

ROMEO BASA, CIRILO BASA, CRISANTO BASA AND PEDRO SEBASTIAN, PETITIONERS-APPELLEES, VS. HON. JOSE GAMBOA AS CITY FISCAL OF MANILA, HON. LINO R. BARBOSA AS ASSISTANT CITY FISCAL O...*G.R. No. L-29883. November 29, 1973*

Ponente: MAKALINTAL, C.J.

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The essential facts are stipulated. The charge against Romeo Basa, one of the petitioners in the court below who are now appellees here, was abduction with rape. The specifications recite that he and his brother Cirilo forcibly took complainant Teodocia Reyes from a place in Divisoria, Manila, to a house in Tondo and kept her there under detention from the 26th to the 29th of November 1967, during which period Romeo Basa repeatedly raped her; that in the night of November 29 Romeo, Cirilo and Crisanto, all surnamed Basa, took her to Gapan and thence to San Antonio, Nueva Ecija, where she was detained inside a house up to the 1st of December and again was raped by Romeo Basa; and that on the 1st of December she was taken back to Gapan, where she was set free.

On December 2, 1967 Teodocia Reyes, assisted by her mother, filed a complaint with the municipal court of Gapan, with a sworn statement to support it. Romeo Basa was thereafter placed under arrest and the municipal court started hearing the case on preliminary investigation. On December 7, while the investigation was still pending, Teodocia Reyes sought the assistance of the METROCOM, which thereupon lodged a complaint against the same defendants for forcible abduction with rape and robbery with the Office of the City Fiscal of Manila.

The case in Nueva Ecija was dismissed by the municipal court of Gapan on January 11, 1968, after it had received the evidence of the parties, on the ground that "the crime committed is and ought to be a consented crime of abduction."

The pendency of the preliminary investigation in Gapan was brought to the attention of the investigating Assistant Fiscal of Manila. He postponed the hearing to February 21, 1968, on which date the METROCOM filed a written motion to dismiss, saying that the offended party could pursue her remedy in the case she had filed in Nueva Ecija. The fiscal in-charge turned down the motion, saying that he was hearing the case on the basis of the complaint of Teodocia Reyes, who was then being represented by a private counsel. There-after the defendants themselves filed a similar motion to dismiss, which was likewise denied by the Assistant Fiscal, as was also a subsequent supplemental motion for the same purpose. The matter was elevated to the City Fiscal, who sustained the action taken by his assistant.

In view of the adverse ruling of the City Fiscal the defendants filed a petition for prohibition with preliminary injunction in the Court of First Instance of Manila, which granted the writ prayed for and enjoined the City Fiscal and his assistant from continuing with the preliminary investigation. The case afterwards was elevated to this Court on appeal by the respondents below.

There is no dispute that the crime charged was a transitory or continuing offense, committed in Manila and in Gapan and San Antonio, Nueva Ecija; that consequently the courts of any of the said places could assume jurisdiction over the case; and that according to settled principle the moment any of the said courts assumed jurisdiction such assumption was to the exclusion of all other courts.

Two circumstances, however, preclude this principle of exclusion from applying in this case. First, by the nature of the charge the court which could have properly assumed jurisdiction to hear and decide the case, if the corresponding information were filed there, was the Court of First Instance of Nueva Ecija. However, the matter was still at the stage of preliminary investigation by the municipal court of Gapan, and preliminary investigation is merely a proceeding conducted previous to the commencement of the criminal action and is designed for no other purpose than that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. The dismissal of the charge by the Gapan municipal court did not amount to an acquittal. It was not final in the sense that a complaint embodying the same charge, filed for purposes of preliminary investigation with another appropriate forum, such as the Office of the City Fiscal of Manila, would constitute double jeopardy from which an accused person is protected by law and by the Constitution.

The second significant feature of this case is that by virtue of the order of dismissal issued by the Gapan municipal court, no jeopardy of conviction having yet attached, the situation was as if no charge had been filed at all. There can be no doubt that had the complainant come to the Office of the City Fiscal of Manila after, instead of before, the case was dismissed in Gapan, she could have done so without the authority of the Manila City Fiscal being subject to question. It makes no difference whatsoever that the complainant went to the said office while the investigation in Gapan was still pending, since the said investigation ended in a dismissal.

The appellees have expressed apprehension about the possible implications of sanctioning the procedure followed by the complainant in this case, namely, that where the offense is transitory or continuing the offended party may file charges, simultaneously or in succession, in the courts of all the places or provinces where such offense, or some of the essential ingredients thereof, have taken place, even if only for preliminary investigation. To shop for a sympathetic forum in that manner is certainly not to be countenanced, especially if it becomes evident that it is designed to oppress, abuse or harass the defendants. In such eventuality, however, there is always the equitable remedy of prohibition or injunction available. In the present case there is no indication of oppression, abuse or harassment in the actions of the complainant.

WHEREFORE, the decision appealed from is reversed and the writ issued by the court a quo is set aside. No pronouncement as to costs.

Ruiz Castro, Teehankee, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

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