

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO BERIALES, BENEDICTO CUSTODIO AND PABLITO
CUSTODIO, ACCUSED-APPELLANTS.**

G.R. No. L-39962. April 07, 1976

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Appeal from the decision of the Court of First Instance of Leyte, Branch V, Ormoc City, in Criminal Case No. 562-0, convicting the accused Ricardo Beriales, Benedicto Custodio, and Pablito Custodio of the crime of murder, sentencing each one of them to the penalty of reclusion perpetua, and to jointly and severally pay the heirs of Saturnina Gonzales Porcadilla the sum of P12,000.00 and to pay the costs.[1]

It appears that in Criminal Case No. 562-0 the herein appellants were charged with the crime of murder in an information filed by the City Fiscal of Ormoc City on November 22, 1974, allegedly committed as follows:

"That on Or about the 13th of September, 1974, at around 9:00 o'clock in the morning at Barrio Mahayahay, this city, and within the jurisdiction of this Honorable Court, the above-named accused, RICARDO BERIALES, BENEDICTO CUSTODIO and, PABLITO CUSTODIO, conspiring together, confederating with and mutually helping and aiding one another, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, strike and stab the person of SATURNINA PORCADILLA, without giving the latter sufficient time to defend herself, thereby inflicting upon the latter mortal wounds which caused her death. * * *"[2]

At the hearing of November 26, 1974, appellants' counsel moved for a reinvestigation of said case, along with two other related cases[3] which the court a quo granted, in its Order reading as follows:

"On motion of Atty. Abas, counsel for the accused and without objection on the part of Fiscal Ramon Solis, Jr., let the reinvestigation of this case immediately take place at the Office of the City Fiscal and let the arraignment and trial be postponed until December 5 and 6, 1974 at 7:30 a.m. of each day, if and when the Fiscal shall recommend that the case shall proceed after it shall have been reinvestigated, with notice to Attys. Abas and Cornejos as well as Fiscal Solis in open court."[4]

On December 3, 1974, the trial court postponed the hearing of the case to December 17 and 18, 1974,[5] in view of the City Fiscal's motion "for a deferment of the hearing or trial set for December 5 and 6, 1974 until such time the REINVESTIGATION shall have been terminated for which the result of said reinvestigation will be submitted to this Honorable Court for its resolution in the premises."[6]

On December 6, 1974, however, the trial court, *motu proprio* cancelled the aforesaid hearings on December 17 and 18, 1974, and, instead, reset the arraignment and trial of the case to December 10 and 11, 1974.[7]

At the hearing of December 10, 1974, appellants' counsel manifested to the court that pursuant to its approval of his motion for reinvestigation, the City Fiscal had set the reinvestigation for December 12, 1974 and had already

issued the corresponding subpoena to secure the attendance of the witnesses.[8] Nevertheless, the court a quo, issued an order setting the hearing of the case to the next day, December 11, 1974,[9] at which hearing, appellants' counsel reiterated his manifestation that since the City Fiscal had already ordered the reinvestigation on December 12, 1974, the said reinvestigation should first be finished and the corresponding resolution rendered thereon and submitted to the court before any trial of the case should take place.[10]

The trial court, however, relying on the mandate of the New Constitution that "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies"[11] re-scheduled the hearing to December 13, 1974.[12] Immediately thereafter, Special Counsel Rosario R. Polines, in representation of the City Fiscal, manifested that the private prosecutor, Atty. Porcadilla, be authorized to conduct the case for the prosecution.[13]

When the case was called for hearing on December 13, 1974, counsel for the appellant asked the court to wait for the City Fiscal to appear, since the reinvestigation of the case had already been terminated and the Fiscal, if given a chance, might be able to report on said reinvestigation.[14] The trial court, however, insisted in arraigning the appellants.[15] When arraigned, the three appellants declined to plead, saying: "I am not going to answer the question because the Fiscal is not yet around." [16] Thereupon, the trial court entered a plea of "Not Guilty" for each of them.[17]

Thereafter, appellants' counsel again manifested that the City Fiscal was absent and that they could not go to trial without the fiscal and his report on the reinvestigation conducted by him.[18] Nonetheless, the trial court, ordered the presentation of evidence by the private prosecutor since he had been previously authorized by the City Fiscal to handle the case.[19]

After the direct examination of the witnesses presented by the private prosecutor, the trial court asked the counsel for the defense if he desired to cross-examine the witnesses. Appellants' counsel, however, reiterated his manifestation that they would not go to trial until the City Fiscal shall have submitted the result of the reinvestigation to the court, and the court each time ruled that it considered such manifestation as a waiver on the part of the appellants to cross-examine the witnesses.[20]

Thereafter, the private prosecutor rested the case for the prosecution and the court called for the evidence of the defense. Again, appellants' counsel manifested that the appellants were not agreeing to the trial of the case unless they first received the result of the reinvestigation conducted by the City Fiscal.[21] Whereupon, the court considered the case submitted for decision and announced the promulgation of the decision on December 17, 1974.[22]

When the case was called on December 17, 1974, appellants' counsel manifested that the accused were not in conformity with the promulgation of the decision on the ground that they did not agree to the trial of the case.[23] Nonetheless, the trial court promulgated its judgment on the same day.[24]

Hence, the appellants interpose this appeal, upon the principal ground that they were denied due process of law.[25] The Solicitor General agrees with such contention and recommends that the judgment under review be set aside and the case remanded to the lower court for another arraignment and trial.[26]

We sustain the appellants. After the trial court granted the appellants' motion for reinvestigation, it became incumbent upon the court to hold in abeyance the arraignment and trial of the case until the City Fiscal shall have conducted and made his report on the result of such reinvestigation. That was a matter of duty on his part, not only to be consistent with its own order but also to do justice and at the same time to avoid a possible miscarriage of justice. It should be borne in mind, that the appellants herein were charged with the serious crime of murder,

and considering that their motion for reinvestigation is based upon the ground that it was Felipe Porcadilla (husband and father, respectively, of the two deceased, Saturnina Porcadilla and Quirino Porcadilla) who was the aggressor for having attacked and seriously wounded appellant Pablito Custodio[27] it was entirely possible for the City Fiscal to modify or change his conclusion after conducting the reinvestigation. When the trial court, therefore, ignored the appellants' manifestations objecting to the arraignment and the trial of the case, until after the City Fiscal shall have rendered a resolution on his reinvestigation, but instead considered such manifestations on their part as a plea of not guilty and proceeded to try the case, received the evidence for the prosecution, and then rendered judgment against them on the basis thereof, it committed a serious irregularity which nullifies the proceedings below because such a procedure is repugnant to the due process clause of the Constitution.[28]

Besides, as correctly pointed out by the Solicitor General, "what is more deplorable, and which renders patently irregular all the proceedings taken in this case, was the total absence of the City Fiscal and/or any of his assistants or special counsel on December 13, 1974, when the appellants were arraigned and when the private prosecutor presented evidence and rested the case supposedly for the People."

Under the Rules of Court, "All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal." [29] In the trial of criminal cases, it is the duty of the public prosecutor to appear for the government.[30] As stated by this Court, "once a public prosecutor has been entrusted with the investigation of a case and has acted thereon by filing the necessary information in court he is by law in duty bound to take charge thereof until its final termination, for under the law he assumes full responsibility for his failure or success since he is the one more adequately prepared to pursue it to its termination." [31] While there is nothing in the rule of practice and procedure in criminal cases which denies the right of the fiscal, in the exercise of a sound discretion, to turn over the active conduct of the trial to a private prosecutor,[32] nevertheless, his duty to direct and control the prosecution of criminal cases requires that he must be present during the proceedings. Thus, in the case of *People vs. Munar*,[33] this Court upheld the right of the private prosecutor therein to conduct the examination of the witnesses because the government prosecutors were present at the hearing; hence, the prosecution of the case remained under their direct supervision and control.

In the present case, although the private prosecutor had previously been authorized by the special counsel Rosario R. Polines to present the evidence for the prosecution, nevertheless, in view of the absence of the City Fiscal at the hearing on December 13, 1974, it cannot be said that the prosecution, of the case was under the control of the City Fiscal. It follows that the evidence presented by, the private prosecutor at said hearing could not be considered as evidence for the plaintiff, the People of the Philippines. There was, therefore, no evidence at all to speak of which could have been the basis of the decision of the trial court.

Moreover, as aptly observed by the Solicitor General, "to permit such prosecution of a criminal case by the private prosecutor with the fiscal in absentia can set an obnoxious precedent that can be taken advantage of by some indolent members of the prosecuting arm of the government as well as those who are oblivious of their bounden duty to see to it not only that the guilty should be convicted, but that the innocent should be acquitted – a duty that can only be effectively and sincerely performed if they actively participate in the conduct of the case, especially in the examination of the witnesses and the presentation of documentary evidence for both parties." [34]

WHEREFORE, the decision appealed from is hereby set aside and the case remanded to the trial court for another arraignment and trial. Costs de oficio.

SO ORDERED.

Barredo, (Acting Chairman), Antonio, Aquino, and Martin, JJ., concur.

- [1] p. 23, Record.
- [2] p. 4, Record.
- [3] Criminal Cases Nos. 561-0 and 563-0, both cases in the same court. (pp. 5-7, t.s.n., Dec. 13, 1974.)
- [4] p. 3, t.s.n., Nov. 26, 1974.
- [5] p. 4, t.s.n., Dec. 3, 1974.
- [6] p. 5, t.s.n., Dec. 11, 1974.
- [7] T.s.n., p. 1, Dec. 6, 1974.
- [8] pp. 1-2, t.s.n., Dec. 10, 1974.
- [9] p. 2, t.s.n., Dec. 10, 1974.
- [10] pp. 2-8, t.s.n., Dec. 11, 1974.
- [11] Sec. 16, Art. IV of the New Constitution.
- [12] pp. 11-12, t.s.n., Dec. 11, 1974.
- [13] p. 13, t.s.n., Dec. 11, 1974.
- [14] p. 2, t.s.n., Dec. 13, 1974.
- [15] pp. 3-6, t.s.n., Dec. 13, 1974.
- [16] p. 6, t.s.n., Dec. 13, 1974.
- [17] p. 6, t.s.n., Dec. 13, 1974.
- [18] pp. 7-8, t.s.n., Dec. 13, 1974.
- [19] p. 8, t.s.n., Dec. 13, 1974.
- [20] pp. 15-16, 24, 38, 42-43, 52-53, t.s.n., Dec. 13, 1974.
- [21] pp. 55-56, t.s.n., Dec. 13, 1974.
- [22] p. 62, t.s.n., Dec. 13, 1974.
- [23] p. 1-2, t.s.n., Dec. 17, 1974.
- [24] p. 24, t.s.n., Dec. 17, 1974.
- [25] pp. 6-9, Appellants' Brief.
- [26] p. 17, Appellee's Manifestation.
- [27] pp. 2-3, t.s.n., Nov. 26, 1974; pp. 3-4, t.s.n., Dec. 11, 1974.
- [28] Sec. 1, Article IV, New Constitution.

[29] Sec. 4, Rule 110.

[30] Sections 1681, 2465, Revised Administrative Code.

[31] Salcedo vs. Liwag, L-21068, Nov. 29, 1963, 9 SCRA 609.

[32] U.S. vs. Despabiladeras, et al., 32 Phil. 442.

[33] L-37642, Oct. 22, 1973, 53 SCRA 278, 280.

[34] pp. 15-16, Appellee's Manifestation.

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