

## SECOND DIVISION

[ G.R. No. 169711, February 08, 2010 ]

**HEIRS OF SARAH MARIE PALMA BURGOS, PETITIONERS, VS.  
COURT OF APPEALS AND JOHNNY CO Y YU, RESPONDENTS.**

### **D E C I S I O N**

**ABAD, J.:**

This case is about the legal standing of the offended parties in a criminal case to seek, in their personal capacities and without the Solicitor General's intervention, reversal of the trial court's order granting bail to the accused on the ground of absence of strong evidence of guilt.

#### **The Facts and the Case**

On January 7, 1992 a number of assailants attacked the household of Sarah Marie Palma Burgos while all were asleep, killing Sarah and her uncle Erasmo Palma (Erasmo). Another uncle, Victor Palma (Victor), and a friend, Benigno Oquendo (Oquendo), survived the attack. The theory of the police was that a land transaction gone sour between Sarah's live-in partner, David So (David), and respondent Johnny Co (Co) motivated the assault.

Four months after the incident, the police arrested Cresencio Aman (Aman) and Romeo Martin (Martin) who executed confessions, allegedly admitting their part in the attack. They pointed to two others who helped them, namely, Artemio "Pong" Bergonia and Danilo Say, and to respondent Co who allegedly masterminded the whole thing. The Regional Trial Court (RTC) of Manila, Branch 51, tried the case against Aman and Martin in Criminal Cases 92-104918-21. The three others remained at large. After trial, the RTC acquitted them both.

After 10 years or on September 5, 2002 respondent Co surrendered to the National Bureau of Investigation. The prosecution charged him with two counts of murder for the deaths of Sarah<sup>[1]</sup> and Erasmo<sup>[2]</sup> and two counts of frustrated murder committed against Oquendo<sup>[3]</sup> and Victor.<sup>[4]</sup> Upon arraignment, Co pleaded not guilty to the charges.

On September 25, 2002 respondent Co filed a petition for admission to bail.<sup>[5]</sup> After hearing or on April 14, 2004, the RTC<sup>[6]</sup> granted bail on the ground that the evidence of guilt of respondent Co was not strong. The RTC summarized the prosecution's evidence as follows:

1. Aman and Martin's extrajudicial confessions that pointed to Co as the one who hired them to kill David and his family.

2. David's testimony as alleged witness to the killing of Sarah. Aman supposedly told David later when they met that it was Co who ordered the massacre.

3. Police officer Leopoldo Vasquez, assistant leader of the police team that investigated the case, said that his team conducted two operations to take Co into custody. The first was in a restaurant where they waited for him. But Co got suspicious and when he saw the police, he immediately left the restaurant, got into his car, and sped away. The police also tried to arrest Co at his residence but the police did not find him there. Co also offered to settle the case.

The RTC had a low estimate, however, of the above evidence. *First*, the extrajudicial confessions of Aman and Martin, apart from having been irregularly executed, merely proved their participation in the killing. Neither, however, claimed conspiracy with respondent Co. Further, the prosecution did not present Aman or Martin during the bail hearing, reportedly because Aman was already dead and Martin could not be located. To admit their sworn statements in evidence would deprive Co of his constitutional right to cross-examine them.

*Second*, David's narrations were, to the RTC, contradictory, uncorroborated, and self-serving, thus lacking in evidentiary weight.

*Third*, police officer Vasquez's story was likewise uncorroborated. Besides, while flight is often indicative of guilt, it requires a clear showing of the identity of the offender and his evasion of arrest. Here, said the RTC, the prosecution failed to establish Co's identity as the assailant and his reason for fleeing from the police.

*Fourth*, the prosecution failed to prove that the offer of settlement came from Co.

Petitioner heirs of Sarah moved for reconsideration<sup>[7]</sup> but the RTC, now presided over by another judge,<sup>[8]</sup> denied the same in its Order of May 18, 2005.<sup>[9]</sup> This prompted the victim's heirs to file a special civil action of *certiorari* with prayer for a temporary restraining order or preliminary injunction<sup>[10]</sup> before the Court of Appeals (CA) in CA-G.R. SP 90028.

The CA dismissed the petition,<sup>[11]</sup> however, for having been filed without involving the Office of the Solicitor General (OSG), in violation of jurisprudence<sup>[12]</sup> and the law, specifically, Section 35, Chapter 12, Title III, Book IV of the Administrative Code which states that:

**Sec. 35. Powers and Functions.--The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceedings, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall**

**discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:**

**x x x x**

**(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.**

Petitioner heirs of Sarah moved for reconsideration<sup>[13]</sup> but the CA denied it for lack of merit in its Resolution of September 16, 2005,<sup>[14]</sup> hence, the heirs' recourse to this Court.

### **The Issue**

The case raises one issue: whether or not the CA correctly dismissed the special civil action of *certiorari*, which questioned the RTC's grant of bail to respondent Co, for having been filed in the name of the offended parties and without the OSG's intervention.

### **The Court's Ruling**

Generally, a criminal case has two aspects, the civil and the criminal. The civil aspect is borne of the principle that every person criminally liable is also civilly liable.<sup>[15]</sup>

The civil action, in which the offended party is the plaintiff and the accused is the defendant,<sup>[16]</sup> is deemed instituted with the criminal action unless the offended party waives the civil action or reserves the right to institute it separately or institutes the civil action prior to the criminal action.<sup>[17]</sup>

The law allows the merger of the criminal and the civil actions to avoid multiplicity of suits.<sup>[18]</sup> Thus, when the state succeeds in prosecuting the offense, the offended party benefits from such result and is able to collect the damages awarded to him.

But, when the trial court acquits the accused<sup>[19]</sup> or dismisses the case<sup>[20]</sup> on the ground of lack of evidence to prove the guilt of the accused beyond reasonable doubt, the civil action is not automatically extinguished since liability under such an action can be determined based on mere preponderance of evidence. The offended party may peel off from the terminated criminal action and appeal from the implied dismissal of his claim for civil liability.<sup>[21]</sup>

The purpose of a criminal action, in its purest sense, is to determine the penal liability of the accused for having outraged the state with his crime and, if he be found guilty, to punish him for it. In this sense, the parties to the action are the People of the Philippines and the accused.<sup>[22]</sup> The offended party is regarded merely