

FELIPE GONZALEZ, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF BULACAN ET AL., RESPONDENTS.*G. R. No. 45233. December 29, 1936*

Ponente: VILLA-REAL, J.

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This is an original petition for mandamus filed by Felipe Gonzalez praying, upon the facts alleged in the corresponding pleading, for the issuance of a writ directed to the herein respondents Court of First Instance of Bulacan and the provincial fiscal thereof, ordering the former to take action on the appeal interposed by said petitioner from the order dismissing his complaint for arbitrary detention against the other respondents Florentino C. Viola and Valentin Maniquis, which was docketed in said Court of First Instance of Bulacan as criminal case No. 6752; and the latter, or the provincial fiscal of Bulacan, to proceed with said criminal case No. 6752 and direct the prosecution thereof until it is finally decided on its merits; or to direct the respondent court, in case of disability of the provincial fiscal, to appoint a special fiscal or permit the offended party to proceed with the case through a private prosecutor, with costs to the respondents.

The pertinent facts necessary for the resolution of the legal question raised in this petition are as follows:

The petitioner Felipe Gonzalez was chief of police of the municipality of San Miguel, Bulacan, suspended by the municipal president thereof, the herein respondent Florentino C. Viola, who appointed the other respondent Valentin Maniquis as acting chief of police in the former's place. On January 18, 1935, the Department of the Interior reinstated said petitioner in the post of chief of police of San Miguel. In attempting to resume his post, he had an altercation with the acting chief of police Valentin Maniquis and the municipal president Florentino C. Viola as a result of which the petitioner was arrested by Valentin Maniquis by order of the municipal president and detained for eight hours and forty minutes, after which he was released on bail. At about 5.00 o'clock in the afternoon of said day, January 18, 1935, acting chief of police Valentin Maniquis filed a complaint for coercion against the petitioner Felipe Gonzalez. The complaint was admitted by the justice of the peace of San Miguel who, after the corresponding preliminary examination, issued the proper warrant of arrest. As the justice of the peace, after conducting the preliminary investigation, found merit in the complaint, he forwarded the case to the Court of First Instance of Bulacan. On March 4, 1935, the provincial fiscal of Bulacan filed an information against Felipe Gonzalez charging him with the crime of coercion. The case was called for trial on October 24, 1935, and Judge Buenaventura Ocampo, then presiding over the Court of First Instance of Bulacan, advanced the opinion that the facts contained in the supporting affidavit were not sufficient to constitute the crime of coercion. Consequently, the private prosecutor, with the consent of the deputy provincial fiscal, asked for the dismissal of the case on the ground that the evidence for the prosecution was not sufficient to support a case for coercion, which motion was granted by the judge in question. While Felipe Gonzalez was detained for the crime of coercion, he instituted habeas corpus proceedings in the Court of First Instance of Bulacan, which was docketed as civil case No. 4988. However, in view of the fact that he had filed a bond for his provisional release, the Honorable Judge Ceferino Hilario, who tried the case, rendered a decision dismissing it, stating as follows: "Because of the scramble by Valentin Maniquis and Felipe Gonzalez for the possession of the police blotter, the latter's conduct provoked a fight which" threatened to

disturb the peace. Consequently, his subsequent arrest ordered by Valentin Maniquis, as acting chief of police, whether on his own account or in obedience to an express order of Florentino Viola, as municipal president, at the moment he provoked a scandal and disturbed the public peace by his unbecoming conduct in the presence of both, was absolutely justified by the circumstances of time and place. Furthermore, a complaint against him for grave coercion was admitted by the justice of the peace a few hours later and he was released on bail."

On February 14, 1935, the herein petitioner Felipe Gonzalez subscribed and filed a complaint for arbitrary detention against the respondents Florentino C. Viola and Valentin Maniquis with the justice of the peace of San Miguel, Bulacan. After conducting the preliminary investigation, the justice of the peace of said municipality issued an order dated November 12, 1935, holding that there were reasonable grounds to believe that the crime of arbitrary detention complained of had been committed on the person of the complainant and that the accused Florentino C. Viola and Valentin Maniquis were criminally liable therefor, and ordered that the case be forwarded to the Court of First Instance of Bulacan for legal action. After the case had been forwarded to the Court of First Instance of Bulacan, the clerk of court docketed it as criminal case No. 6752. When the case was transferred to the office of the provincial fiscal of Bulacan, the deputy provincial fiscal, Teofilo D. Reyes, conducted a preliminary investigation in the presence of the alleged offended party, the accused and their respective attorneys, who submitted their respective arguments in support of their claims. After considering the arguments of both parties, the acting provincial fiscal, Roman de Jesus, as well as the deputy provincial fiscal, Teofilo D. Reyes, arrived at the conclusion that the case was without merit. On November 26th of said year, the complainant and offended party, Felipe Gonzalez, petitioner herein, filed a motion with said court praying that he be permitted to prosecute the case by himself through a private prosecutor or that a special fiscal be appointed to take charge of the prosecution on the ground that the deputy provincial fiscal of Bulacan, who had charge of the case, had advanced the opinion that the prosecution could not be sustained, believing that the proven facts did not constitute the crime of arbitrary detention. Said motion was denied by the respondent court then presided over by the Judge-at-large Honorable Sotero Rodas, on the ground that the motion was premature. On December 12, 1935, the acting provincial fiscal filed a motion for dismissal which reads:

"Now comes the undersigned and to this Honorable Court respectfully shows:

"That this is a case of arbitrary detention described and penalized under article 125 of the Revised Penal Code.

"That the supposed arbitrary detention arose from the fact that the complainant Felipe Gonzalez was arrested on January 18, 1935, on a charge of grave coercion.

"That the said charge for grave coercion was dismissed by this Honorable court on petition of the private prosecutor, concurred in by Deputy Provincial Fiscal, Mr. Teofilo.

1). Reyes, for lack of sufficient evidence.

"That this case was instituted by the offended party as a result of the dismissal of the case for grave coercion.

"That in order that a case for arbitrary detention may prosper, it is necessary that the detention must be shown to be without any legal ground.

"That in the case at bar, the detention of complainant Felipe Gonzalez, was shown to be justified not only by the justice of the peace of San Miguel who remanded the case for grave coercion to this Honorable Court, not only by the Provincial Fiscal who subscribed to the information for grave coercion but also, by the Honorable Judge Ceferino Hilario, who took cognizance of the case of habeas corpus instituted by the herein complainant in connection with his detention, when he declared in his decision that the detention of the herein complainant was justified by the circumstance and place.

"That the undersigned believes that this case cannot be sustained.

"Wherefore, it is respectfully prayed that this case be dismissed with costs de oficio."

Pursuant to said motion, the Honorable Sotero Rodas, on December 31, 1935, issued an order which reads as follows:

"Upon motion of the fiscal of the 12th instant, based on the ground that he has no sufficient evidence to support the prosecution, the court orders the dismissal of the above-entitled case with the costs de oficio and the cancellation of the bond filed by the accused for their provisional release."

On February 11, 1936, the alleged offended party Felipe Gonzalez filed a motion for reconsideration which was denied by the vacation Judge, Honorable Modesto Castillo, in an order of April 27, 1936. On April 30, 1936, said offended party interposed an appeal which was denied by the said vacation judge in an order of May 27, 1936. As the alleged offended party filed a motion for reconsideration of the order denying the appeal, the Honorable Marcelo T. Boncan, then presiding over the Court of First Instance of Bulacan, denied it in an order of July 15, 1936.

The first question to be decided in this petition is whether or not the offended party in a case of arbitrary detention can appeal from an order of dismissal entered by a Court of First Instance upon a petition filed by the fiscal before the trial, finding that the probatory facts upon which the complainant claims to base his complaint are insufficient to establish the existence of the crime charged.

Section 107 of General Orders, No. 58 provides as follows:

"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."

It will be noted that the privileges conserved by the above-quoted section to the person claiming to have been injured by the commission of an offense were those secured to him by the former law to take part in the prosecution of said offense and recover damages for the injury sustained by reason of the same, imposing upon the promotor fiscal, however, the duty of directing the prosecution, subject to the right of the person injured to appeal from any decision of the court denying him a legal right. Now then, what are the rights of a person injured by the commission of an offense, the denial of which by a court may be appealed by him?

The late illustrious Chief Justice of this court, Honorable Cayetano Arellano, who had taken part in the preparation of General Orders, No. 58, interpreting the above-quoted section 107 thereof in the case of *United States vs. Municipal Council of Santa Cruz de Malabon* (1 Phil., 731, 732), stated as follows:

"Under the American system the prosecution of public offenses is reserved to the representative of the Government to such an extent that the individual citizen can not bring an action for that purpose. He is protected by his right to bring a personal action for the damage which the commission of a crime may occasion him. As to him the crime is but the source of a civil obligation. General Orders, No. 58, series of 1900, which has established the principles and rules of criminal procedure peculiar to that system of legislation, as a concession to the period of transition from one system of legislation to another, has compromised only with the private penal action of the injured party, but with that of the latter alone—not with the action which under the former law on the subject of criminal procedure might be brought by any citizen who might desire to aid the action of the Government. It was necessary to maintain the private penal action of the injured party himself, in consequence of the continued operation of the Penal Code, for two reasons: First, because, on principle, the

declaration of the criminal liability carries with it the declaration of the resulting civil obligation; second, because there are crimes which can not be prosecuted other than at the formal instance of the person injured.

"For this reason, under the heading 'rights of the person injured by the offense' section 107 was drawn, according to which, 'the privilege 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 recover damages for the injury sustained by reason of the same shall not be abridged by the provisions of this order * * *. It is evident that the special and accentuated inclusion of the right of the person injured, not recognized in the general principles which form the basis of this procedural system, is the most express exclusion of any other right, such as that arising from the popular penal action, not recognized in the American system. * * *"

Section 2 of General Orders, No. 58, as amended by section 1 of Act No. 2886, provides that all prosecutions for public offenses shall be in the name of the People of the Philippine Islands against the person charged with the offense. Section 1681 of the Revised Administrative Code, as amended by section 2 of said Act No. 2886, provides that the provincial fiscal shall be the law officer of the province, and as such shall therein discharge the duties incident to the institution of criminal prosecutions and represent the People of the Philippine Islands in all criminal cases in the courts held in such province. Section 1687 likewise provides that the provincial fiscal shall have authority, if he deems it wise, to conduct an investigation into the matter of any crime or misdemeanor. Section 1661 of said Code, likewise amended, states that it shall, among other things, be the duty of the Attorney-General to represent the People of the Philippine Islands in the Supreme Court in all criminal cases.

Section 12 of said General Orders, No. 58, provides that every person making complaint must inform the magistrate of all persons whom he believes to have any knowledge of its commission. It is inferred from the foregoing that the person injured by the commission of an offense may file a complaint in the manner prescribed by section 4 of General Orders, No. 58. However, if, as was seen, section 2 of said General Orders, No. 58, as amended by section 1 of Act No. 2886, provides that all prosecutions for public offenses shall be in the name of the People of Philippine Islands against the person charged with the offense, and section 1681 of Act No. 2711 imposes upon the provincial fiscal the duty of instituting criminal prosecutions and of representing the People of the Philippine Islands in all criminal cases in courts held in each province, the right of the offended party to institute criminal prosecution for the commission of a public offense ceases, under the present legislation, with the filing of the complaint, the promotor fiscal taking charge of the prosecution of the suit in the name of the People of the Philippine Islands until the termination thereof.

Inasmuch as every person charged with a crime has in his favor the constitutional presumption of innocence (Article III, section 1, paragraph 17, of the Constitution of the Philippines), and inasmuch as under this presumption no person may be declared criminally responsible except upon evidence establishing it beyond a reasonable doubt, the promotor fiscal before filing a complaint or information, or if the complaint has been filed by the offended party, before proceeding with the case, must determine whether the evidence submitted to or found by him is legally sufficient to establish the guilt of the accused beyond a reasonable doubt. The sufficiency or insufficiency of the evidence is a matter of appreciation. Consequently, the institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence, in his opinion, is sufficient or not to establish the guilt of the accused beyond a reasonable doubt, except when a preliminary investigation has been conducted by a competent justice of the peace and the case forwarded to a likewise competent Court of First Instance, in which event the provincial fiscal can not dismiss it *motu proprio*, but has to apply to the court where it is pending to decree the dismissal thereof (*U. S. vs. Barredo*, 32 Phil., 444; *U. S. vs. Abanzado*, 37 Phil., 658).

The person injured by the commission of an offense may choose between bringing the civil action independently of the criminal action (article 111, in connection with article 117, Spanish Code of Criminal Procedure of

September 14, 1882), to recover through the courts damages arising from the criminal liability of the author of the crime of which he was the victim, in view of the provision of article 100 of the Revised Penal Code to the effect that every person criminally liable is also civilly liable, or appear as a party in the criminal action instituted by the promotor fiscal at the initiative of either the injured person or said promotor fiscal (article 112, Spanish Code of Criminal Procedure of September 14, 1882). In this latter case 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 can not 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.

Article 854 of the aforesaid Code of Criminal Procedure of 1882, some of the provisions of which are supplementary to General Orders, No. 58, reads:

"Art. 854. The following persons shall be entitled to appeal: the promotor fiscal, those who have been parties to the criminal proceedings, those who, not having been parties thereto, are affected by the judgment, and their heirs.

"The plaintiffs in civil cases shall not be entitled to appeal except in cases affecting restitutions, reparations and indemnities claimed by them."

Some of the rights secured by the Spanish law to the person claiming to be injured by the commission of an offense and conserved by section 107 of General Orders, No. 58, are to take part in the prosecution of the offense, to recover damages for the injury sustained by reason of the same and to appeal only in matters affecting restitutions, reparations and indemnities claimed by them, but not with regard to the criminal action. Inasmuch as the herein petitioner Felipe Gonzalez, as complainant in the criminal case the People of the Philippine Islands vs. Florentino C. Viola and Valentin Maniquis, did not claim indemnity for damages and was not deprived of his right to do so in the order of dismissal which is the subject matter of this opinion, under the above-quoted provision he is not entitled to appeal from said order.

Of course, it being discretionary in the promotor fiscal to prosecute an action or not, as well as in the judge to dismiss or not to dismiss it in view of the facts alleged by the promotor fiscal in his motion, any grave abuse of discretion on the part of any of them may be corrected by mandamus ordering the reinstatement of the case and the prosecution thereof (22 R. C. L.f page 96, paragraph 8; 38 Corpus Juris, page 623, paragraph 115).

Furthermore it could not have been the intention of the authors of General Orders, No. 58, to grant to the person

injured by the commission of an offense the right to appeal from an order of dismissal issued upon petition of the promotor fiscal himself, because the appeal would not serve its purpose which is the review of the evidence upon which the motion for dismissal was based, taking into consideration the fact that the proceeding followed in the preliminary investigation conducted by justices of the peace for the arrest of the accused, in the preliminary investigation had to determine whether the crime complained of has been committed and that there is reasonable ground to believe that the party charged has committed it, and in that conducted by the promotor fiscal, after the case is forwarded to the Court of First Instance, is summary and the testimony of the witnesses does not appear in writing. The only data relied upon by the judge in determining whether or not the case should be dismissed are those furnished by the promotor fiscal in his motion or those acquired by the court itself *motu proprio*, which, if forwarded to this court by virtue of an appeal, are insufficient to determine whether or not the promotor fiscal and the lower court have erred in dismissing the case.

Therefore, with respect to the first remedy sought in the petition, that is, that the respondent Court of First Instance of Bulacan be ordered to take action on the appeal taken by the petitioner from the order of dismissal of the complaint for arbitrary detention, entered by the respondent Court of First Instance of Bulacan, upon petition of the respondent provincial fiscal of Bulacan before the trial, in as much as the appeal in such case does not constitute a right granted to the person injured by the commission of an offense by section 107 of General Orders, No. 58, said remedy does not lie and the petition in this respect is denied.

With respect to the prayer contained in said petition for mandamus to the effect that the provincial fiscal of Bulacan be ordered to proceed with the criminal case and direct the prosecution thereof until it is finally decided on its merits, inasmuch as it is discretionary, as already stated, on the part of the promotor fiscal to do so or not, and it not having been alleged in the petition that said fiscal has committed a grave abuse of discretion in asking for the dismissal thereof, neither can the petition in this particular be granted.

Lastly, it is prayed that the respondent judge appoint a special fiscal or permit the offended party to prosecute the case through a private prosecutor. Section 1679 of the Revised Administrative Code provides that "when a provincial fiscal shall be disqualified by personal interest to act in a particular case or when for any reason he shall be unable, or shall fail, to discharge any of the duties of his position, the judge of the Court of First Instance of the province shall appoint an acting provincial fiscal, who shall discharge all the duties of the regular provincial fiscal which the latter shall fail or be unable to perform." In this case the respondent provincial fiscal of Bulacan is not disqualified by personal interest to act in the criminal case under consideration. Neither is he unable nor did he fail to discharge any of the duties of his position, but, on the contrary, complying with his duty, he has intervened in the case, has investigated the merits thereof and has found that the proven facts are insufficient to constitute, and do not constitute the crime of arbitrary detention charged, and, using his sound discretion, he asked for the dismissal of the case. Therefore, the third prayer of the petitioner is without merit and cannot be granted.

Wherefore, finding no merit in the petition for mandamus interposed by the petitioner, it is denied and dismissed, with costs to the petitioner. So ordered.

Avanceña, C. J., Diaz, and Laurel, JJ., concur.

DISSENTING
IMPERIAL, J.:

The facts of the case are stated at length in the majority opinion. For this reason, I consider it unnecessary to reproduce them.

The proceeding has been instituted to compel: (a) The Court of First Instance of Bulacan to admit and take action on the appeal taken by the petitioner from the order dismissing the complaint for arbitrary detention filed against the other two respondents in criminal case No. 6752; (b) the fiscal of said province to prosecute the case until judgment is rendered therein, and (c) the respondent court to appoint a special fiscal to take the place of the provincial fiscal in case the latter refuses to proceed with the case.

By inverting the order of considering the remedies applied for and referring to the petition to the effect that the provincial fiscal of Bulacan proceed with the case and that the respondent court appoint a special fiscal in case the former refuses to proceed with the case, I concur in the majority opinion that such remedies are premature and the consideration and granting thereof will depend upon the result of the appeal from the order of dismissal. If the appeal were not meritorious and the respondent court correctly dismissed the case, this court, on appeal, must affirm the order of dismissal in question.

The principal point raised by the petition for mandamus is whether the petitioner, as complainant or offended party in criminal case No. 6752 of the Court of First Instance of Bulacan, is entitled to appeal from the respondent court's order dismissing the complaint in the case, upon petition of the provincial fiscal. The majority opinion maintains the negative. I am of the opinion that the laws in force in this jurisdiction recognize the right of appeal.

The pertinent parts of sections 43 and 44 of the Code of Criminal Procedure, General Orders, No. 58, as amended by Acts Nos. 3785 and 2886, respectively, read as follows:

"SEC. 43.—From all final judgments of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Supreme Court as hereinafter prescribed. * * *

"SEC. 44.—Either party may appeal from final judgment or from an order made after judgment affecting the substantial rights of the appellant. The People of the Philippine Islands may also appeal from a judgment for the defendant rendered on a demurrer to an information or complaint and from an order dismissing a complaint or information."

The two sections above-quoted recognize the right of appeal from final judgments of the Courts of First Instance in any criminal case. They likewise grant the promotor fiscal the right to appeal from resolutions sustaining demurrers, to an information. Jurisprudence, however, has restricted such right in cases where judgments of acquittal have been rendered on the ground that appeal by the promotor fiscal implies violation of the doctrine of double jeopardy, whereby an accused cannot be put twice in jeopardy of conviction for the same offense (*Kepner vs. United States*, 195 U. S., 100; *U. S. vs. Yam Tung Way*, 21 Phil., 67). There is no doubt that the order of dismissal appealed from by the petitioner is a final judgment in the legal sense because it put an end to the facts and rights in controversy in the complaint and the motion to dismiss presented in the case (33 C. J., 1047-1051).

Section 107 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."

Interpreting the above provision, the majority opinion maintains that the offended party in a criminal case can take part in the prosecution of the offense only when a civil liability arises therefrom and he claims and is entitled to an

indemnity, restitution or reparation which is civil in nature, inferring therefrom that when, as in this case, the offended party neither claims nor is entitled to an indemnity, neither is he entitled to appeal from the order of dismissal which put an end to the case. I do not agree to this interpretation. Section 107 contains two different provisions. The first one recognizes the right of the offended party to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same. The second proclaims the right of the person injured to appeal from any decision of the court denying him a legal right. While it is true that the last part of the section in question provides that the promotor fiscal must direct the prosecution, this does not in any way alter the right of the offended party to take part in the prosecution, to recover damages and to appeal from any resolution prejudicial to his interest.

The right to take part in the prosecution of the offense and to appeal from any decision denying a legal right is made subordinate to the indispensable condition that the offended or injured party is likewise entitled to recover damages arising therefrom. This conclusion, in my humble opinion, is in conflict with section 107. Granting that the interpretation were correct, the facts before this court do not warrant the averment that the offended party in this particular case is not entitled to recover damages from the accused, the other respondents. Although the complaint contains no allegation relative to damages, by following the practice sanctioned in this jurisdiction, the offended party could prove during the trial any damage or injury he might have suffered as a direct or necessary consequence of the offense charged.

The legal question under consideration has already been decided by this court in the case of *United States and Sebastiana vs. Perez* (1 Phil., 203). In said case the action was commenced upon a complaint formulated by the offended party who charged the accused with the crime of estafa, having misappropriated the sum of P2,247. The accused filed a demurrer alleging that he did not appropriate the money for himself or apply it to his personal use but that it was a Chinese who embezzled it, having negotiated a check which proved to be spurious. He had informed the offended party thereof and the latter exonerated him by approving the accounts of administration of the Hotel de España presented to her. The court sustained the demurrer and the complaining witness appealed from the order to that effect. In the appeal the promotor fiscal contended that the order was erroneous. The court sustained his contention. The accused assigned as error committed by the court the fact that the latter accepted the appeal, it not having been interposed by the promotor fiscal but by the complainant. The same question now under consideration, that is, whether or not the therein complainant was entitled to appeal from the order sustaining the demurrer, which order was prejudicial to her rights as offended party, was directly raised. This court, deciding the point of controversy, said:

"Counsel for the defendant has expressly prayed in this instance that we declare that the appeal of the complaining witness was improperly allowed, upon the ground that section 23 of General Orders, No. 58, provides that an order sustaining a demurrer by the accused ends the case, and is a bar to another prosecution for the same offense, and that section 44 grants the United States only the right to appeal against such an order. We consider this contention to be wholly unfounded. Section 23 does not deal with appeals, which are specially dealt with in other sections of the general order which determine in what cases an appeal may be allowed. It is unquestionable that the order in question is not unappealable, as the accused appears to contend, because section 44 cited, says expressly that it may be appealed against by the United States. With respect to the private individual injured by the offense, as is the complainant in this case, the right to appeal from such an order is recognized in section 107, which, after providing that 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 * * * shall not be held to be abridged by the provisions of this order expressly declares that such person, that is, the party injured, may appeal against any decision denying him a legal right. It is unnecessary to add that an order sustaining a demurrer by the accused is such an order, because it tends to make unavailing the rights which the injured party attempts to exercise by means of the complaint. It is evident that it has this effect, because such an order,

when final, constitutes a bar to a continuation of the case or a subsequent prosecution for the same offense charged in the complaint. This order, therefore, being appealable, not only by the United States but also by the party injured, it is evident that the effects of the order must be subordinated to the result of the appeal taken by the latter, and the allowance of the appeal by the court below was perfectly legal and strictly in accordance with the statute."

The doctrine laid down in the case of the United States vs. Municipal Council of Santa Cruz de Malabon (1 Phil., 731 et seq.), is cited as authority in support of the conclusions arrived at in the majority opinion. What this court stated in said case is not applicable to the legal question under consideration. In said case the question was raised whether or not the Philippine Sugar Estates Development Co., Ltd., a stock company, could subscribe a complaint for a public offense and institute the corresponding proceeding, not being the offended or injured party. . This court then held the opposite view basing its opinion upon the innovations introduced into the law of criminal procedure by General Orders, No. 58, and upon the provisions of section 107. The question whether or not the offended or injured party in a criminal case can appeal from any resolution denying a legal right was not raised, discussed or decided.

Another reason alleged is that if action were taken on the appeal from the order of dismissal, this court would have no data sufficient to determine and decide the merits thereof. I do not deem this consideration an argument against the appeal. The appeal, if acted upon, must be decided on its merits. If the appeal is without merit it must be dismissed and the appealed order affirmed. But if the petitioner is entitled to appeal in accordance with section 107, as I believe to have so demonstrated, the petition must be granted and the Court of First Instance of Bulacan required to take action on the appeal.

Wherefore, I dissent from the majority opinion.

ABAD SANTOS, J.:

I concur in the dissenting opinion of Justice Imperial.

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