

IN THE MATTER OF THE APPLICATION FOR A WRIT OF HABEAS CORPUS, SIMON LUNA, PETITIONER-APPELLANT, VS. HON. LORENZO M. PLAZA, AS JUDGE OF THE MUNICIPAL COURT OF TANDAG, SURIGAO DEL...

G.R. No. L-27511. November 29, 1968

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Appeal from the decision of the Court of First Instance of Surigao del Sur, dated April 20, 1967, dismissing the petition for a writ of habeas corpus, filed by herein petitioner-appellant Simon Luna -- hereinafter referred to simply as petitioner -- who was charged with murder in Criminal Case No. 655-New of the same court.

The criminal action was commenced by T-Sgt. Can-dido Patosa, PC investigator of Tandag, Surigao del Sur, by filing with respondent Municipal Judge Lorenzo M. Plaza, of the Municipal Court of Tandag, criminal case No. 1138 charging the accused, herein petitioner, with the crime of murder. Supporting the complaint were sworn statements of the witnesses for the prosecution, in the form of questions and answers taken by T-Sgt. Patosa, and subscribed and sworn to before the respondent Judge at the time of the filing of the complaint. The respondent Judge examined the 'prosecution witnesses by reading to them "all over again the questions and answers" in their statements in writing, and the witnesses-affiants declared before said Judge that the questions were propounded by T-Sgt. Candido Patosa, and that the answers were made by them. The affiants further declared before respondent Judge that their answers were true, and were freely and voluntarily made; that they fully understood the questions and answers, and that they were willing to sign their respective affidavits. The affiants signed their respective affidavits in the presence of the respondent Judge, who also signed after the usual procedure of administering the oath.

Considering the answers of the affiants to the questions contained in their sworn statements, together with the post-mortem and autopsy report on the dead body of the victim Jaime Diaz Ng, the certificate of death, the sketch showing the position of the victim and the accused, and Exhibits 6, 7, 8, 12, and 13 of herein respondents, the respondent Judge opined that there was reasonable ground to believe that the crime of murder had been committed and the accused was probably guilty thereof. Respondent Judge issued the order and warrant of arrest, specifying therein that no bail should be accepted for the provisional release of the accused. On February 20, 1967, upon motion of petitioner that he be admitted to bail upon the ground that the evidence of guilt was not strong, respondent Judge issued an order granting bail, fixing it at P30,000.00; which order, however, respondent Judge later revoked, and petitioner was denied bail.

The case was subsequently remanded to the Court of First Instance of Surigao del Sur, after petitioner filed a waiver of his right to preliminary investigation. On March 9, 1967 respondent Provincial Fiscal filed an information charging herein petitioner with the crime of murder. The petitioner was detained in the provincial jail of Surigao del Sur under the custody of respondent Provincial Warden.

On April 5, 1967, petitioner filed a petition for a writ of habeas corpus with the Court of First Instance of Surigao del Sur, therein docketed as Special Proceedings No. 105-New, claiming that he was being deprived of liberty without due process of law, on the ground that the imprisonment and detention was the result of a warrant of arrest issued by respondent Judge in violation of Republic Act No. 3828, and praying for the annulment of the order for his arrest and his discharge from confinement.

Herein respondents filed their answer, alleging that Republic Act No. 3828 had been substantially complied with; that a motion to quash, and not a petition for habeas corpus was the proper remedy; and that petitioners application for bail constituted a waiver of the right to question the validity of the arrest.

After trial, the Court of First Instance of Surigao del Sur rendered its decision, dated April 20, 1967, holding that respondent Municipal Judge had substantially complied with Republic Act No. 3828, and consequently denied the application for the writ of habeas corpus, and dismissed the case. Hence this appeal.

Petitioner, in his assignment of errors, claims that the trial court erred, as follows:

1. In giving absolute credence to the oral testimony of the respondent Judge to the effect that he adopted and made his own the questions and answers taken by T-Sgt. Patosa, PC Investigator, one of the prosecution witnesses, because the records show the contrary;
2. In denying the writ of habeas corpus and in dismissing the petition.

1. In support of his first assignment of error, petitioner contends that Republic Act No. 3828 imposes on a municipal judge, before he can issue a warrant of arrest, two specific duties, to wit: (1) personally examine the complainant and witnesses with "searching questions and answers", which means that the judge must cross-examine them in case their affidavits are presented; and (2) said examination must be reduced to writing and form part of the records of the case. The record of the instant case, according to petitioner, does not show that said examination was performed by respondent Judge. Petitioner urges that the absence of any document in the record that shows that respondent Judge had performed the examination is positive proof that respondent Judge did not perform his duty, notwithstanding his testimony before the Court of First Instance of Surigao del Sur, during the hearing of this case, to the effect that he adopted the questions propounded to each of the prosecution witnesses by T-Sgt. Patosa. Petitioner maintains that this testimony, being self-serving intended to cover up the failure to comply with the law, should not have been believed by the Court of First Instance, and said court thereby committed error when, believing said testimony, it found that there had been substantial compliance with the requirement that the municipal judge should personally examine the witnesses. Petitioner further maintains that assuming that the adoption of the questions made by T-Sgt. Patosa constituted substantial compliance with the requirement that the judge should examine the witnesses by asking searching questions, still the second requirement, that of reducing to writing the said procedure of adoption, has not been complied with; and so, Republic Act No. 3828 was still violated, and the issuance of the warrant of arrest was in violation of said Act and the Constitution and constituted denial of due process.

Petitioner contends that the trial court erred in giving absolute credence to the testimony of respondent Municipal Judge. Regarding credibility of witnesses, this Court has consistently held that, as a general rule, the lower court's findings as to the credibility of witnesses will not be interfered with by appellate courts. Thus, in the case of *People vs. Sinaon*,^[1] this Court said:

"Time and again, we have held that as a rule where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, considering that it is in a better position to decide the question, having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless there is a showing that it has overlooked certain facts of substance and value, that if considered, might affect the result of the case."

Petitioner has appealed "from the decision/order" of the trial court "to the Honorable Supreme Court of the Philippines, on the ground that the same is contrary to law and the Philippine Constitution" and prayed that "all the records of the proceeding and the evidence, oral and documentary, be transmitted or forwarded to the Honorable Supreme Court x x x".[2] Since petitioner appealed directly to this Court he must, therefore, raise only questions of law and he has thereby waived the right to raise any question of fact,[3] and the findings of facts of the trial court, under the rules and precedents, must be deemed final and binding upon this Court.[4]

The findings of facts of the trial court are found in the following portion of the decision appealed from, to wit:

"There is no dispute that there is a valid complaint charging the accused Simon Luna, the herein petitioner with the crime of Murder filed with the respondent Judge authorized to conduct the examination of the witnesses for the prosecution for the purpose of determining the existence of probable cause before the issuance of the corresponding warrant of arrest; that the complaint is supported by the statements of the witnesses under oath in writing in the form of questions and answers and other documents attached to the complaint; that before the issuance of the corresponding warrant of arrest, the respondent judge personally examined the witnesses for the prosecution on their statements taken by T-Sgt. Candido Patosa by reading the questions and answers all over again to the affiants who confirmed to the respondent Judge that the statements contained in their sworn statements are true; that being satisfied that the questions and answers contained in the sworn statements taken by T-Sgt. Patosa partake of the nature of his searching questions and answers as required by law, the respondent Judge adopted them as his own personal examination of the witnesses for the purpose of determining the existence of probable cause, the order and the warrant of arrest were issued to take the accused into custody for the commission of the offense charged (Exhibits "H", "H-1", "I" and "I-1" - petitioner); and that the petitioner waived his right to the preliminary investigation (Exhibit "12" - respondent) and applied to be admitted to bail."

Petitioner, however, claims that the failure of respondent Judge to put in writing that he adopted the questions asked by T-Sgt. Patosa and his failure to ask "searching questions" violated Republic Act No. 3828.

Republic Act No. 3828, approved June 22, 1963, inserted in section 87 (c) of the Judiciary Act of 1948 the following paragraph:

"No warrant of arrest shall be issued by any justice of the peace in any criminal case filed with him unless he first examines the witness or witnesses personally, and the examination shall be under oath and reduced to writing in the form of searching questions and answers."

Before a municipal judge may issue a warrant of arrest, the following conditions must first be fulfilled: (1) he must examine the witnesses personally; (2) the examination must be under oath; (3) the examination must be reduced to writing in the form of searching questions and answers. Were these conditions fulfilled in the instant case?

The first condition was fulfilled. The trial court found as a fact that "the respondent judge personally examined the witnesses for the prosecution x x x;" that respondent judge adopted as his own personal examination the questions asked by T-Sgt. Patosa as appearing in the written statements, which he read over again to the witnesses together with the answers given therein, asking the witnesses whether said answers were theirs, and whether the same answers were true, to which the witnesses answered in the affirmative. Republic Act No. 3828 does not prohibit the municipal Judge from adopting the questions asked by a previous investigator.

It appears that the sworn statements[5] of the witnesses state at the beginning that the sworn statement was "taken by T-SGT Candido L. Patosa", and does not state that it was taken by the respondent municipal Judge himself. This circumstance is explained by the fact that said written statements already taken by T-Sgt. Patosa were delivered to respondent Municipal Judge who adopted the questions therein in his examination, because he

considered them searching questions. Respondent Judge presumably did not consider it necessary to change the introductory remarks in each of the written statements. But that he made the examination personally cannot be doubted; it is so stated in the order dated February 18, 1967, which recites:

"After examining the witnesses personally and under oath there is reasonable ground to believe that an offense for murder has been committed and that the accused, Simon Luna, is probably guilty thereof." (Exh. H)

The ruling in *Doce vs. Branch II of the Court of First Instance of Quezon, et al.*, [6] wherein this Court held that the warrant of arrest issued therein was irregularly issued is not applicable to the case at bar for the simple reason that the facts are different. This Court in that case said:

"There is merit in the assertion that the warrant of arrest was irregularly issued. Section 87 of the Judiciary Act as amended by Republic Act 3828 requires that the Municipal Judge issuing the same, personally examine under oath the witnesses, and by searching questions and answers which are to be reduced to writing. Here, instead of searching questions and answers, we have only the affidavits of respondent and her one witness. Moreover, said affidavits were sworn to before Judge Cabungcal, not before Judge Juntereal who issued the warrant of arrest."

In the instant case, as stated above, the respondent Municipal Judge personally examined under oath the witnesses by asking questions, that were adopted from a previous investigation, and considered by him as sufficiently searching and which questions and the answers thereto were in writing and sworn to before him prior to his issuance of the order of arrest.

The second condition required by Republic Act No. 3828 for the issuance of a warrant of arrest was also fulfilled. The trial court found that the complaint was "supported by statements of the witnesses under oath." The record also shows the following documents to have been subscribed and sworn to before respondent Judge namely: Exhibit B, sworn statement of herein petitioner Simon Luna y Albay; Exhibit C, sworn statement of Eusebio Corpuz; Exhibit D, sworn statement of Bruno M. Zafra; Exhibit E, sworn statement of Martiliano J. Bautista; Exhibit F, sworn statement of Jose F. Suarez; and Exhibit G, sworn statement of Janedina Diaz y Bandy.

The third condition required by Republic Act No. 3828 was likewise fulfilled. The examination of the witnesses was written down, in the form of searching questions and answers. The term "searching questions and, answers" means only, taking into consideration the purpose of the preliminary examination which is to determine "whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof so that a warrant of arrest may be issued and the accused held for trial" [7], such questions as have tendency to show the commission of a crime and the perpetrator thereof. What would be searching questions would depend on what is sought to be inquired into, such as: the nature of the offense, the date, time, and place of its commission, the possible motives for its commission; the subject, his age, education, status, financial and social circumstances, his attitude toward the investigation, social attitudes, opportunities to commit the offense; the victim, his age, status, family responsibilities, financial and social circumstances, characteristics, etc. The points that are the subject of inquiry may differ from case to case. The questions, therefore, must to a great degree depend upon the Judge making the investigation. At any rate, the court a quo found that respondent Judge was "satisfied that the questions and answers contained in the sworn statements taken by T-Sgt. Patosa partake of the nature of his searching questions and answers as required by law," so the respondent Judge adopted them.

Petitioner's further contention that the issuance of the warrant of arrest was a violation of the Constitution and of procedural due process is likewise untenable. The Constitution, in Section 1 (3), Article III, provides that no warrant shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce. The constitutional requirement of examination

of witnesses under oath was, as shown above, fulfilled. The existence of probable cause depended to a large degree upon the finding or opinion of the judge conducting the examination. Respondent Judge found that there was a probable cause, as stated in his order of arrest, that "after examining the witnesses personally and under oath there is a reasonable ground to believe that an offense of murder has been committed and that the accused, Simon Luna, is probably guilty thereof."

Petitioner's last contention that the warrant of arrest issued was a violation of procedural due process because of the alleged defective preliminary examination has no leg to stand on, in view of what we have hereinbefore stated. Moreover, this Court has held that preliminary examination is not an essential part of due process of law.[8] Preliminary examination may be conducted by the municipal judge, prior to the issuance of the warrant of arrest, either in the presence, or in the absence, of the accused. The record shows that herein petitioner waived the preliminary investigation before respondent Municipal Judge, and instead, he filed a petition for bail. The petition for bail was at first granted by respondent Judge, but later the order granting bail was revoked. This conduct of petitioner indicates that he had waived his objection to whatever defect, if any, in the preliminary examination conducted by respondent Judge prior to the issuance of the warrant of arrest. Indeed, petitioner has no substantial -- much less legal ground to complain that he was denied the due process of law.

We find that the trial Judge committed no error when he held that, based upon the facts shown during the hearing of this case, respondent Municipal Judge had substantially complied with the requirements of the law specifically Republic Act 3828 -- before issuing the warrant of arrest in this case.

2. In the light of what has been said above, it appears clear that petitioner's second assignment of error, that the trial court erred in denying the writ of habeas corpus, is untenable. Moreover, Section 4 of Rule 102 of the Rules of Court provides in part, as follows:

"Sec. 4. When writ not allowed or discharge authorized. If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge x x x and that the court or judge had jurisdiction to issue the process x x x or make the order, the writ shall not be allowed. x x x"

All the conditions, in the afore-quoted Section 4, set forth to deny the writ, are present in the instant case. It is shown that petitioner is detained and is in the custody of the respondent Provincial Warden by virtue of the order of arrest dated February 18, 1967, and the order dated February 21, 1967, of respondent Judge, to confine petitioner in the provincial jail. It is not disputed by petitioner that respondent Judge had jurisdiction to issue the warrant of arrest and the order of commitment under the provisions of Section 47, Republic Act No. 409, as amended by Republic Act No. 1201, although petitioner did question the validity of the warrant of arrest for allegedly having been issued in violation of Republic Act No. 3828 -- which claim We have found to be untenable. Consequently, the trial Judge did not commit an error in denying the writ of habeas corpus prayed for.

At any rate, We believe that, if at all, the remedy available to the petitioner herein, under the circumstances stated in this opinion, is not a petition for a writ of habeas corpus but a petition to quash the warrant of arrest or a petition for a reinvestigation of the case by the respondent Municipal Judge or by the Provincial Fiscal.

We wish to stress, however, that what has been stated in this opinion is certainly not intended to sanction the return to the former practice of municipal judges of simply relying upon affidavits or sworn state-ments that are made to accompany the complaints that are filed before them, in determining whether there is a probable cause for the issuance of a warrant of arrest. That practice is precisely what is sought to be voided by the amendment of Section 87 (c) of Republic Act 296 (Judiciary Act of 1948) which requires that before a municipal judge issues a warrant of arrest he should first satisfy himself that there is a probable cause by examining the witnesses personally, and that the examination must be under oath and reduced to writing in the form of searching questions

and answers. It is obvious that the purpose of this amendment is to prevent the issuance of a warrant of arrest against a person based simply upon affidavits of witnesses who made, and swore to, their statements before a person or persons other than the judge before whom the criminal complaint is filed. We wish to emphasize strict compliance by municipal or city judges of the provision of Section 87 (c) of the Judiciary Act of 1948, as amended by Republic Act 3828, in order to avoid malicious and/or unfounded criminal prosecution of persons.[9]

In the case now before Us, while it is true that the respondent Municipal Judge did not himself personally cause to be reduced to writing in the form of questions and answers the examination of witnesses presented before him by the person who filed the criminal complaint, We are satisfied that, as shown by the evidence, respondent Judge had personally examined the witnesses under oath and that the questions asked by the Judge and the answers of the witnesses were reflected in writings which were actually subscribed and sworn to before him. Moreover, We are of the considered view that no substantial right of the petitioner had been violated because, as hereinbefore adverted to, petitioner waived his right to preliminary investigation after he was arrested, and he took the step of applying for bail before respondent Municipal Judge. These acts of the petitioner subsequent to his arrest constitute an implied admission on his part that there was a probable cause for the issuance of the warrant of arrest against him. Those acts of the petitioner constitute a waiver of whatever irregularity, if any there was, that attended his arrest.[10]

WHEREFORE, the decision of the trial court dated April 20, 1967, appealed from, is affirmed. Costs against petitioner-appellant.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.
Reyes, J.B.L., J., concurs in the result.

[1] G. R. No. L-15631, May 27, 1966.

[2] As quoted from the Notice of Appeal.

[3] Millar vs. Nadres, 74 Phil. 307; Portea vs. Pabellon, 47 O.G. 655; Flores vs. Plasina, 50 O.G. 1073.

[4] Abijuela, et al., vs. Dolosa, et al., No. L-14245, December 29, 1960.

[5] Exhibits, B, C, D, E, F, and G.

[6] G. R. No. L-26437, March 13, 1968.

[7] Sec. 1, Rule 112, Rules of Court.

[8] People vs. Olandag, 92 Phil. 286, 289.

[9] The amendment is copied at the earlier part of this opinion.

[10] Doce vs. Branch II of the Court of First Instance of Quezon, G. R. No. L-26437, March 13, 1968 (22 SPCRA, 1028, 1031).

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