

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE
ROBERTO ZURBANO, PRESIDING JUDGE OF BRANCH III, COURT OF
FIRST INSTANCE OF ALBAY, RESPONDENT.**

G.R. No. L-32673. February 22, 1971

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Where a written complaint for rape, subscribed under oath by the offended party before the Fiscal, is filed with the court of competent jurisdiction after the Fiscal had conducted the required preliminary investigation, and a certification to that effect appears below the complaint, is it still necessary for the Fiscal, after finding a prima facie case against the respondents, to file with the court of first instance an information in addition to the offended party's sworn complaint? This is the question We are called upon to resolve in this original action of certiorari filed by Assistant Provincial Fiscal Emmanuel R. Real of Albay in the name of the People.

On January 13, 1970, one Lea Cipoon filed with the Office of the Provincial Fiscal of Albay a complaint for rape against three persons. The fiscal's office conducted a preliminary investigation thereon and found a prima facie case against the respondents. The investigating fiscal then procured and caused to be filed with the court of first instance a sworn complaint for rape subscribed by the offended party before the said fiscal, containing a list of prosecution witnesses. Below the complaint was a certification by the fiscal to the effect that he had conducted a preliminary investigation and that there was reasonable ground to believe that the crime charged in the complaint had been committed and that the accused were probably guilty thereof. There was also a recommendation for bail.

The case was docketed as Criminal Case No. 101 of the Court of First Instance of Albay and assigned to Branch III presided over by respondent Judge Zurbano. On September 28, 1970, respondent Judge issued an order directing the fiscal to file an information within two days from receipt of the order. The fiscal moved for a reconsideration, but in an order dated September 29, 1970, the motion was denied and the record of the case was ordered returned to the fiscal's office so that the latter could file the "necessary information." Hence, the present petition.

We find the petition meritorious in view of the following considerations:

1. The filing with the proper court of a complaint or an information is sufficient to commence a criminal action. In *Astero vs. Chief of Police of Dagupan City*, L-26741, July 31, 1969 (28 SCRA 1078), We said:

"The premise to the effect that a public crime, such as that of corruption of minors 'is not one of those which may be prosecuted x x x upon the complaint of the offended party,' is manifestly erroneous. Indeed, Section 1 of Rule 110 of the Rules of Court, explicitly provides that '(a)ll criminal actions must be commenced either by complaint or information x x x."

In the said case We quoted the following from our decision in *U.S. vs. Narvas*, 14 Phil., 410:

"Under the provisions of those sections a criminal action or prosecution may be instituted in the courts

specified therein in either one of two ways. In the first place it may be commenced by any person presenting to a court or to a magistrate the complaint above defined. Such complaint is the process which begins the action and gives the court or magistrate jurisdiction of the person of the defendant and the subject-matter of the action. Where such complaint has been presented no other or further pleading on the part of the government is necessary. The prosecution proceeds upon the complaint alone. In the second place the action may be commenced by the promotor fiscal by presenting to the court and filing with the clerk thereof the information defined and set forth in the section above quoted. In that case such information is the process which institutes the action and the prosecution proceeds upon it as the people's pleading. It is the duty of the fiscal to prosecute the action, whether commenced by complaint or information. This enables him to prevent malicious or unfounded prosecutions by private persons."

The sections referred to above are Sections 2, 3, 4 and 5 of the former Code of Criminal Procedure, which are similar to Sections 1, 2 and 3, Rule 110 of the Revised Rules of Court, to wit:

"SECTION 1. Commencement of criminal action. - All criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefor.

"SEC. 2. Complaint defined. - Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated.

"SEC. 3. Information defined. - An information is an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court."

It is true, as contended by respondent Judge, that a complaint need not be filed with the court, unlike an information which is required by Section 3 of Rule 110 to be "filed with the court" (Cf. *Espiritu vs. De la Rosa*, 78 Phil., 829); but nothing in Section 2 of said rule bars the filing of a complaint with the court. Indeed, in certain cases, as will be seen from Our discussion below, the filing of the complaint with the court is considered the operative act that confers jurisdiction.

2. The crime of rape being one which is required by Article 344 of the Revised Penal Code and by Section 4, Rule 110 of the Revised Rules of Court, to be prosecuted "upon a complaint filed by the offended party x x x," the filing with the court of first instance of a sworn complaint charging such offense is sufficient to initiate criminal prosecution. As We said in *U.S. vs. Narvas*, supra, "the action can not be prosecuted upon the information of the fiscal." A fortiori, to require the fiscal to file an information would be to call for the doing of an act which the law and the rule themselves consider unnecessary, superfluous and ineffectual.

Respondent Judge leans on Section 2 of Republic Act No. 732 to buttress his position that even if the crime charged in the complaint which is lodged with the fiscal's office is a semi-public offense, an information should still be filed with the court. Incidentally, the aforementioned section must be deemed amended by Republic Act No. 5180 (An Act Prescribing a Uniform System of Investigation by Provincial and City Fiscals and their Assistants, and by State Attorneys or their Assistants), which took effect on September 8, 1967. The particular provision relied upon by respondent Judge is, however, retained substantially in Section 1 of Republic Act No. 5180, which in part provides that "no information for an offense recognizable by the Court of First Instance shall be filed by the provincial fiscal or city fiscal x x x, without first giving the accused a chance to be heard in a preliminary investigation conducted by him x x x." Respondent Judge argues that under this provision the fiscal is in duty bound to file an information with the court of first instance after finding a prima facie case against the respondents in a preliminary investigation. We find the argument unmeritorious, because the provision in question in no way precludes the filing of a complaint directly with the court after a preliminary investigation thereon has

been conducted by the fiscal or by the state attorney.

Considering that a complaint for rape sufficient in form was filed with the proper court by the injured party thru the investigating fiscal after the latter had found a prima facie case against the respondents in a preliminary investigation, We see no reason why the filing of said complaint, unaccompanied by an information, would not be sufficient to start the criminal proceedings. Of course, no law or rule prevents the fiscal from filing an information for rape if he elects to do so. However, since the filing of a complaint for rape or for any of the other offenses enumerated in Article 344 of the Revised Penal Code, by the person or persons mentioned therein, is jurisdictional (Cf. *People vs. Santos, et al.*, 101 Phil., 798), the filing thereof is sufficient to initiate a valid prosecution, and no information need be filed any longer by the fiscal.

In the present case the fiscal chose not to file an information. While We certainly do not begrudge him his right to exercise his option in this manner, the thought comes to Us that much delay could have been avoided, nay, the interest of a speedy administration of justice would have been greatly subserved, had the fiscal simply complied with respondent Judge's order instead of taking the matter to this Court. Since the case is before Us anyway, We are left with no alternative but to assess its merits, and, perforce, grant the petition.

WHEREFORE, the writ of certiorari prayed for is granted, and the orders complained of are accordingly set aside. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

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