

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF. NATIVIDAD FLORENDO, COMPLAINANT AND APPELLANT, VS. GENEROSO MACEDA AND CORAZON MACEDA, DEFENDANTS AND APPELLEES.

G.R. No. 48224. September 23, 1942

Ponente: MORAN, J.

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MORAN, J.:

This is a criminal action for slight slander instituted in the justice of the peace court of Pasig, Rizal, against defendants Generoso Maceda and Corazon Maceda and which was dismissed on the ground that the offense had already prescribed. The offense was allegedly committed on July 21, 1940. and the action was filed on October 22, 1940, that is, three months and one day after the supposed commission thereof. The appeal of the private prosecutor to the Court of First Instance having been dismissed on the same ground on motion of the fiscal, the complainant appealed to this Court.

The first question here raised is: May the offended party appeal from the order of dismissal rendered upon petition of the fiscal to that effect? This question inevitably leads to the inquiry as to whether the offended party may intervene in the prosecution of a criminal action and, in the affirmative case, the instances where intervention is proper. This is so because, obviously, where there is no right to intervene, there is no right to appeal.

Rule 106, section 15, of the Rules of Court, provides:

"Unless the offended party has waived the civil action or expressly reserved the right to institute it after the termination of the criminal case, and subject to the provisions of section i hereof, he may intervene, personally or by attorney, in the prosecution of the offense."

This provision was taken from section 107 of General Orders, No. 58, which recites:

"The privileges now secured by law to the person claiming to be injured by 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 tho prosecution, subject to the right of the person injured to appeal from any decision of the court denying him a legal right."

The late Chief Justice Arellano, one of the members of the commission which drafted General Orders, No. 58, commenting on the right of the offended party to intervene in the prosecution of the criminal action as provided for in section 107 aforequoted, said:

"* * * La accion penal privada del ofendido mismo era necesario mantener como consecuencia de la vigencia delCodigo Penal por dos razones: primera norque, en principio, con el pronunciamiento principal acerca de la responsabilidad criminal suele ir el relativo a la responsabilidad civil; y segunda, porque "ay delitos que no pueden perseguirse de otro modo quo por medio de instancia formal de la persona ofendida. Tor estas razones,

bajo el epigrafe 'derechos de la persona agraviada por el delito', se dicto la seccion 107, segun la cual, 'los derechos hasla ahora asegurados por la Ley a la persona que alega haber sido agraviada por la comision de un delito, para tomar parte en su persecucion y exigir la responsabilidad civil nacida del delito, no quedan restringidos por las disposiciones de esta orden'." (Estadoa Unidos contra Malabon, 1 Jur. Fil., 760, 7G2.)

In a resolution, upon a motion for reconsideration, in the case of *People vs. Orais* (38 Off. Gaz., 2434), this Court had occasion to explain the specific import of the above-quoted observations of the late Chief Justice, thus:

"* * * No pudo haber sido la intencion del legislador el permitir al particular lesionado por la comision de un delito tomar parte en su persecucion haya o no sufrido daños y perjuicios en su persona o en sus intereses. La frase 'tomar parte en su persecucion y exigir la responsabilidad civil nacida del delito' limita esta intervencion a los casos en que el ofendido particular haya sufrido daños y perjuicios provenientes del hecho delictivo."

And in *Gonzalez vs. Court of First Instance of Bulacan* (63 Phil., 846, 857), this Court reaffirmed these observations as follows:

"Some of the rights secured by the Spanish law to the person claiming to be injured by the commission of the 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." (Italics ours.)

It is thus evident, in the light of the history of the enactment of section 107 of General Orders, No. 58, as reflected in the observations of one of its framers and the explanatory decisions of this Court, that the offended party may, as of right, intervene in the prosecution of a criminal action, but then only when, from the nature of the offense, he is entitled to indemnity and his action therefor has not by him been waived or expressly reserved. This is the rule we have now embodied in section 15 of Rule 106 of the new Rules of Court, elsewhere quoted. But, as expressly provided in this same section, this right of intervention in appropriate cases is subject to the provision of section 4 of the same Rule which reads as follows:

"All criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of the fiscal."

As a necessary corollary to this provision, we laid down the principle that even if the offense is one where civil indemnity might rightly be claimed, if the criminal action is dismissed by the court, on motion of the fiscal, on the ground of insufficiency of the evidence, the offended party cannot appeal from the order of dismissal because otherwise the prosecution of the offense would, in the last analysis, be thrown beyond the direction and control of the fiscal. (*Gonzalez vs. Court of First Instance of Bulacan*, supra; *People vs. Orais*, supra; *People vs. Moll*, 40 Off. Gaz., 2d Sup., p. 231; *People vs. Lipana*, 40 Off. Gaz., 3456.) In the cases cited, statements were, however, made by this Court importing a grant of right to the offended party to appeal upon a question of law. We reaffirm these statements as a correct qualification of the rule, it being understood, however, that such right to appeal upon a question of law presupposes the existence of a rightful claim to civil indemnity and the offended party has neither waived nor reserved expressly his action therefor.

It is argued that in *People vs. Baes* (38 Off. Gaz., 2319), wherein the crime charged is that of offending religious feelings which obviously precludes any idea of civil indemnity, we ruled that the offended party may appeal upon a question of law from the dismissal of the case ordered by the Court of First Instance. The contention rests on an erroneous predicate regarding the true offense alleged to have been committed. In our resolution rendered upon a motion for reconsideration in *People vs. Orais* (38 Gac. Of., pag. 2434), we explained our ruling thus:

"* * *. Existe, piles, una distincion fundamental entre la cuestion envuelta en la causa de Baes y la envuelta en

la de Gonzalez.

"Aunque en la primera causa los hechos denunciados constituyen mas bien delito de allanamiento de una propiedad, previsto y penado por el articulo 281 delCodigo Penal Revisado, que Ueva consigo rcsponsabilidad civil, no hubiendose alegado en la denuncia que el denunciante particular hubiese sufrido algun daño, hubicra sido mas propio el que hubiesemos considerado la solicitud de mandamus como si oe hubiese presentado para obligar al Juigado inferior a admitir no la apelacion, sino la denuncia en la que los hechos denunciados constituian el delito de allanamiento de una propiedad, y no el de 'ofensa a los sentimiontos religiosos', ya que la calificacion que el Ministerio Fiscal da en una querella a un delito no es la que determine su naturaleza, sino los hechos delictivos alegados en la denuncia y probados en el juicio; puesto que, no teniendo el particular agraviado por la comision de un delito derecho de tomar parte en su persecution y de apelar, a menu que reclamase danos y perjuicios o el delito enjuiciado fuese de los que necesariamente producen responsabilidad civil, al unico remedio que le queds es el de mandamus paro obligar al Ministerio Fiscal a presenter la nuerolla correspondiente con vista de la denuncia que alega hechos constitutivos de delito, probados en la investigacion preliminar, y al Juez que sobreseyo la denunda a mocion del Mimsterio Fiscal a reponer la causa, si se ve que uno y otro cometieron abuso de discredit."

In the instant case, the civil action for damages arising from the oral defamation charged does not appear to have been waived or expressly reserved by the supposed offended party. And since, according to Rule 107, section 1, paragraph (a), "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action," we believe, and so hold, that the offended party may rightly intervene by interposing an appeal from the order dismissing the action upon a question of law.

An admission is imputed to the attorney for the offended party to the effect that no damages had been sustained by the latter arising from the offense charged, but this supposed admission is denied. Besides, no attorney can waive his client's cause of action unless with the consent of the client (7 C. J. S., 922), and, in the instant case, the admission attributed to the private prosecuting attorney is not alleged to have been made with the offended party's consent.

The next question is: Has the offense of slight slander charged in the complaint prescribed?

Article 90 of the Revised Penal Code provides:

"Crimes punishable by death, reclusion perpetua or reclusion temporal shall prescribe in twenty years.

"Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

"Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years.

"The crime of libel or other similar offenses shall prescribe in two years.

"The offenses of oral defamation and slander by deed shall prescribe in six months,

"Light offenses prescribe in two months,

"When the penalty fixed by law is a compound one the highest penalty shall be made the basis of the application of the rules contained in the first, second and third paragraphs of this article."

This provision fixes the different prescriptive periods for grave felonies, less grave felonies and light felonies. Thus, a grave felony prescribes in 20 years if it is punishable by death, reclusion perpetua or reclusion temporal, or in 15 years if it is punishable by other afflictive penalty, Less grave felonies prescribe in 10 years if they are punishable by correctional penalty, or in 5 years if punishable by arresto mayor, except the offense of libel or other similar offenses which shall prescribe in 2 years, or the offense of oral defamation and slander by deed

which shall prescribe in 2 months. As the offense, the offense charged in the instant case is a light offense, the prescriptive period of 2 months applies thereto. The case, therefore, was rightly dismissed.

It is contended by complainant-appellant that all offenses of oral defamation, whether light or serious, prescribe in six months because the second to the last paragraph of article 90 above quoted apparently so implies. We cannot uphold such interpretation. The very fact that the prescriptive period for serious oral defamation was expressly excepted from the general rule by lowering it from ten years to six months argues against the supposition that the lawmaker intended to raise the prescriptive period for light oral defamation from two months (as that of all other light offenses) to six months, i. e., on the same level with serious oral defamation. The obvious, reason for shortening the period of limitation for the prosecution of serious oral defamation—namely, that a verbal insult is forgotten as soon as the heat of passion subsides—applies with equal, if not greater, force to light oral defamation. Hence, there is no reason to suppose that the lawmaker intended to raise the prescriptive period for light oral defamation above that of other light offenses. Indeed, that was the same law under the old Penal Code, and there has been no reason or occasion for any change.

The order of dismissal is affirmed, with costs against appellant.

Yulo, C.J., Paras, Bocobo, and Generoso, JJ., concur.

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