

MARGARITO SAUSI, PETITIONER VS. THE HONORABLE JOSE R. QUERUBIN, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL AND THE PROVINCIAL FISCAL OF NEGROS OCCIDENTAL, RESPOND...

G.R. No. L-24122. January 30, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

This Tribunal was persuaded to entertain this petition for certiorari against respondent Judge as the question raised appeared worthy of further consideration. Specifically, the matter for determination is whether upon a remand by a municipal judge, after conducting the preliminary investigation, that the offense committed was not, as alleged, that of frustrated murder, but merely physical injuries with permanent deformity, could the provincial fiscal, the other respondent in this proceeding, file an information for frustrated murder, without a new preliminary investigation on his part? For so it did transpire in this case. The accused taking the stand that the answer must be in the negative moved to dismiss. Respondent Judge denied such motion. Hence this petition, based on the premise that such denial raised a jurisdictional issue. The authoritative doctrines, as will hereafter be shown, do not go so far as to warrant a definitive dismissal. Certiorari may be availed of however in the sense that the case must be sent back to the lower court so that it could require the fiscal to conduct the necessary preliminary investigation, before an information for a crime other than that certified by the municipal court could be justified. That is the remedy to which petitioner may rightfully lay claim.

The facts are undisputed. It was shown that the municipal court of Talisay, Occidental Negros, after conducting a preliminary investigation recommended that the proper complaint against the accused, now petitioner, be one for serious physical injuries with permanent deformity rather than frustrated murder.[1] It did not dismiss the case. In the information filed by respondent Provincial Fiscal of Negros Occidental, the offense for which the accused had to stand trial was one for frustrated murder. He did not conduct a new preliminary investigation.[2] Then came a motion to dismiss by the accused before the trial could be held "based mainly on the ground that the Provincial Fiscal had no authority to file the above-mentioned 'Information' against the petitioner without first conducting-a-new preliminary investigation of the case x x x"[3] There was an opposition by respondent Provincial Fiscal, wherein he pointed out that he saw no need for a "new preliminary investigation" as there was no "actual dismissal of the original criminal complaint," by the municipal court. He therefore maintained that what was done by him was in accordance with the powers vested in him as provincial fiscal.[4] Respondent Judge denied the motion to dismiss in an order of December 15, 1964.[5] Hence, as noted, this petition. In fairness to respondent Judge, it must be noted that the way the motion to dismiss was worded with the implication that the accused was thereby rendered immune to further prosecution for frustrated murder must have led to its denial. This petition, however, does admit, as it very well could not deny, that respondent fiscal has the power to conduct another preliminary investigation, which could result precisely in that kind of an indictment. It was only his failure to do so before filing the information that marred his actuation.

To that extent, as noted at the outset, the petition possesses merit.

1. The prevailing doctrine is that if a municipal judge, after a preliminary investigation, finds that the charge against the accused is not warranted, the prosecution for such offense is not thereby barred as long as the fiscal conducts another preliminary investigation before filing the corresponding information. So it was held in a 1916 decision, *United States vs. Marfori*.^[6] In *People vs. Pervez*,^[7] decided in 1960, this Court, speaking through Justice J.B.L. Reyes, could assert: "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."^[8] It is quite clear therefore that an accused is not thereby relieved of any apprehension that he may be indicted just because a municipal judge finds that the evidence offered at such proceeding does not justify his being held for trial. The threat of possible loss of liberty, even of life in capital offenses, is by no means over. The menace still hangs over his head. The only guarantee to the high regard that the law has for physical liberty is that the fiscal must conduct a new preliminary investigation. Such a requirement, of course, may likewise be looked upon as a recognition of the wide discretion enjoyed by such official to assure that the guilty does not go unpunished. What is more, they should be made to respond for the particular crimes warranted by the evidence, which it is for him to evaluate. That is why even when there is a remand by the municipal judge after a preliminary investigation, his power to conduct his own inquiry is conceded. To quote a new from another opinion of Justice J.B.L. Reyes, this time in *Talusan vs. Ofiana*:^[9] "The power of the provincial fiscal (or his assistant) to conduct his own investigation or reinvestigation of a case already elevated to the Court of First Instance by a municipal judge or justice of the peace who conducted a preliminary investigation thereon, in order to determine his own course of action as prosecuting officer, is particularly true in the present case, since counter-charges for attempted murder have also been filed against herein petitioner (who earlier filed his own charge of frustrated murder against private respondents) based on the same incident."^[10]

2. The decision arrived at, moreover, manifests fidelity to the principle that underlies the concept of a preliminary investigation. As set forth in the leading case of *United States vs. Grant and Kennedy*,^[11] decided as far back as 1910: "The object or purpose of a preliminary investigation, or a previous inquiry of some kind, before an accused person is placed upon trial, is to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from an open and public accusation of crime, from the trouble, expense, and anxiety of a public trial, and also to protect the State from useless and expensive trials."^[12] While malice neither nor oppression could be imputed to the actuation of the provincial fiscal, still in view of the grave doubt entertained by the municipal judge, the holding of another preliminary investigation is more than warranted. For it could dispel any imputation of haste on the part of the provincial fiscal even on the assumption that thereafter the offense imputed to the petitioner as the accused would be that of frustrated murder. The basic premise, of course, is that respondent Provincial Fiscal would be guided solely by the proof offered in the information that thereafter would be filed by him. That the accused cannot escape an indictment would seem to follow from the express finding of the municipal judge that he could be prosecuted of physical injuries with permanent deformity. Parenthetically, it may be observed that had he been more categorical in dismissing the case outright for lack of evidence to sustain the accusation for frustrated murder, there would have been no need for this further proceeding.

WHEREFORE, the writ of certiorari is granted and the order of respondent Judge of December 15, 1964, annulled and set aside. The case is remanded to the lower court for further proceeding in accordance with this opinion. No costs.

Makalintal, C.J., Fernandez, and Aquino, JJ., concur.

Antonio, J., took no part.

[1] Petition, Annex A.

[2] Ibid, par. 3.

[3] Ibid, par. 4.

[4] Ibid, par. 5.

[5] Ibid, par. 6.

[6] 35 Phil. 666. Cf. Conde vs. Judge of First Instance, 45 Phil. 173 (1923).

[7] 110 Phil. 214.

[8] Ibid, 216. Cf. People vs. Casiano, L-15309, Feb. 16, 1961, 1 SCRA 478; People vs. Reginaldo, L-15960, April 29, 1961, 1 SCRA 1307; People vs. Mapa, L-15345, May 26, 1962, 5 SCRA 95; Abubakar vs. Arca, L-14916, Dec. 29, 1962, 6 SCRA 922; People vs. Tan, L-17791, April 30, 1963, 7 SCRA 981; People vs. Monton, L-23906, June 22, 1968, 23 SCRA 1024; People vs. Figueroa, L-24273, April 30, 1969, 27 SCRA 1239; Zacarias vs. Cruz, L-25899, Nov. 29, 1969, 30 SCRA 728.

[9] L-31028, June 29, 1972, 45 SCRA 467.

[10] Ibid, 472.

[11] 18 Phil. 122.

[12] Ibid, 147. The United States vs. Grant decision was cited with approval in United States vs. Laban, 21 Phil. 297 (1912); United States vs. Carlos, 21 Phil. 553 (1911); United States vs. Go Chanco, 23 Phil. 641 (1912); United States vs. Ipil, 27 Phil. 530 (1914); United States vs. Remigio, 37 Phil. 599 (1918); United States vs. Alabot, 38 Phil. 698 (1918); Uy Kheylin vs. Villareal, 42 Phil. 886 (1920); People vs. Solon, 47 Phil. 443 (1925); People vs. Villegas, 55 Phil. 567 (1931); People vs. Caringan, 61 Phil. 416 (1935); People vs. Castillo, 76 Phil. 72 (1946); People vs. Dizon, 76 Phil. 265 (1946); People vs. Zapanta, 79 Phil. 308 (1947); Sayo vs. Chief of Police of Manila, 80 Phil. 859 (1948); Bustos vs. Lucero, 81 Phil. 640 (1948); Lozada vs. Hernandez, 92 Phil. 1051 (1953); Rodriguez vs. Arellano, 96 Phil. 954 (1955); Santos, Jr. vs. Flores, L-1851, Aug. 31, 1962, 5 SCRA 1136; Molinyawe vs. Flores, L-18256, Aug. 31, 1962, 5 SCRA 1137; People vs. Figueroa, L-24273, April 30, 1969, 27 SCRA 1239.

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