

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT VS. ARTEMIO PERVEZ, DEFENDANT AND APPELLEE.*G.R. No. L-15231. November 29, 1960*

Ponente: REYES, J.B.L., J.

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On December 8, 1958, the appellee Artemio Pervez was charged with attempted rape before the Justice of the Peace of San Miguel, Iloilo. After conducting the first and second stages of preliminary investigation, the Justice of the Peace, on January 30, 1959, dismissed the charge for insufficiency of evidence. Disagreeing with the findings of the Justice of the Peace, the Provincial Fiscal, on February 19, 1959, filed an information for attempted rape against Pervez in the Court of First Instance, certifying that he had conducted a preliminary investigation in accordance with Republic Act 732, as amended; that there is reasonable ground to believe that the offense charged has been committed, and that the accused is guilty thereof.

On a motion to quash, the court below dismissed the information, sustaining the contention of the defense that after the dismissal by the Justice of the Peace, the Provincial Fiscal had no authority to file the information unless upon a new preliminary investigation, in which (more intimated than directly averred), the accused had the right to be present and submit his evidence; that Republic Act 732, as amended by Republic Act 1799, applies only to crime cognizable by the Court of First Instance and filed directly with said court, not to those originally filed with the Justice of the Peace. Cited for the above proposition are Villanueva, et al. vs. Hon. Gonzales, et al., 99 Phil., 679; 52 Off. Gaz., (12) 5497, and People vs. Magbanua, et al., C.A.-G. R. No. 19544-R, 54 Off. Gaz., 4500.

From the order quashing the information, the Government appeals, contending that under Republic Act 732, as amended, the Provincial Fiscal is properly authorized to conduct a preliminary investigation even without the presence of the accused who did not request to be present, regardless of whether it was originally filed with the Justice of the Peace or with said Provincial Fiscal; that the law itself does not make such distinction; that the Provincial Fiscal is not bound by the findings of the Justice of the Peace, and may conduct his own preliminary investigation, to be guided accordingly by the result thereof.

We find merit in the appeal. It can not seriously be disputed, and needs no citation of authorities,, that the Provincial Fiscal is not precluded from conducting his own preliminary investigation of a case previously dismissed by the Justice of the Peace, since such dismissal creates no bar to another prosecution. There is need only to determine whether he may do so without the presence of the accused. In a line of cases (Villanueva, et. al., vs. Hon. Gonzales, et al., supra.; Lozada vs. Hernandez, 92 Phil., 1051; Rodriguez vs. Arellano, 96 Phil., 954; People vs. Napagao, 97 Phil., 785; 51 Off. Gaz., [11] 5634), this Court has repeatedly held that the legality of a preliminary investigation by the Provincial Fiscal, pursuant to Republic Act 732, as amended, is not affected by lack of previous notice to the accused, for said notice is required only after the accused requested to be present. It is not averred or shown that the accused herein had requested to be present; hence, the Provincial Fiscal was within his authority in conducting the investigation without the attendance of the accused. That there had been a previous dismissal by the Justice of the Peace of the same charge would not alter the above rule. Indeed, we see

no substantial distinction between those cases originally investigated by the Justice of the Peace, and dismissed by him, and those originally investigated by the Provincial Fiscal (as in the Villanueva tmd Napagao cases, with respect to some of the accused), in both of which, before filing an information in court, the Provincial Fiscal has to rely on the result of his own investigation. If, in the latter cases, the Provincial Fiscal may conduct the investigation without the accused who did not request to be present, we see no reason for changing the rule where a Justice of the Peace, in a preliminary investigation, had previously dismissed the charge, when, as aforesaid, the findings of the Justice of the Peace do not bind the Provincial Fiscal. (Of course, where a Justice of the Peace forwards a case to the Court of First Instance with the finding that there is a prima facie case, the Fiscal cannot, on his own authority, dismiss the case, but should file with the court a motion to dismiss.)

We are cited to our ruling in Villanueva, et al., vs. Hon. Gonzales, et al., supra, in support of the proposition that Republic Act 732, as amended, does not apply to those cases originally filed and investigated by the Justice of the Peace, and, thereafter, forwarded to the Court of First Instance. This argument springs from a total misapprehension as to the real import of the Villanueva case. In that case, this Court ruled that:

"Republic Act 732 'governs preliminary investigations conducted by provincial fiscals in cases originally instituted by them in courts of first instance. It does not apply to cases begun in Justice of the Peace Courts and thereafter forwarded to the corresponding Court of First Instance . . . !'"

Obviously, the ruling refers to those cases where the Justice of the Peace conducted the second stage of preliminary investigation, and found a prima facie case, or where the accused waived preliminary investigation therein. In such cases; the Provincial Fiscal may rely on the evidence presented in the Justice of the Peace, and is under no obligation to conduct an entirely new preliminary investigation. But certainly, there is nothing in said decision to justify the conclusion that after a previous dismissal by the Justice of the Peace, the Provincial Fiscal may not conduct a separate, independent investigation of his own, and this, without the presence of the accused, if the latter did not so request. In fact, the Villanueva case upheld the legality of the preliminary investigation conducted by the provincial fiscal with respect to one of the accused who was not among those originally investigated by the Justice of the Peace, and who was not given notice by the provincial fiscal in his own investigation.

In resume, we reiterate our previous rulings that if the charge for a crime cognizable by the Court of First Instance is filed by a competent party or officer in the Justice of the Peace Court, and the accused waives preliminary investigation therein, or the Justice of the Peace, after regular preliminary investigation, finds that a prima facie case exists, and consequently, elevates the records to the Court of First Instance, the Provincial Fiscal is not called upon to conduct another investigation, and may forthwith file the information in the Court of First Instance. Republic Act No. 732 does not apply in such a case. But if the Justice of the Peace, after due investigation, dismisses the charge, then the case stands as if no charge had been made, and the Provincial Fiscal may thereafter conduct his own investigation of the same charge under the aforesaid Republic Act 732, making it in the presence of the accused if and when the latter so requests.

Wherefore, the order appealed from is reversed, with costs against the appellee.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Order reversed.

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