

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. AGAPITO OLANDAG, DEFENDANT AND APPELLEE.*G.R. No. L-4797. November 26, 1952*

Ponente: PARAS, C.J.

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This is an appeal by the Government from an order of the Court of First Instance of Misamis Occidental, dismissing the case filed against the defendant appellee, Agapito Olandag, for theft of large cattle, on the ground that the Justice of the Peace of Baliangao failed (1) to conduct any preliminary examination to determine the existence of the crime charged and whether the appellee has committed the same and (2) to issue the necessary warrant of arrest.

The complaint against the appellee was filed by the chief of police of Baliangao on October 5, 1948. The record of the justice of the peace contains the affidavit of Paulino Agias, subscribed and sworn to on September 29, 1948 before the municipal mayor (Exh. A); the affidavit of Maximo Malanog, subscribed and sworn to on October 1, 1948 before the Justice of the Peace, Isabelo J. Villanueva (Exh. B); the affidavit of Crispino Tagayon, subscribed and sworn to on September 29, 1948 before the municipal mayor (Exh. C); the affidavit of Esteban Bulahag, subscribed and sworn to on October 1, 1948 before the justice of the peace, Isabelo J. Villanueva (Exh. D); and the affidavit of Ceferino Jalampangon, subscribed and sworn to on September 29, 1948 before the municipal mayor (Exh. E); all of which incriminate the appellee.

It appears from the docket of the justice of the peace court of Baliangao that on October 5, 1948 the complaint was filed and the appellee was already under custody before any warrant of arrest could be issued; that on the same date the bail bond was fixed at P2,500, later increased to P3,000; that on November 18, 1948, the complaint was read to the appellee who entered a plea of not guilty, and the court conducted a preliminary investigation; and that on December 15, 1948, the justice of the peace issued an order finding that there was a prima facie case against the appellee and remanding the case to the Court of First Instance for trial on the merits. The record also shows that the appellee filed the necessary bail bond for P3,000, and that on November 24, 1948, a warrant of arrest was issued by the justice of the peace, A. L. Penaco, and served on the appellee on the same date by the chief of police of Baliangao.

It is the opinion of the Court of First Instance of Misamis Occidental that, although the justice of the peace (A. L. Penaco) conducted the preliminary investigation proper, his failure to conduct a preliminary examination and to issue a warrant of arrest, was fatal to the jurisdiction of the court. The lower court argued that the justice of the peace merely read the several affidavits presented with the complaint, without actually making any statement or order to the effect that there was a probable ground for the issuance of a warrant of arrest, and this amounted to a deprivation of due process of law.

In *U. S. vs. Ocampo*, 18 Phil., 1, this Court has already held that a justice of the peace court is not prohibited by any law "from reaching the conclusion that 'probable cause' exists from the statement of the prosecuting attorney

alone, or any other person whose statement or affidavit is entitled to credit in the opinion of the judge or magistrate." Indeed, in *Arteche vs. Rosales*, 67 Phil., 48, 52, it was observed that the "justice of the peace could not be compelled to receive the sworn statements of the complainant and his witness by questions and answers, simply because it is of judicial notice that he was not provided with a stenographer." On the other hand, in *Bustos vs. Lucero*, March 8, 1949, 46 Off. Gaz., Supp. No. 1, p. 445, it was ruled that preliminary investigation is not an essential part of due process of law.

Moreover, it appearing that the appellee had chosen to file a bond for his temporary release, and had raised the objection for the first time after his arraignment before the Court of First Instance on August 14, 1950,—almost; two years after the filing of the complaint in the justice of the peace court,—he must be deemed to have waived his right to the preliminary examination which, at any rate, could be conducted by the justice of the peace either in the presence or in the absence of the appellee. The issuance on November 24, 1948 of a warrant of arrest which was duly served on the same date upon the appellee, has furthermore cured the previous failure to issue said warrant. As a matter of tact, the justice of the peace did not issue a warrant of arrest upon the filing of the complaint on October 5, 1948 obviously because the appellee was then under custody.

As the justice of the peace court is not a court of record, it is not required, after conducting a preliminary examination, to expressly make it of record that he has conducted said preliminary examination and that there is reasonable ground to believe that the defendant has committed the crime charged, because "the issuance of the warrant of arrest is prima facie evidence that, in his judgment at least, there existed 'probable cause' for believing that the person against whom the warrant is issued is guilty of the crime charged."

Wherefore, the appealed order is reversed and the case remanded to the Court of First Instance of Misamis Occidental for further proceedings. So ordered.

Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

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