101 Phil. 599

[G. R. No. L-10427. May 27, 1957]

EULOGIO MILL, PETITIONER, VS. PEOPLE OP THE PHILIPPINES AND HON. NICASIO YATCO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, RESPONDENTS.

D E C I S I O N

FELIX, J.:

Executive Orders Nos. 400 and 58 issued by the President of the Commonwealth of the Philippines and made effective January 1, 1942, and August 1, 1945, respectively, created the City of Greater Manila1 whereby Quezon City was absorbed by and became a part of the City of Greater Manila.

On August 8, 1946, an information for murder committed in Quezon City, then a part of the City of Greater Manila, was filed with the Court of First Instance of Manila and docketed therein as Criminal Case No. 221, against petitioner Eulogio Mill, which information reads as follows:

> "That on or about the 8th day of June, 1946, in the City of Manila, Philippines, the said accused, with intent to kill and by means of treachery, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon one Iluminada Cabio by then and there stabbing her with a knife on the breast and other parts of her body, thereby inflicting upon her mortal wounds which wore .the direct and immediate cause of her instantaneous death."

Upon being arraigned on *December 14, 1955*, in Branch VIII of the Court of First Instance of Manila, defendant pleaded "not guilty" to this information. The delay in the arraignment of the defendant for 8 years since the filing of the information until his arraignment therefor, was due to his success in evading arrest.

On *October 10, 1946*, that is, before the arraignment of the defendant in the aforementioned case, Republic Act No. 54 was enacted by Congress, expressly repealing said Executive Orders Nos. 400, and 58 and restoring Quezon City to its former status as .a distinct and separate chartered city. On January 3, 1956, after the passage of Republic Act No. 54, counsel for the defendant Eulogio Mill riled with the Court of First Instance of Manila a motion to quash the information in said case and in an- other case in which the same defendant was charged with the crime of frustrated murder (not involved in these proceedings), apparently committed at the same occasion, on the ground that the Court had no jurisdiction to take cognizance thereof, which motion was granted by order of the Court of January 16, 1956, worded as follows:

> "Wherefore, these two eases are dismissed, with costs *de oficio*. The Clerk of Court is directed to forthwith send a copy of this order to the Prison Officer, Manila Police Department, for his information, and another copy to the City Attorney of Quezon City, together with copies of the informations, for such action as he may deem proper to take in the premises. If no new informations are filed by him in the Court of First 3instance, Quezon City, within five days from receipt of a copy of this order, the Prison Officer, Manila Police Department, shall forthwith release the. defendant from custody." (Section 7, Rule 113, Rules of Court.)

This motion was predicated on the assumption that the Court "had lost jurisdiction to try these two cases as of the date of the approval of Republic Act No. 54 and the revival of Quezon City on October 10, 1946."

On January 21, 1956, the City Attorney of Quezon City filed an information with the Court of First Instance of Rizal (Quezon City Branch), docketed as Criminal Case No. Q-1907, which was amended on January 26, 1956, accusing the petitioner Eulogio Mill of the same crime of murder for which he had been previously charged in Criminal Case No. 221 of the Court of First Instance of Manila., and to said amended information the defendant pleaded "not guilty" upon arraignment. Said amended information was of the following tenor: "

> The undersigned City Attorney of Quezon City accuses Eulogio Mill *alias* "Oloy" of the crime of murder, committed as follows:

> That on or about the 8th day of June, 1946, in Quezon City, Philippines, the above named accused, with intent to kill and without any justifiable motive, did then and there wilfully, unlawfully and feloniously, with treachery, with evident premeditation and by taking-advantage of superior strength, attack, assault and stab one Iluminada Cabio by then and there striking her with an open knife, hitting her on the breast, back and on different parts of her body, thereby inflicting upon her serious and mortal stab wounds on said parts of her body, which were the direct and immediate cause of her death. That by reason of the death of said Iluminada Cabio, her heirs suffered actual, moral and other damages under the Civil Code."

Sometime thereafter, or on February 21, 1956, and upon learning that the offense with which he stands charged in Criminal Case No. Q-1907, in the Court of First Instance of Rizal, Branch VII, Quezon City, is one for which' he had allegedly been in jeopardy in Criminal Case No. 221 of the Court of First Instance of Manila, which had been dismissed, defendant Eulogio Mill filed a motion to with- draw his plea of not guilty and to allow him to submit a motion to quash. This motion was set for hearing and after the parties were heard in oral argument, respondent Judge Nicasio Yatco issued in open court the following order: "

> For lack of sufficient merits, the motion to quash filed by counsel for the accused dated February 21, 1956, is hereby denied.",

against which defendant filed a motion for reconsideration on the ground that said order is contrary to law and established jurisprudence. But the respondent Judge after hearing anew the parties in oral argument on March 10, 1956, denied the motion for reconsideration in the following language:

> "There being no valid and convincing reasons alleged in the motion for reconsideration of counsel for the accused to disturb the order of this Court dated February 25, 1&56, the same is hereby denied."

It is to be stated at this juncture that the hearing of this case had been set for March 22, 1956, at 8:30 in the morning, and alleging that he has no other plain, adequate and speedy remedy in the ordinary course of law for the protection of his fundamental right not to be put twice in jeopardy for the same offense, on March 15, 1956, petitioner herein filed in this Court the present certiorari and prohibition proceedings with preliminary injunction, praying that:

1. Upon the filing of this petition a writ of perliminary injunction issue against the respondent Court from hearing Criminal Case No. Q-1907 which it set for March 22, 1956.
2. An order issue annulling' and reversing the orders. of the respondent Court denying' the motion to quash and the motion for the reconsideration and ordering the respondent (Judge) to desist from further proceeding in Criminal Case No. Q-1907.
3. Petitioner further prays for such other measures or reliefs that this Honorable Court may deem just and equitable in the premises."

This petition was given due course by this Court which provided by resolution of March 19, 1956, to let the writ of preliminary injunction prayed for in the petition be issued upon the filing by the petitioner of a bond in the sum of P200, and this requisite having been fulfilled the corresponding writ of preliminary injunction was issued.

On the facts just narrated, the main question that comes up for Our determination is whether or not the remedies of certiorari and prohibition lie in this case. Before engaging, however, in this task, it wiIl not be amiss to take up first the side issue of whether an accused may, as a matter of right, withdraw his plea of "not guilty" to file a motion to quash. Rule 113 of the Rules of Court, prescribes:

> "Section 1. *Time to move to quash or plead*.—Upon being arraigned the defendant shall immediately, unless the court grants him further time, either move to quash the complaint or information or plead thereto, or do both. If he moves to quash, without pleading, and the motion is withdrawn or overruled he shall immediately plead."

This section provides that upon arraignment the defendant shall *immediately* either move

to quash the complaint or information or plead thereto, or to do both. Under the old procedure a defendant who desired to "demur" (a plea now substituted by the "motion to quash") to the complaint or information must do so before he pleads thereto, and it was held that while he could demur as a matter of right *before* he entered his plea, once he had pleaded *not guilty*, his withdrawal of such plea, in order to "demur", became a matter of judicial discretion. This ruling applies to a motion to quash. (2 Koran's Comments on the Rules of Court, 1952 ed.,..p. .780).

In U. S. vs. Schneer, 7 Phil. 523, a case of *estafa*, the defendant, represented by counsel, pleaded not guilty to the information. He afterwards asked permission of the court to withdraw the plea and demur to the complaint. The denial thereof was assigned as error by the defendant on his appeal from the judgment of conviction.

"Held: In this ruling the court committed no error. The defendant has a right to demur to a complaint before he pleads thereto, but he has no right after he has pleaded not guilty to withdraw that pica and present a demurrer. It is within the discretion of the court below to grant or deny him permission to do so."

The information in the case at bar appears to be on its face a sufficient information, and in the case of U. S, vs. Baluyot, 40 Phil. 385, permission to withdraw the plea of not guilty in order to interpose a demurrer to the information in a prosecution for murder was properly denied where the information appeared to be sufficient. In that case this Court reiterated its ruling that the withdrawal of a plea of not guilty in order to demur became a matter of judicial discretion. In the case at bar there is no showing that the respondent Judge abuse his discretion in not allowing the petitioner to withdraw his former plea of not guilty.

Coming now to the main question at issue, We may say the following: Rule 67 of the Rules of Court prescribes:

> "Section 1. *Petition for certiorari*.—When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and *there is no appeal, nor my plain, speedy and adequate remedy in the ordinary course of law*, a person aggrieved thereby may file a verified petition in the proper court alleging the facts "with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board, or officer, as the law

requires, with costs."

In People vs. Manuel, G. Pv. Nos. L-6794 and L-6795, promulgated on August 11, 1954, the accused was charged under two separate informations, one for illegal possession of firearms and another for frustrated murder.

Subscribed before the District Judge, both informations certified that the corresponding preliminary investigation and examination of witnesses had been conducted. Accused submitted a motion to quash in both cases contending that the Fiscal had no authority to formulate the charges nor to conduct preliminary investigation. Upon denial of said motion to quash accused appealed:

> "Held: Under section 1 (Rule 118), in order that a judgment may be appealed from, it is necessary that it be final in the sense that it completely disposes of the cause, so that no further questions affecting the merits remain for adjudication. An order overruling a motion to dismiss presented by the defendant against the information does not dispose of the cause upon its merits and is thus merely interlocutory and not a final order within the meaning of the above section." (Moran's Comments on the Rules of Court—1952 Ed., Vol. 2 p. 880, citing Fuster vs. Johnson, 1 Phil. 670).

In line with the above view, the Rules specifically direct that if the defendant moves to quash before pleading, and the motion is overruled, "he shall immediately plead" (section 1, Rule 113); *which means, obviously, that trial should go on*. As stated in Collins vs. Wolfe, 4 Phil. 534, the appellant Domingo Manuel, after the denial of his motion, "should have proceeded with the trial of the causes in the court below, and if final judgment is rendered against him, he can then appeal, and upon such appeal present the question which he is now seeking to have decided." (Padilla's Criminal Procedure, 1955 ed., p. 396).

In People vs. Aragon* G. R. No. L-5930, February 17, 1954, the Supreme Court, among others, said: "There is no reason for dismissing the appeal. The order appealed from is one denying a motion to dismiss and is not a final judgment. It is, therefore, not appealable. (Rule 118, sections 1 and 2)."

Although in the light of the foregoing decisions an order denying a motion to quash is not

appealable because the order is merely interlocutory, yet, that does not mean that the final judgment that may be rendered in the case could not be appealed, and that is why in the case of Arches vs.

Beldia, et al., G. R. No. L-2414, promulgated on May 27, 1949, this Court held "that neither certiorari nor prohibition lie against an order of the court granting or denying a motion to quash an information. If the courts have jurisdiction to take cognizance of the cases and to decide the motion to quash, *appeal in due time is the obvious and only remedy* for the public prosecutor or the accused, as the case may be." (See the case of Fernando E. Ricafort, petitioner, vs. Hon. Wenceslao L. Fenian, etc., et al., *supra*, p.- 575).

In view of the foregoing, we hold that in the case at bar the writs of certiorari and prohibition applied for do not lie, for the order objected to is only interlocutory, and petitioner can in due time appeal from the final judgment that the Court of First Instance of Rizal may render in the case if it were adverse to him.

Wherefore, this case is dismissed and the writ of preliminary injunction issued herein is set aside and left without force and effect. With costs against petitioner. So it is ordered.

Bengzon, Actg. C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., and *Endencia, JJ.,* concur.

- 94 Phil., 364.

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