from said reinvestigation." (Pages 117 and 118, original record.)

The attorneys of the herein appellant objected to this petition and presented their respective pleadings (see pages 121-123, 126-129, original record).

The court resolved the question by entering the following order which is the object of the present appeal:

"Considering that the informations in these two cases are nothing more than the result of two absolutely contradictory and irreconcilable versions of one and the same incident;

"Considering that the provincial fiscal cannot conduct the prosecution in these two cases, inasmuch as it is evident that he cannot sustain and try to convince the court in the aforesaid two cases of his absolutely

antagonistic theories; and

"Considering that the People of the Philippine Islands, plaintiff .in these two cases, cannot sustain two prosecutions which are incompatible with each other;

"Wherefore, the court hereby grants the motion of the prosecuting officer praying for the provisional dismissal of these two cases to enable him to institute a single criminal action for the crime resulting from his reinvestigation." (Pages 130 and 131, original record.)

We believe that the fiscal had sufficient grounds to ask the court for the dismissal of the two cases for the purpose of reinvestigating them and to take such action as may be prompted by the result of the reinvestigation.

Our conclusion is not exactly based upon the facts and opinions set forth in the fiscal's motion, but rather on his object in asking for the dismissal, namely, to investigate the case again and thereafter take such action as the interests of justice may require; such an attitude indicated his uncertainty as to which of the two cases was to be prosecuted.

Although this court held in the case of *People vs. Mediavilla* (52 Phil, 94) that:

"CRIMINAL PROCEDURE; FILING OF DIFFERENT COMPLAINTS AGAINST GUILTY AND OFFENDED PARTIES.—The filing of an information against some defendants for the murder of an individual, and then another information for frustrated homicide and less serious physical injuries against said individual and others, because said individual had fired three shots at one of his assailants with his revolver, and because another of the defendants, the accused in the instant case, had wounded said assailant, does not disqualify the prosecuting attorney from sustaining said charges, because the accused in the one may be the offended parties in the other and vice versa, nor does it violate professional ethics which forbids an attorney to represent adverse interests, since in both cases the prosecuting attorney represents the public," nevertheless, when the provincial fiscal, in view of the facts of the cases, apprehends that it would be an absurdity on his part to conduct both prosecutions, said officer, being responsible for the prosecution of criminal cases (section 1681, Administrative Code; *U. S. vs. Reyes*, 20 Phil., 510; and *U. S. vs. Despabiladeras and Laxamana*, 32 Phil., 442), has a right to investigate the cases more thoroughly in order the better to conform his action and attitude therein to the real facts and to the dictates and requirements of justice and the public interest.

And in granting said motion of the provincial fiscal, the court did no more than recognize the great responsibility devolving on him and the rights it had in helping him in the better performance of his duties.

We find no error in the order appealed from, and the same is hereby affirmed in all its parts, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, and Villa-Real, JJ., concur.

[1] *People vs. Uy Tiam Su*, p. 547, post.

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