

**MARIANO B. VILLANUEVA AND CONSUELO PAPA-VILLANUEVA
PETITIONERS, VS. HONORABLE PRIMITIVO GONZALES, JUDGE OF
THE COURT OF FIRST INSTANCE, AND PROVINCIAL FISCAL
MARIANO B. BENEDICT...**

G.R. No. L-9037. July 31, 1956

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

On June 24, 1954, a complaint for kidnapping was filed with the Justice of the Peace Court of Naic, Cavite, against several persons, including petitioner herein Mariano Villanueva. After conducting the first phase of the preliminary investigation provided in the Rules of Court, the Justice of the Peace of Naic issued the corresponding warrants of arrests, which were duly served. When the defendants appeared before said court on August 20, 1954, for the second stage of the preliminary investigation, they waived their right thereto, whereupon, the record of the case was forwarded to the Court of First Instance of Cavite. Later on, after making a preliminary investigation, in the course of which several witnesses gave testimony, under oath, implicating Villanueva's wife, Consuelo Papa-Villanueva, in the commission of the crime charged in said complaint, the provincial fiscal of Cavite filed the information, Annex D, charging, with kidnapping, not only the original defendants, but, also, said Consuelo Papa-Villanueva and one Tomas Panganiban. At the foot of said information the following appears:

"I hereby certify that I have conducted the preliminary investigation of the above-entitled case with respect to accused Tomas Panganiban and Consuelo Papa-Villanueva, having examined the witnesses under oath and that there is reasonable ground to believe that the accused committed the crime charged, and further certify that the other accused have waived their rights to preliminary investigation conducted before the Justice of the Peace of Naic, Cavite,

MARIANO V. BENEDICTO

Provincial Fiscal

"Subscribed and sworn to Before me this 13th day; of; September, 1954, at Cavite City.

Deputy Clerk of Court"

On October 20, 1954, Villanueva filed, with the Court of First Instance of Cavite, a petition praying "that a reinvestigation of this case be ordered so that herein accused may be afforded of their own right as provided for in * * * Republic Act No. 732." This was followed on October 29, 1954 by a motion to quash, upon the ground that the information is null and void for alleged noncompliance with said Republic Act No. 732. This motion, as well as said petition for reinvestigation, were denied in an order dated January 10, 1955. A reconsideration thereof was sought in a motion filed by the Villanuevas on February 10, 1955. Four (4) days later the court issued an order the dispositive part of which reads:

"However, in the interest of the administration of Justice, it is hereby ordered that a preliminary investigation

be held before this Court with respect to the said accused-spouses wherein the prosecution should present whatever evidence it has against them. This preliminary investigation is hereby set for February 19, 1955, at 8:30 a.m."

This order was, on motion for reconsideration filed by the prosecution amended by another dated February 15, 1955, of the following tenor:

"Considering the petition for reconsideration of the Provincial Fiscal and finding the same to be well founded, the order dated February 14, 1955 is hereby reconsidered in the sense that the preliminary investigation granted to the accused-spouses Mariano Villanueva and Consuelo Papa shall take place at the time with, the trial as against the other accused, and this on March d, 2, 3 and 4, 1955, at two o'clock in the afternoon, instead of on February 19, 1955, as previously scheduled.

"The said accused-spouses and their counsel are hereby advised to be thorough in their cross-examination of the prosecution witnesses so that in the event that the Court finds the evidence of the prosecution to be sufficient in establishing a prima fade case as against them, such evidence adduced at the preliminary investigation with respect to said accused-spouses may very well be reproduced without the necessity of presenting all over again such testimonies of witnesses who shall have already given evidence in Court."

What transpired on March 1, 1955, when the case was called for a second preliminary investigation and trial, at the same time, is set forth in the order of the Court of First Instance of Cavite of March 15, 1955, from which we quote:

"* * * when the Court posed to query to the said accused-spouses in the afternoon of March 1st, 1955, as to whether or not they are willing to have the testimonies of the witnesses to be presented by the prosecution at such second preliminary investigation reproduced at the trial of the case with respect to them in the eventuality that the Court, after such second preliminary investigation, finds prima facie evidence against them, the said accused-spouses declined to make their stand known, and even refused to be arraigned on the information as against them unless the second preliminary investigation be first conducted by the Court, which arraignment was requested by the Fiscal by way of forestalling any future objection on the part of the said accused spouses to the reproduction later on at the trial of the testimonies to be given by the prosecution witnesses in the preliminary investigation sought by the accused spouses.

"This attitude on the part of accused-spouses, Villanueva and Papa, gives the Court the impression that they are obstructing the objective of the Court towards a speedy trial, considering that this Court issued its aforementioned order with a view to (1st) protesting innocent accused from unjustified delays in the proceedings in the meanwhile that they stand accused, and (2nd) to protecting society at large, by seeing to it that the guilty are convicted at the earliest possible date. In this manner, it occurred to the mind of the court that the paramount interests of the administration of justice demand that this contemplated second preliminary investigation, as granted by the Court to the accused-spouses, should now be, as it is hereby, withdrawn and cancelled.

"Let it therefore be declared that this case be put in the calendar for the arraignment of the above-named accused-spouses, Mariano B. Villanueva and Consuelo Papa.

"The petition for reconsideration of the Provincial Fiscal dated March 1st, 1955 is accordingly granted, with the cancellation and withdrawal of the order of February 15, 1955 granting accused-spouses Villanueva and Papa the so-called second preliminary investigation.

"The Clerk of Court is instructed to set this case for the arraignment of said) accused-spouses, Villanueva and Papa, after which another date should be set for the trial of the case on the merits with regard to all the accused.

Thereupon, the Villanuevas instituted the present action for "certiorari, prohibition and iftandamus", with the prayer that:

"1. Pending hearing of this petition on the merits, and upon the filing of a bond in such amount as this Honorable Court may fix, a writ of preliminary injunction be immediately issued against the respondent Judge Primitivo Gonzales restraining him from proceeding with the arraignment of the herein petitioners and the trial of the said criminal case No. 11,867 of the Court of First Instance of Cavite insofar as herein petitioners are concerned.

"2. After hearing, an order be issued annulling and setting aside the order of the respondent Judge dated March 15, 1955, Annex 'F' of the petition, and giving full force and effect to the orders dated February 14 and 15, 1955, quoted in paragraphs 17 and 18 of the petition in which orders respondent Judge directed the prosecution to present its evidence at a preliminary investigation to be conducted by respondent Judge in the presence of petitioners.

"3. In the alternative an order be issued, after hearing, directing respondent Provincial Fiscal Mariano B. Benedicto to conduct a preliminary investigation of the case with due notice to the herein petitioners of the place, date and hour of such investigation and according to petitioners the right to cross-examine the witnesses against them.

"4. Respondents be ordered to answer this petition,

"5. The preliminary writ of injunction be made final and permanent, unless either the respondent judge or respondent fiscal conducts a preliminary investigation of which petitioners should be notified and at which they should be allowed to cross-examine the witnesses.

"6: Petitioners be awarded such other remedy and relief as may be just and equitable in the premises." The writ of preliminary injunction prayed for has not been issued. In the language of petitioners herein, the question for determination is:

* * *"Under the provision of Republic Act No. 752, may a provincial fiscal file an information without first notifying the accused so as to enable the latter to be present at the preliminary investigation to be conducted by him and to cross-examine the witnesses of the complainant or the prosecution?"

Petitioners urge a negative answer, relying, upon section 1687 of the Revised Administrative Code, as amended by section 2 of Republic Act No. 732, reading:

"A provincial fiscal shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same. If the offense charged falls within the original jurisdiction of the Court of First Instance the defendant shall not be entitled as a matter of right to preliminary investigation in any case where the provincial fiscal himself after due investigation of the facts made in the presence of the accused if the latter so requested, 'shall have presented an information against him in proper form and certified under oath by the said provincial fiscal that he conducted a proper preliminary investigation. To this end, he may, with due notice to the accused, summon reputed witnesses and require them to appear before him and testify and be cross-examined under oath by the accused upon the latter's request. The attendance or evidence of absent or recalcitrant witnesses who may be summoned or whose testimony may be required by the provincial fiscal under the authority herein conferred shall be enforced by proper process upon application to be made by the provincial fiscal to any Judge of First Instance of the Judicial District. But no witness summoned to testify under this section shall be compelled to give testimony to incriminate himself.

"The Provincial Fiscal shall also cause to be investigated the cause of sudden deaths which have not been satisfactorily explained and when there is suspicion that the cause arose from the unlawful acts or omissions of other persons, or from foul play. For that purpose he may cause autopsies to be made and shall be entitled to demand and receive for purposes of such investigations or autopsies, the aid of the medico-legal section of the National Bureau of Investigation or of the District Health Officer and the different presidents of the sanitary

divisions of the province." (*Italics supplied.*)

Petitioners contention is untenable. Said Republic Act No. 732, governs preliminary investigations conducted by provincial fiscals in cases originally instituted by them in courts of first instance. It does not apply to cases begun in justice of the peace courts and, thereafter, forwarded to the corresponding court of first instance, either after the second phase of the preliminary investigation required in the Rules of Court had been conducted before said justice of the peace courts, or after a waiver by the accused of their right to said preliminary investigation. The reason is obvious. In those cases the provincial fiscal is under no obligation to make such preliminary investigation. 'He may rely upon the evidence introduced in, and the facts found by, the justice of the peace court, at the preliminary investigation therein conducted.

With respect to petitioner Consuelo Papa-Villanueva, who was not included in the complaint filed with the justice of the peace court of Naic, the legality of the preliminary investigation made by the provincial fiscal, as regards said petitioner, is not affected by the lack of previous notice thereof to her, for said notice is "required only after the accused has requested to be present at the investigation" *Lozada vs. Fernandez*, (92 Phil., 1051), April 29, 1953, and no such request had been made by Mrs. Villanueva prior to said preliminary investigation. In *Rodriguez vs. Arellano* (96 Phil., 954), decided on April 30, 1955, we declared:

" * * *that it is not the duty of the provincial fiscal conducting a preliminary investigation under the authority of Republic Act No. 732, to notify the accused thereof so that the latter may exercise his right to request his presence in the investigation. We held, however, that if during an investigation and prior to the filing of the information, the accused requests to be present, the fiscal must conduct the investigation in his presence. In the case at bar, we hold that the respondent judge exceeded his powers in remanding the case for a new investigation and requiring the provincial fiscal to comply with the demand of the respondent accused that he be notified thereof, because the investigation by the fiscal had already been finished and the information filed, when the demand of the accused was made."

This view was reiterated in *People vs. Napagao* (97 Phil., 785), decided on October 29, 1955, in the following language:

"* * * the legal duty of the provincial fiscal to notify the accused of the preliminary investigation, arises only after the latter expressly requests that said investigation be made in his presence. Counsel for defendants-appellees, in contending otherwise, stresses the fact that the above quoted provision recites that 'to this end, he may, with due notice to the accused, summon reputed witnesses and require them to appear before him and testify and be cross-examined under oath by the accused upon the latter's request,' and 'that the attendance or evidence of absence or recalcitrant witnesses who may be summoned or whose testimony may be required by the provincial fiscal * * * shall be enforced by the proper process upon application to be made by the provincial fiscal to any Judge of the First Instance of the Judicial District Inasmuch, however, as the sentences referred to by counsel for defendants-appellees, are introduced by the phrase 'to this end', they are to be construed in relation to the preceding provision, namely, that the accused should make the corresponding request if he desires to be present at the investigation. The clause 'if the latter so requested', appearing in the second sentence of the above quoted provision of Republic Act No. 732 would be meaningless, if in all cases the fiscal is bound to notify and require the presence of the accused." (*Italics supplied.*)

Wherefore, the petition must be, as it is hereby, denied with costs against the petitioners. It is so ordered.

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

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