

**GOTARDO FLORDELIS, PETITIONER, VS. HONORABLE EDGAR R. HIMALALOAN, AS ACTING CITY JUDGE, CITY COURT OF TAGBILARAN, BRANCH II; THE PEOPLE OF THE PHILIPPINES; AND SULPICIO TINAMPAY...**

*G.R. No. L-48088. July 31, 1978*

Ponente: BARREDO, J.

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**BARREDO, J.:**

Petition for certiorari and prohibition assailing the order of respondent judge denying petitioner's motion to quash a criminal information for perjury against him based on the grounds that (a) the facts charged therein do not constitute an offense and (b) the said information contains averments which constitute a defense.

The information in question, which was filed with the City Court of Tagbilaran City, presided over by respondent judge, on January 13, 1978 reads as follows:

"The undersigned, 3rd Assistant City Fiscal, City of Tagbilaran, Philippines, hereby accuses Gotardo Flordelis of the crime of Perjury, committed as follows:

"That, on or about the 2nd day of July, 1977, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, moved by a desire to evade payment of a just debt and Attorneys' fees for legal services rendered, did then and there willfully, unlawfully and feloniously execute and sign a verified answer to the complaint of Atty. Sulpicio Tinampay and filed with the City Court of Tagbilaran City and which alleges, among other things, that the herein accused did not owe anything from Atty. Sulpicio Tinampay, much less, did he engage his legal services, when in truth and in fact, as said accused fully well knew, such statement on a material matter is false for the records would show that said accused had actually engaged the legal services of Atty. Sulpicio Tinampay in the cases of 'THE PEOPLE OF THE PHILIPPINES VS. GOTARDO FLORDELIS', docketed as Criminal Case No. 4639, for Usurpation of Official Function, and 'THE PEOPLE OF THE PHILIPPINES VS. FERMIN O MAR, ET AL.', docketed as Criminal Case No. 4640, for Perjury; thus, said accused herein had in said manner willfully, unlawfully and feloniously made an untruthful statement in a narration of facts, thereby causing upon said Atty. Sulpicio Tinampay trouble and embarrassment, to his damage and prejudice in the amount to be proved during the trial of the case.

"Acts committed contrary to the provisions of Article 183 of the Revised Penal Code.

"City of Tagbilaran, Philippines, December 28, 1977.

(Sgd.) "MARIANO CAPAYAS  
"3rd Asst. City Fiscal

"APPROVED:

(Sgd.) "JOVENCIO S. ORCULLO  
"City Fiscal"

(Pages 24-25, Record.)

On February 13, 1978, petitioner filed a motion to quash this information on the two grounds already stated at the outset of this opinion. On even date, respondent judge denied the said motion to quash thus:

"O R D E R

"The Court is not yet in the position to resolve the issues thus raised in the motion to quash filed by the accused thru counsel at this stage of the proceedings without allowing the People to present in Court the questioned pleadings as basis of the charge of perjury, otherwise, the Court would be denied of its right to scrutinize the evidence of the prosecution if the case will be quashed, and if also, the prosecution is not given a chance to present the questioned document or pleadings as evidence in Court.

"Thus, the issues adverted to in the motion to quash are all question of evidence which the Court cannot resolve without allowing the People to present first its evidence in Court.

"WHEREFORE, the motion to quash filed by the accused thru counsel should be denied, as it is hereby denied for being premature.

"Notify the prosecuting Fiscal and Atty. Amado G. Olis of this order accordingly.

"SO ORDERED." (Page 41, Record.)

It is plain from even a cursory reading of the above-quoted information that the allegedly false statement attributed to the petitioner was made by him in "a verified answer to the complaint of Atty. Sulpicio Tinampay and filed with the City Court of Tagbilaran City".

Without delving any further into the detailed circumstances of the proceeding in the City Court of Tagbilaran City referred to in the information and confining Our attention even only to the mention therein of "a verified answer to a complaint -- filed in the City Court", it is at once apparent that one element of the crime of perjury is absent in the charge as filed against petitioner, namely, that the sworn statement complained of must be required by law. (The Revised Penal Code by Justice Ramon C. Aquino, Vol. III, 1976 ed., pp. 1062-1063.) The answer to a complaint in an ordinary civil action need not be under oath.

Moreover, it is likewise clear that any statement contained in an appropriate pleading filed in court that is relevant

to the issues in the case to which it relates is absolutely privileged and it is the law that the same may not be made the subject of a criminal prosecution. (People vs. Aquino, 18 SCRA 555.)

The assertion of respondent judge in his order in question that the prosecution should first be allowed to "present in court the questioned pleadings as basis of the charge of perjury" overlooks quite surprisingly that petitioner had attached to his motion to quash the complaint and the verified answer, and it is not claimed that the authenticity of any of them has been put in issue by the prosecution. Thus, further evidence to show (1) that those pleadings were filed in an ordinary action where there is no requirement that the answer to a complaint does not have to be verified and (2) the relevancy of the allegedly perjured statements and consequently their absolutely privileged character was superfluous. Actual presentation thereof at the formal trial could not have altered their legal import in the determination of whether or not under the facts alleged in the information petitioner could be convicted of perjury.

On the issue of the propriety of certiorari and prohibition under the circumstances of this case, We only need to reiterate what We held in People vs. Ramos, L-25265, May 9, 1978 thus:

"As to the contention of respondents that the denial of a motion to quash is not a ground for certiorari and prohibition, suffice it to state that to allow an accused to undergo the ordeals of trial and conviction when the information or complaint against him is patently defective or the offense charged therein has been indisputably shown to have already prescribed is unfair and unjust for which reason, procedurally, the ordinary remedy of appeal cannot be plain and adequate." (Page 69, Record.)

WHEREFORE, the petition herein is granted and the respondent court is hereby ordered to dismiss the above-quoted information for perjury against petitioner in Criminal Case No. 918 of said court. No costs.

Fernando, (Chairman), Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

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