

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
CARLOS LA CASTE, FRANCISCO CASTRO AND PEDRO CUENTO,
ACCUSED-APPELLEES.**

G.R. No. L-29083. February 27, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal on a question of law by the State from the joint order of the Court of First Instance of Zamboanga City ordering the dismissal of the three criminal cases pending trial before it upon motion of one of the accused on the alleged ground that no preliminary investigation had been conducted prior to the filing of said cases.

For a brief background of the proceedings in the lower court:

In Criminal Cases Nos. 3068 and 3072, filed on April 17, 1962, the accused Carlos La Caste, Francisco Castro, Pedro Cuento and Jose L. Gonzales[1] were charged in two separate informations filed by special prosecutor Edilberto Barot, Jr. of the Department of Justice and special counsel Vicente T. Largo, of having swindled through falsification of public/official documents the Philippine National Bank (Zamboanga City Branch) of the sum of P1,000.00 on each occasion, in connection with homestead loans being granted by the said bank. Sworn statements of the homesteaders used as tools of the crimes charged in the informations, stating that they received only P100.00 of the P1,000.00 loans given by the bank, were attached to the informations.

Separate identical orders in each of the said two cases were issued under the same date by the lower court,[2] as follows:

"After conducting the required preliminary investigation, the Court believes that there is reasonable cause against the accused x x x and the Court hereby orders the arrest of said accused and fixes their bond in the amount of P1,000.00 per accused, which bond may be approved either by this Court, the Municipal Court of Zamboanga City or any other court within the Republic of the Philippines."

In Criminal Case No. 3086, filed on May 24, 1962, the same accused Francisco Castro, security inspector of the Philippine National Bank at its Zamboanga City branch, this time with Abdu Jalo and Jesus Ibanez and two other unidentified persons were charged with a third crime of estafa through falsification of public/official documents (with the same offended party and the same modus operandi) in an information filed by the same government prosecutors. The prosecutors duly certified in the information that they had conducted a preliminary investigation of the case in accordance with law, that there was reasonable ground to believe that the offense charged had been committed and that the accused were guilty thereof. On May 24, 1962, then vacation judge of the lower court, now appellate court justice, Carmelino Alvendia, issued an order for the arrest of the accused and fixed bail at P10,000.00, which was reduced to P1,000.00 by order of the regular judge of the lower court per order of June 9, 1962, upon the accused's motion.

The accused in all three cases accordingly posted therein the bail fixed for their liberty. As there were common

accused in the three cases and the same offended party, the minutes show that the cases were scheduled for joint arraignment and trial. After several postponements for various reasons over a period of two years, the accused in the three cases were all finally arraigned and entered their not-guilty plea on June 26, 1964. On the same date, upon motion of the accused Francisco Castro, the lower court issued a joint order ordering the prosecution "to produce and permit the inspection and copying or photographing, by or on behalf of the accused or of his defense counsels, of any written statements given by the complainants and other witnesses in the investigations of the offenses conducted by the prosecution or by any other investigating officers as well as of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not otherwise privileged, which constitute or contain evidence material to any matter involved in the actions, and which are in the possession or under the control of the prosecution."

The trial scheduled for October 21, 1964 was postponed until new assignment upon motion of the prosecution. Thereafter, almost two years later on March 30, 1966, the accused Francisco Castro filed a motion for an order directing the state prosecutor to reinvestigate the cases against him "because no preliminary investigation had been conducted with notice to [him] previous to the issuance of the warrants of arrest" and "there is sufficient evidence in [his] favor . . . which, if made known to the state prosecutor in a re-investigation, will clear [him] of any responsibility" - which bore the state prosecutor's written conformity and was granted by the lower court on the same date.

The accused Francisco Castro, however, forsook this boon and filed on November 16, 1966 still another motion for dismissal of the cases on the very same ground of lack of preliminary investigation or lack of notice thereof to him. The hearing thereof set on November 19, 1966 was postponed to November 26, 1966 in order to give the state prosecutor time to reply thereto. On November 26, 1966, the lower court, finding no opposition on record to the same, found it "well taken" and ordered the cancellation of the "bonds filed by the accused" and the dismissal "of the above-entitled cases with costs de-officio and without prejudice to refileing the same."

The state prosecutor seemed to have finally realized the peculiar turn of events and timely filed on December 6, 1966 this appeal. The lower court still gave the accused Francisco Castro the opportunity of objecting to the appeal on the ground that the dismissal order was "only interlocutory and therefore unappealable" but finally issued its order of April 21, 1967 "giving due course" to the appeal and ordering the forwarding of the records to this Court.

Notwithstanding the lack of any transcripts to be submitted with the appeal, since the dismissal order was issued on the pleadings above stated, it nevertheless took the clerk of the lower court, L. T. Mendoza, Jr., almost one year to forward to this Court through his letter dated March 4, 1968, the records of the cases at bar, which were finally received via PAL by this Court on March 30, 1968. No brief for appellees having been filed within the reglementary period, the appeal was declared submitted for decision on February 11, 1969.

The appealed order of dismissal must be set aside on manifest factual and legal grounds.

1. The gross error of the factual premise of the lower court's dismissal order that no preliminary investigation of the cases was conducted is shown by the records themselves. In Criminal Cases Nos. 3068 and 3072, the lower court itself in its order of April 17, 1962, ordering the arrest of the accused and fixing their bail made of record that it had "conducted the required preliminary investigation"[3] and that it found the existence of reasonable cause against the accused. In Criminal Case No. 3086, the prosecutors had certified in the information under their oath before then vacation Judge Alvendia to the fact of their having conducted a preliminary investigation in accordance with law. The accused Francisco Castro himself, in his motion of March 30, 1966 for reinvestigation, while claiming not to have had notice of the preliminary investigation, conceded in effect the fact of such

preliminary investigation having been held and merely asked for a re-investigation.

2. Even assuming *arguendo* that the above facts of record were absent, still the lower court had no factual basis for relying merely on the unverified assertion of the accused Francisco Castro as to the alleged lack of preliminary investigation. As recently reiterated by the Court in *People vs. Figueroa*,^[4] the trial court should not disregard "the presumption that official duty has been regularly performed and the well-settled rule that when nothing appears affirmatively on the record that a preliminary investigation was not in fact held, an objection on the ground of denial or deprivation thereof deserves scant consideration by virtue of the presumption that both the court as well as the prosecution proceeded in accordance with law. Certainly, defense counsel must first overcome the presumption of regularity in the performance of official duty and present strong *prima facie* evidence of irregularity or falsification of the investigating fiscal's certification and record of the investigation for the Court to deny them the faith and credence properly due them."

3. On legal premises, the lower court's action was likewise patently erroneous. As has been time and again stated by the Court, the posting of bail by the accused and their entry of their plea constituted a waiver of their right to preliminary investigation and any irregularity that attended it.^[5] The apparent neglect and failure of the prosecution to file an opposition to Castro's motion for dismissal could not of course be deemed - as erroneously implied by the lower court in its order - to cancel out the accused's waiver of the right to a preliminary investigation when they submitted to arraignment and entered their pleas. Furthermore, aside from the fact that all objections available to the accused were taken to be waived upon failure to move to quash at the time of their plea, as provided by Rule 117, section 10, (subject to the specific exceptions provided therein), failure to hold preliminary investigation cannot be made the basis of a motion to quash. We are constrained to point out once more, as in *Figueroa and Bandiola vs. Querubin*^[6] that where the absence of a proper preliminary investigation has been timely raised and has not been waived, the trial court is called upon "not to dismiss the information but hold the case in abeyance and conduct its own investigation or require the fiscal to hold a reinvestigation. This Court, speaking through now Mr. Chief Justice Concepcion in *People vs. Casiano*,^[7] had stressed this as the proper procedure, pointing out that the 'absence of such investigation did not impair the validity of the information or otherwise render it defective. Much less did it affect the jurisdiction of the Court of First Instance over the present case.' "^[8]

4. Incomprehensible, unauthorized and contrary to law is the lower court's outright dismissal of all the three cases as against all the accused "with costs *de-oficio* and without prejudice to refileing the same" when it had noted in its very order that the sole movant for dismissal on the ground of lack of preliminary investigation was only the accused Francisco Castro. Assuming that the lower court found merit in the accused Castro's dismissal motion, it had no basis whatever for dismissing the cases as against Castro's co-accused, who were represented by other counsel, and who had not made a similar claim as Castro for dismissal of the cases against them.

5. The Court has noted, furthermore, that notwithstanding the undue length of time during which the cases were awaiting trial, the lower court perfunctorily granted Castro's motion for a reinvestigation on the basis of Castro's bare representation that there was sufficient evidence, which, if made known to the state prosecutor, would clear him of responsibility, without even requiring the accused-movant to justify his assertion and to inform it of the nature of such alleged exculpatory evidence. Considering that a *prima facie* case had been made out against the accused at the preliminary investigation conducted by the lower court itself and by the government prosecutors, the lower court should have exercised great restraint in granting any reinvestigation with the consequent delay involved, since the weighing and evaluation of such evidence in defense of the accused as against the State's evidence is best left to its judgment and its verdict rather than to that of the prosecutor. It may be noted that the Department of Justice has likewise adopted such a policy against reinvestigations of cases already filed in court,

limiting them to cases where serious irregularities have been committed during the preliminary investigation or where new and material evidence not available at the investigation have been discovered, which if proven or admitted, would probably change the fiscal's findings as to the existence of a prima facie case.[9]

As noted above in the narration of the background facts, the proceedings in the lower court have been characterized by inaction and delay so detrimental to the need of promptly trying criminal cases and determining the innocence or guilt of the accused. The undue delay of almost one year incurred by the clerk of the lower court in discharging his ministerial duty of forwarding on appeal the records of the cases at bar to this Court requires some explanation also. These matters should be referred to the Secretary of Justice for appropriate investigation and the filing of administrative proceedings against those found responsible therefor, as the facts may warrant.

ACCORDINGLY, the order of dismissal appealed from is hereby set aside and the lower court is directed to proceed without further delay with the trial of the accused-appellees upon the informations filed in the cases at bar. With costs in solidum against the accused-appellees. Let a copy of this decision be furnished the Secretary of Justice for the corresponding investigation of the matters noted in the preceding paragraph.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Villamor, and Makasiar, JJ., concur. Fernando and Barredo, JJ., took no part.

[1] Gonzales was accused only in Criminal Case No. 3072.

[2] Presided by Judge Gregorio D. Montejo, who ceased as such on March 6, 1968. (Administrative Order No. 114 of the President, March 5, 1968.)

[3] See Rule 108, section 4 of the old Rules, now Rule 112, section 13.

[4] 27 SCRA 1239 (Apr. 30, 1969) citing *People vs. Selfaison*, 1 SCRA 235 (1961) and other cases.

[5] *Zacarias vs. Cruz*, 30 SCRA 728 (Nov. 29, 1969) and *Palanca vs. Querubin*, 30 SCRA 738 (Nov. 29, 1969) and cases cited.

[6] L-24652, September 30, 1970.

[7] 1 SCRA 478 (February 16, 1961).

[8] *Figueroa*, supra fn. 4.

[9] Department of Justice Circular No. 74, July 26, 1967.

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