

FERNANDO GUEVARRA AND MARCOS GUEVARRA, PETITIONERS, VS. VICENTE DEL ROSARIO, JUDGE OF FIRST INSTANCE OF TAYABAS, HERMOGENES CALUAG, PASTOR C. JAVIER,. CARLOS A. BUENDIA, AND SEB...*G.R. No. 49252. November 13, 1946*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-49252/>**PADILLA, J.:**

Fernando Guevarra and Marcos Guevarra pray for a writ of mandamus to compel the respondent court to conduct a preliminary investigation upon a complaint filed by them on June 28, 1944, charging Hermogenes Caluag, Provincial Fiscal of Tayabas, Pastor C. Javier, Municipal Mayor of Candelaria, Tayabas; Carlos A. Buendia, Justice of the Peace of Sariaya and Candelaria, Tayabas, and Sebastian A. Li wag, Clerk of Court of the Justice of the Peace of Candelaria, Tayabas, with the crime of falsification of public documents, denned and punished under article 171 of the Revised Penal Code. They also pray that the respondent court be compelled to communicate on the subject matter of the complaint with the Secretary of Justice . so that the latter may appoint an acting fiscal in view of the incumbent's disqualification to act in the case.

Two days after the filing of the complaint referred to, the respondent court acting thereon ordered the return of the complaint to the petitioners, for the reason that the Ministry of Justice or the Bureau of Public Prosecution of the Republic of the Philippines should first be heard before the complaint might be entertained. A motion for reconsideration of the order was denied on July 14, 1944.

The Director of Prisons reports in CA-G. R. No. 77 that the petitioners died in Bilibid Prisons. Emilio Guevarra and Ciriaco Guevarra, son and brother of the petitioners, pray to be allowed to substitute the petitioners in this case.

The substitution prayed for calls for determination of the question whether, upon the death of the petitioners, the action brought in this proceeding survived to their heirs or legal representatives. The action survived if the cause of action survived. The cause of action, upon which this proceeding in mandamus is predicated, arose from the failure of the respondent court to conduct a preliminary investigation upon a complaint filed by the petitioners charging certain officers with the crime of falsification of public documents. The right of the petitioners to file a complaint charging the commission of a crime is personal. It is so, because as required in section 2, Rule 106, a complaint charging a person with an offense must be subscribed by the offended party. The right being personal, the complaint filed by the petitioners with the respondent court abated upon their death.

Likewise, the cause of action, upon which this proceeding in mandamus is based, is personal. The failure of the respondent court to conduct a preliminary investigation which gave rise to this proceeding was upon petitioners' complaint. The heirs or legal representatives of the late petitioners could not justly complain of the failure of the respondent court to conduct a preliminary investigation, because they had filed no complaint. It was the complaint of the deceased petitioners. The cause of action in this proceeding did not survive to the heirs or legal

representatives of the late petitioners, because the complaint filed by the petitioners with the respondent court, from which the cause of action in this proceeding arose, abated upon the death of said petitioners. Hence this proceeding cannot be prosecuted or continued by the heirs or legal representatives of the late petitioners, for the cause of action upon which it is predicated is personal and did not survive to said heirs and legal representatives.

Motion for substitution is denied and petition for a writ of mandamus abated, without costs.

Hilado, Bengzon, Briones, and Tuason, JJ., concur.

CONCURRING

FERIA, J., with whom concur MORAN, C. J., and PABLO, J.:

I concur in the majority decision for the following reasons:

It is true and plain that the abatement of actions, either 1 by operation of the law or the will of the parties, does not carry with it the extinction of the right of action; but it is also true that the extinction of a cause or right of action necessarily and impliedly carries with it the abatement of the pending action to enforce it, because the latter is but the legal means of enforcing the former.

The common law rule that the death of a party abates a pending action irrespective of whether or not the cause of action survives, has never been in force or applied in this jurisdiction. Section 119 of the old Code of Civil Procedure Act No. 190, from which section 17, Rule 3, of the Rules of Court was taken, provided that "In case a party to an action dies while the action is pending, the action shall not abate by reason thereof, but the court on motion may allow the action or proceeding to be continued by or against his executor, administrator or other legal representative, etc."

Where the cause of action is entirely personal to the plaintiff and does not survive to his representatives, such as the right to support, divorce, and so forth, the action abates on the death of the plaintiff. But if the right of action is not personal and survives to the representatives of the deceased, the action is not abated or extinguished by the death of the plaintiff, and the latter will be substituted by his legal representative under section 17, Rule 3 of the Rules of Court.

According to our Rules of Court, mandamus is a special civil action, and therefore the provisions of section 17, Rule 3, on substitution of parties who die during the pendency of a suit apply. Rules 1 to 3 of the Rules of Court contain general provisions applicable to all civil actions, ordinary and special, as contradistinguished from a special proceeding; and section 1, Rule 65 of the same Rules further prescribes that "the provisions of the preceding rules (including said Rule 3) shall apply in actions * * * for mandamus, etc." This is in accordance with the rule prevailing in United States, where "it is now considered in most jurisdictions, and especially in those where both legal and equitable remedies are administered by the same tribunal or where the code system of procedure obtains, that a mandamus proceeding: is not a special proceeding, but that it is nothing more nor less than an action at law, or a civil action under the code." (18 U. C. L., 333.)

The doctrine enunciated in 18 It. C. L., 335, section 287, as laid down in the case of *People vs. Western Life Indemnity Co. et al.* (2G1 111., 513), to the effect that "A proceeding in mandamus is in the nature of personal action, and it generally abates on the death of the person in whose behalf they have been instituted, is not borne out by the decision in that case. It is true that the Supreme Court of Illinois held in said, case that mandamus is a personal action, and the language used was broad enough to warrant the conclusion that the court takes the position that all mandamus proceedings abate on the death of the petitioner; but the subject matter of the action in

said case was such that the personal representative who sought to be substituted as petitioner had no interest in its continued prosecution. Said conclusion can not, therefore, be considered as a general rule, but applicable only to cases involving the same or similar facts. In the same decision, it is said that "This Court has stated that where a right of action is so entirely personal that a person, by contract, can not place it beyond his control, the action will not survive; that, as a general rule, assignability and survivability of causes of action are convertible terms. (Selden vs. Illinois Trust and Savings Bank, 239, 111., 67, 87, N. E., 860.) * * * It appears from the record that the wife is the beneficiary under this insurance policy. It is conceded that she is the only one that could recover under it and that the representative of the deceased, after his death, would not have any interest in said policy, hence the action could not survive to the "heir, devisee, executor or administrator" under section 10 of the Abatement Act."

In view of the foregoing, we are of the opinion and so hold that the rule is, not that a mandamus proceeding as a personal action abates upon the death of the relator in the absence of statutory provisions to the contrary, but that it may abate or not depending upon the nature of the right sought to be enforced thereby. In other words, the nature of the right of action sought to be enforced by mandamus is a material factor in determining whether or not it abates upon the death of the petitioner. If the right of action involved is entirely personal and, consequently, does not survive upon the death of the party to his representative, the action of mandamus to enforce it abates upon the death of the relator. But if the right sought to be enforced is not personal as, for instance, an action of mandamus to compel a judge to act in an action for recovery of a real or personal property, or a register of deed to inscribe a real estate in the relator's name, the mandamus proceeding does not abate upon the latter's death.

The question to be determined by this Court in the present case is, therefore, whether or not the right of the petitioners, as offended party, to subscribe and file a complaint of falsification of public documents against certain public officers, and compel by mandamus the respondent judge or his successor in the office to practice the corresponding preliminary investigation, is entirely personal and does not survive upon the death of the said petitioners to their representative. If it is not personal and survives or is not extinguished by the death of the petitioners, the now pending mandamus proceeding is not abated, and may be continued by their representative in substitution for the deceased. But if it is entirely personal to the petitioners, or the latter could not, by contract or otherwise, place it beyond their control, it is extinguished by the death of the relators, and the latter's action of mandamus abates and can not be continued by their legal representative under section 17, Rule 3, above mentioned.

Under the Rules of Court relating to criminal procedure, all criminal actions shall be prosecuted under the direction and control of the fiscal, because the people represented by the government is the party in interest to prosecute offenses or crimes and secure the conviction of the offenders in order to preserve the public order. But where a crime or offense not only disturbs the public order but also injures the property right of an individual, the latter, as offended party, is authorized by law to subscribe and file a complaint and prosecute the criminal action, although subject to the direction and control of the fiscal. (Sec. 4, Rule 106, Rules of Court.) The Rules of Court do not directly define the meaning of "offended party," but from the provision of section 11, Rule 106, of the said Rules, it may clearly be inferred that offended party is the person against whom or against whose property the crime was committed.

Under the American system, the prosecution of public offenses is reserved to the representative of the government and the individual citizen can not bring an action for that purpose, for he is protected by his right to bring a civil action for damages caused by the crime. The old General Orders No. 58, from which the Rules of Court on criminal procedure were taken, 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. (United States vs.

Municipal Council of Santa Cruz de Malabon, 1 Phil., 731, 733.) But, while one of the reasons in maintaining the private penal action of the injured party himself, was the right of the latter to the civil obligation of the defendant resulting from a crime or misdemeanor, the right granted by law to the injured party to subscribe and file a complaint against the offender, is not made to depend upon his right of action to recover from the offender the latter's civil liability arising out of the crime or offense in each particular case. Because, although no civil action may arise out of an offense, the injured party may subscribe and file a complaint, as in bigamy and other offenses in which the injury or damage caused to the victim can not be compensated in terms of money. And even though a public offense causes damage or injury to and recoverable by the aggrieved party, and the latter waives or reserves the right to institute separately the civil action under section 1 of Rule 107, the injured party is entitled or preserves his right to subscribe and file a compl'n against the accused, because of his being the offended party.

This right conferred by law upon the offended party is purely or entirely statutory and personal, and upon his death it does not survive to his representative. The heirs of the deceased can not exercise the same right or continue the proceeding instituted by the decedent, although they may, as any other person, inform the prosecuting attorney of the commission of the crime or offense, because they are not and can not be considered the offended party. As above stated, the right granted by the Spanish Code of Criminal Procedure to any citizen who might desire to aid the action of the Government, to bring a penal action, was abolished by the rules of criminal procedure contained in General Order No. 58 and its amendments.

DISSENTING

PERFECTO, J., with whom concurs PARAS, J.:

On June 28, 1944, petitioners commenced a criminal action by filing directly with the Court of First Instance of Tayabas a complaint charging several officials with the offense of falsification of public documents which was docketed as criminal case No. 158 of said court.

Petitioners allege that Judge Vicente del Rosario of the Court of First Instance of Tayabas issued on June 30, 1944, an order commanding the clerk of said court to return the complaint to petitioners with instructions either to file the case with the Ministry of Justice or the Bureau of Public Prosecution which should first be heard before the suit is entertained by the court or to file said criminal complaint with the justice of the peace court. On July 3, 1944, petitioners filed a motion for reconsideration, which was denied by the respondent judge on July 14, 1944, ruling that only an information signed by the fiscal and not a complaint signed by the offended party may be filed with the Court of First Instance directly.

Alleging that the lower court has violated the provisions of section 4 of Rule 108, section 4 of Rule 106, and section 1 of Rule 124, petitioners pray that judgment be rendered commanding the lower court to conduct a preliminary investigation in said criminal case No. 15S.

The rule provisions invoked by petitioners are as follows:

"Upon complaint or information filed directly with the Court of First Instance, the judge thereof shall conduct a preliminary investigation in the manner provided in the following sections, and should he find a reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest and try the case on the merits." (Sec. 4, Rule 106.)

"All criminal actions either commenced by complaint or by information shall be prosecuted -under the direction and control of the fiscal." (Sec. 4, Rule IOC.)

"Courts of justice shall be always open, except on legal holidays, for the filing of any pleading or other proper papers, for the trial of cases, and for the issuance of orders or rendition of judgments. Justice shall be impartially administered without unnecessary delay." (Sec. 1, Rule 124.)

On August 23, 1944, Solicitor General Sixto de la Cuesta and Solicitor Vicente Arguelles filed the following answer to the petition:

"Comes now the undersigned counsel for the respondent Judge of the Court of First Instance of Tayabas, and respectfully states:

"That under the Rules of Court a criminal complaint may be filed directly with the Court of First Instance by the offended party and that upon the complaint filed, it is the mandatory duty of the Judge thereof to conduct a preliminary investigation in the manner provided by said rules. (Rule 108, section 4 of Rules of Court.)

"That it is a uniform practice that when a complaint is laid before a magistrate be he a judge of the Court of First Instance or a Justice of the Peace, 'he must make a preliminary investigation, and if he is satisfied that the crime complained of has been committed and that there is reasonable ground to believe that the party charged has committed it, he must take the action the law requires' (United States vs. Banzuela and Banzuela, 31 Phil., 564; People vs. Solon, 47 Phil., 443, 453).

"That it is error on the part of the respondent Judge to order the return of the complaint filed in the case in question to the aggrieved party for reasons stated in the pronouncements made in the orders of the court of June 11, 1944 and July 14, 1944; and that said complaint could have been entertained in court without prejudice to endorsing the matter to the Bureau of Public Prosecution for such action as said office may deem proper.

"Wherefore, it is submitted that the orders of the Court of First Instance of June 30, 1944, and July 14, 1944, subject of the present proceedings are not in accord with law, and that the petitioners are entitled to the remedy sought in these proceedings."

Emilio Guevarra and Ciriaco Guevarra, sons of petitioner Fernando Guevarra and brothers of Marcos Guevarra, being co-accused in the criminal case for murder wherein the alleged falsification of public documents has been committed, filed in this Court a motion to prosecute this case in substitution of petitioners Fernando and Marcos Guevarra who, according to the Director of Prisons, died while detained in the Bilibid Prison, in Muntinlupa.

The majority voted to deny the motion for substitution and to dismiss the petition, the latter notwithstanding the fact that the Solicitor General himself, more than two years ago, had filed an answer agreeing with the petition because "the petitioners are entitled to the remedy sought in these proceedings."

The majority contend that the right of petitioners to file a complaint charging the commission of a crime is personal and abated upon their death; and that the cause of action, upon which this proceeding for mandamus is based, is also personal and, for that reason, did not survive to the heirs or legal representatives of said petitioners, because upon their death the complaint filed by them with the respondent court abated.

The whole architectural structure of the majority's theory is built, not upon the rocky foundation of any legal principle—either universally accepted or just newly discovered by a pioneering juridical or philosophical genius, not even upon any plausible legal maxim invented by a resourceful Lord Coke in support of a just or equitable solution of a controversy—but upon the haziness and broad meaning of an adjective; "personal."

The majority's syllogism starts from the following major premise: All things personal abate and do not survive with the subject's death, and are intransmissible.

The thesis can not stand the least analysis. Everybody knows that almost all, if not all, things transmitted by the

death of a person to his heirs are, or may be, designated as "personal." There are, in the first place, things which are classified as strictly personal goods, such as, furniture, money, shares, and other movable property. Even lands and buildings are "personal" property, as distinguished from conjugal or communal property. The paraphernal estate of a deceased wife is her "personal" property.

The consequences to which the majority's thesis leads are too obvious and too obviously senseless that we feel it needless to expose further its absolute lack of any foundation on reason or common sense, on logic or experience.

Now, if the majority, by adopting a novel and arbitrary lexicon, should want the adjective limited to a kind of personal things which, by their very nature, die with the subject's death, then the major premise of their syllogism must be restated to convey that sense.

But then such kind of personal things shall exclusively and absolutely comprise alone the organs and other parts of the physical body which dies at his death. Of course, they will not include his spirit, his thoughts, or the written words in which he had expressed them. Those thoughts, if of permanent value, such as those that sprang from the minds of great men, like Rizal or Mabini, or from the minds of great thinkers, never die and are transmitted to coming generations for mankind to cherish until the end of time.

Even the destructible parts of the physical body of a dead person, notwithstanding their superlative personal character, remain transmissible. The devilish leaders of Nazi Germany took full advantage of this fact at Maidanek where the remains of millions of men, women and children they massacred were used to fertilise their orchards and gardens.

The right of filing a complaint for the commission of a crime and the right to enforce that right by mandamus can not, surely, be identified with any physical limb or organ of the subject of those rights.

If by designating them as "personal" the majority wanted to convey the idea that they are exclusively personal, from which they concluded that they are intransmissible, they must feel that their theory is completely indefensible, when they had to seek refuge under an sphynxian silence, supplying the lack of ground and truth of their theory with the emphasis of an unreasoned assertion, made with the dogmatism of absolutists who would not countenance any discussion of, and would frown with Olympic disdain at, the challenge of an argument. "Magister dixit ila est."

Section 2 of Rule 106 is invoked by the majority to support the proposition that the right to file a complaint for the commission of a crime is personal and is used as a board from which to jump to the conclusion that it is also intransmissible.

They assume that because said section defines the complaint as "a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government," no other party can sign or file it.

Evidently, the majority have lost sight of the provisions of section 5 of Rule 106, regarding sufficiency of criminal complaint or information, which reads as follows:

"SEC. 5. Sufficiency of complaint or information.—A complaint or information is sufficient if it states the name of the defendant; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place -wherein the offense was committed.

"When the offense is committed by more than one person, all of them shall be included in the complaint or information."

It can be seen that, while section 2 of Rule 106 defines complaint as a "sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated," section 5 thereof specifies the essential elements which would make a complaint sufficient. Among said elements, the signature "by the offended party, any officer or other employee of the government" is not mentioned. In other words, under section 5 of Rule 106, a complaint is sufficient although it does not bear the signature of the "offended party, any peace officer or other employee of the government." Said section admits even the possibility of a complaint not bearing the signature, not only of the persons mentioned in section 2, but also of any other person.

It must be so under the philosophy underlying our system of criminal law which, as it happens in all enlightened countries, starts from the principle that all criminal offenses undermines the social stability and orderliness of society and that the real offended party, aside from the actual victims themselves, is the people. An unmistakable statement of that philosophy underlying our system of criminal law appears in section 1 of Rule 106, which provides:

"SECTION 1. Commencement of criminal action.—All criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefor."

The error of the majority in insisting, in the present case, that the complaint for falsification of public documents¹ in question did not survive upon the death of complainants Fernando and Marcos Guevarra, and in denying their surviving sons and brothers, Emilio and Ciriaco Guevarra, the right to continue these mandamus proceedings and to prosecute the complaint filed by the two deceased, starts from the primitive concept that the crime had offended exclusively the victims and that the victims are the only one's entitled to prosecute the culprits. All cultured persons ought to know that such an underlying concept is outworn and has been discarded, and is outgrown by a more advanced system of philosophy in criminal law. The fact, established by sociological studies and researches, that the tribes of remote antiquity would make reprisals and would even start tribal wars for offense committed against one of their members, is a conclusive proof that the primitive concept which we are refuting could have only been accepted before the existence of any organized human community.

In the present case, the sons and brothers of the deceased complainants, Emilio and Cirilo Guevarra, are, after all, as offended parties themselves as the deceased for two reasons:

-

Because, as sons and brothers of the victims of the alleged falsifications, they suffered almost as much as the deceased from the effects of the falsifications, as it is only natural to persons so closely related.

- Because they themselves were later included as accused in the criminal proceedings in which the alleged falsifications were committed, as alleged co-authors of the murder imputed to the deceased, and the harm inflicted upon them by said proceedings appears self-evident, considering the fact that we had only recently, by unanimous decision, acquitted them of the crime charged in the information. (People vs. Guevarra, p. 415, ante.)

We vote for the granting of the motion for substitution and of the prayer of the petition, concurred in by the Solicitor General himself in representation of the respondent Court of First Instance of Tayabas. The fact that the rules have been violated by the lower court more than two years ago and the relief sought in the petition, notwithstanding the Solicitor General's answer, has not been acted upon for that long period of time, instead of lessening petitioners' right to seek the relief prayed for makes stronger the plea for said relief. The law must be complied with. No excuses, no compromises, no circumventions should be allowed to defeat the unmistakable mandates of the law. Much less when in the complaint for falsification of public documents, which was illegally

rejected by the lower court, the high interests of public morals and society are at stake. The fact that the crime was allegedly perpetrated by government officials, entrusted with the duty to keep watch over the law and to prosecute all kinds of lawlessness, makes more imperative that the petition should not be so lightly whitewashed.

The stern attitude of the law against all erring persons must not be relaxed because the alleged culprits are law officers. No violation of the law must be countenanced only because it will protect the erring officials or because the law is invoked by the weak, the defenseless, by one who is under indictment for an abhorrent crime, or by a moral leper, spurned by all his fellow citizens. The law is incompatible with the iniquities of discrimination.

Motion for substitution denied; petition for writ of mandamus abated.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.