

ROMULO CANTIMBUHAN, NELSON B. MALANA, AND ROBERT V. LUCILA, PETITIONERS, VS. HON. NICANOR J. CRUZ, JR., PRESIDING JUDGE OF THE MUNICIPAL COURT OF PARAÑAQUE, METRO MANILA, AND FI...

G.R. Nos. 51813-14. November 29, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the Order, dated August 16, 1979, of respondent Judge Nicanor J. Cruz, Jr., of the then Municipal Court of Parañaque, Metro Manila, disallowing the appearances of petitioners Nelson B. Malana and Robert V. Lucila as private prosecutors in Criminal Cases Nos. 58549 and 58550, both for less serious physical injuries, filed against Pat. Danilo San Antonio and Pat. Rodolfo Diaz, respectively, as well as the Order, dated September 4, 1979, denying the motion for reconsideration holding, among others, that "the fiscal's claim that appearances of friends of party-litigants should be allowed only in places where there is a scarcity of legal practitioner, to be well founded. For, if we are to allow non-members of the bar to appear in court and prosecute cases or defend litigants in the guise of being friends of the litigants, then the requirement of membership in the Integrated Bar of the Philippines and the additional requirement of paying professional taxes for a lawyer to appear in court, would be put to naught." (p. 25, Rollo)

Records show that on April 6, 1979, petitioner Romulo Cantimbuhan filed separate criminal complaints against Patrolmen Danilo San Antonio and Rodolfo Diaz for less serious physical injuries, respectively, and were docketed as Criminal Cases Nos. 58549 and 58550 in the then Municipal Court of Paranaque, Metro Manila.

Petitioners Nelson B. Malana and Robert V. Lucila, in 1979, were senior law students of the U. P. College of Law where, as part of the curriculum of the university they were required to render legal assistance to the needy clients in the Office of the Legal Aid. Thus, in August 1979, petitioners Malana and Lucila filed their separate appearances, as friends of complainant-petitioner Cantimbuhan. Herein respondent Fiscal Leodegario C. Quilatan opposed the appearances of said petitioners, and respondent judge, in an Order dated August 16, 1979, sustained the respondent fiscal and disallowed the appearances of petitioners Malana and Lucila, as private prosecutors in said criminal cases. Likewise, on September 4, 1979, respondent Judge issued an order denying petitioners' motion for reconsideration.

Hence, this petition for certiorari, mandamus and prohibition with prayers, among others, that the Orders of respondent judge, dated August 16, 1979 and September 4, 1979, be set aside as they are in plain violation of Section 34, Rule 138 of the Rules of Court and/or were issued with grave abuse of discretion amounting to lack of jurisdiction. Upon motion, the Court, on November 8, 1979, issued a temporary restraining order "enjoining respondent judge and all persons acting for and in his behalf from conducting any proceedings in Criminal Cases Nos. 58549 (People of the Philippines vs. Danilo San Antonio) and 58559 (People of the Philippines vs. Rodolfo Diaz) of the Municipal Court of Paranaque Metro Manila on November 15, 1979 as scheduled or on any such

dates as may be fixed by said respondent judge."

Basis of this petition is Section 34, Rule 138 of the Rules of Court which states:

"SEC. 34. By whom litigation conducted. - In the court of a justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar."

Thus, a non-member of the Philippine Bar - a party to an action is authorized to appear in court and conduct his own case; and, in the inferior courts, the litigant may be aided by a friend or agent or by an attorney. However, in the Courts of First Instance, now Regional Trial Courts, he can be aided only by an attorney.

On the other hand, it is the submission of the respondents that pursuant to Sections 4 and 15, Rule 110 of the Rules of Court, it is the fiscal who is empowered to determine who shall be the private pro-secutor as was done by respondent fiscal when he objected to the appearances of petitioners Malana and Lucila. Sections 4 and 15, Rule 110 of the Rules of Court provide:

"SEC. 4. Who must prosecute criminal actions. - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal.

"x x x x x x x x

"SEC. 15. Intervention of the offended party in criminal action. - Unless the offended party has waived the civil action or expressly reserved the right to institute it separately from the criminal action, and subject to the provisions of section 4 hereof, he may intervene, personally or by attorney, in the prosecution of the offense."

And, they contend that the exercise by the offended party to intervene is subject to the direction and control of the fiscal and that his appearance, no less than his active conduct of the case later on, requires the prior approval of the fiscal.

We find merit in the petition. Section 34, Rule 138 of the Rules of Court, clearly provides that in the municipal court a party may conduct his litigation in person with the aid of an agent appointed by him for the purpose. Thus, in the case of *Laput vs. Bernabe*, 55 Phil. 621, a law student was allowed to represent the accused in a case pending before the then Municipal Court, the City Court of Manila, who was charged for damages to property through reckless imprudence. "It is accordingly our view that error was committed in the municipal court in not allowing *Crispiniano V. Laput* to act as an agent or friend of *Catalino Salas* to aid the latter in conducting his defense." The permission of the fiscal is not necessary for one to enter his appearance as private prosecutor. In the first place, the law does not impose this condition. What the fiscal can do, if he wants to handle the case personally is to disallow the private prosecutor's participation, whether he be a lawyer or not, in the trial of the case. On the other hand, if the fiscal desires the active participation of the private prosecutor, he can just manifest to the court that the private prosecutor, with its approval, will conduct the prosecution of the case under his supervision and control. Further, We may add that if a non-lawyer can appear as defense counsel or as friend of the accused in a case before the municipal trial court, with more reason should he be allowed to appear as private prosecutor under the supervision and control of the trial fiscal.

In the two criminal cases filed before the Municipal Court of Parañaque, petitioner *Cantimbuhan*, as the offended party, did not expressly waive the civil action nor reserve his right to institute it separately and, therefore, the civil action is deemed impliedly instituted in said criminal cases. Thus, said complainant *Romulo Cantimbuhan* has personal interest in the success of the civil action and, in the prosecution of the same, he cannot be deprived of his right to be assisted by a friend who is not a lawyer.

WHEREFORE, the Orders issued by respondent judge dated August 16, 1979 and September 4, 1979 which disallowed the appearances of petitioners Nelson B. Malana and Robert V. Lucila as friends of party-litigant petitioner Romulo Cantimbuhan, are hereby SET ASIDE and respondent judge is hereby ordered to ALLOW the appearance and intervention of petitioners Malana and Lucila as friends of Romulo Cantimbuhan. Accordingly, the temporary restraining order issued on November 8, 1979 is LIFTED.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion, Jr., Guerrero, Abad Santos, Plana, Escolin, and Gutierrez, Jr., JJ., concur. Teehankee and De Castro, JJ., joined J. Melencio-Herrera in her dissenting opinion.

Aquino, J., I dissent. Senior Law students should study their lessons and prepare for the bar. They have no business appearing in court.

Melencio-Herrera, J., dissents in a separate opinion.

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DISSENTING OPINION

MELENCIO-HERRERA, J.:

Section 34, Rule 138 of the Rules of Court specifically provides that it is "a party" who may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose in the Court of a Justice of the Peace Romulo Cantimbuhan, as the complaining witness in Criminal Cases Nos. 58549 and 58550 of the then Municipal Court of Paranaque, Metro Manila, is not a "party" within the meaning of the said Rule. The parties in a criminal case are the accused and the People. A complaining witness or an offended party only intervenes in a criminal action in respect of the civil liability. The case of Laput and Salas vs. Bernabe, 55 Phil. 621, is authority only in respect of the accused, as a "party", in a criminal case.

Sections 4 and 15, Rule 110 of the Rules of Court, being the more specific provisions in respect of criminal cases, should take precedence over Section 34, Rule 138 and should be controlling (Bagatsing vs. Hon. Ramirez, 74 SCRA 306 [1976]). Section 4 provides that all criminal actions shall be prosecuted under the direction and control of the Fiscal, while Section 15 specifically provides that the offended party may intervene, personally or by attorney, in the prosecution of the offense.

I vote, therefore, to uphold the Order of respondent Municipal Judge, dated August 16, 1979, disallowing the appearances of petitioners as private prosecutors in the above-mentioned criminal cases.

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