

GLORIA ABRERA, PETITIONER AND APPELLANT, VS. LUDOLFO V. MUÑOZ, JUSTICE OF THE PEACE OF OAS, ALBAY, AND CORAZON A. FLORDELIZA, RESPONDENTS AND APPELLEES.

G.R. No. L-14743. July 26, 1960

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

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

Appeal from an order of the Court of First Instance of Albay, dated February 23, 1957, dismissing the petition for certiorari filed by Gloria R. Abrera to set aside an order of the Justice of the Peace of Oas, Albay, dated May 5, 1956, rendered in Criminal Case No. 609 which was before the latter court for preliminary investigation.

It appears that respondent Corazon A. Flordeliza filed a complaint for serious oral defamation against petitioner in the Justice of the Peace of Oas, Albay. The respondent Justice of the Peace conducted the first stage of the preliminary investigation, issued the warrant of arrest, and admitted petitioner to bail. Thereafter, the case was set for the second stage of the preliminary investigation, during which petitioner's counsel asked permission to cross-examine the prosecution witnesses who had testified prior to the arrest of petitioner. The respondent judge denied this on the ground that the preliminary investigation was then already on its second stage.

Thereafter, pursuant to Section 11, Rule 108 of the Rules of Court, petitioner started presenting evidence by testifying for herself. After her testimony, the prosecution asked to be allowed to cross-examine her, to which petitioner's counsel objected. The respondent Judge then issued the order dated May 5, 1956, allowing the prosecution to cross-examine petitioner and her witnesses to be presented at said investigation. A motion for reconsideration filed by petitioner was also denied.

Accused Gloria R. Abrera then filed in the Court of First Instance of Albay the petition for certiorari subject of this appeal, alleging that the respondent Justice of the Peace acted without or in excess of its jurisdiction in issuing the order of May 5, 1956 allowing the prosecution to cross-examine her and her witnesses. A motion to dismiss and a reply thereto were respectively filed by the parties, on the basis of which the question was submitted to the court below.

In dismissing the petition for certiorari, the lower court rejected petitioner's contention that inasmuch as she was not allowed to cross-examine the prosecution's witnesses who testified prior to her arrest, it was error for the respondent Justice of the Peace to allow her and her witnesses to be cross-examined by the prosecution in the second stage of the preliminary investigation. The order in question reasons out that the accused cannot, as of right, demand to cross-examine the witnesses presented against her prior to her arrest, and that therefore, petitioner cannot complain that she was not allowed to thus cross-examine prosecution's witnesses. As to whether the prosecution could cross-examine the defense witnesses presented at the second stage of the preliminary investigation, the order, in so many terms, justified it as in furtherance of the function of a preliminary investigation to determine whether there is sufficient ground to hold the accused for trial or whether he should forthwith be discharged.

Petitioner-appellant contends that the mere absence of any legal provision denying the prosecution the right to cross-examine the defense witnesses does not authorize the Justice of the Peace to allow the prosecution to thus cross-examine; that there is nothing in Section 11, Rule 108 of the Rules of Court which grants such right to the prosecution; that courts cannot exercise powers other than those expressly granted or implied from those granted; that the order of respondent judge allowing the cross-examination of the defense witnesses, considering that the same had previously been disallowed as against prosecution's witnesses, infringes on the equal protection clause of the Constitution.

At the outset, it should be stated that the refusal of the Justice of the Peace to allow the defense to cross-examine the prosecution's witnesses presented prior to petitioner's arrest, cannot be utilized as argument for the contention that the prosecution should not have been allowed to cross-examine the defense witnesses. An accused is not entitled to cross-examine the witnesses presented against him in the preliminary investigation before his arrest, this being a matter that depends on the sound discretion of the Judge or investigating officer concerned (*People vs. Ramilo*, 98 Phil., 545; 53 Off. Gaz. [3] 1431; *Dequito vs. Arellano*, 81 Phil., 128; *Bustos vs. Lucero*, 81 Phil., 640). Petitioner-appellant's attempt to draw a parallel between the refusal of the judge to allow her to cross-examine prosecution's witnesses, with the permission granted to the latter as against the defense witnesses, assumes the existence of a vested right of which petitioner-appellant had been deprived, in being denied confrontation of the prosecution witnesses, she was not deprived of any right but was merely refused the exercise of a privilege. Perforce, there is no merit to her contention that the order of respondent judge denied her the equal protection of the laws guaranteed by the Constitution.

As to whether the prosecution could be allowed to cross-examine the defense witnesses, when they take the stand pursuant to Section 11, Rule 108 of the Rules of Court, a consideration of the basic function of a preliminary investigation convinces this Court that this can be done. A preliminary investigation is held to determine whether there are sufficient grounds which engender a well-founded belief that the accused is probably guilty of the offense charged and should be held to await trial in the proper court, and conversely, whether the evidence against him is so insubstantial as to warrant his immediate discharge. Being entrusted with this grave responsibility, the powers of the investigating official should not be curtailed to an extent which would render him inadequately equipped to discharge his functions. He might want to hear both sides and experience shows that both sides are not necessarily revealed by a contained, separate and unrelated presentation. Cross-examination whether by the judge or by the prosecution supplies the gap by permitting an instant contrast of falsehoods and opposing half-truths, mixed with elements of truth, from which the examining judge or officer is better able to form a correct synthesis of the real facts. As observed in *Dequito vs. Arellano*, *supra*,—

"It is true that the accused is given the opportunity to refute the charge by his or his witnesses' evidence. The objection to such reasoning is, it assumes that if the defendant is not guilty, it takes no more than his evidence to convince the court of his innocence. Experience shows, however, that in many cases, one has to hear both sides, and sometimes more than both sides, to reach an intelligent and correct conclusion. * * * In some cases, it is necessary to resort to cross-examination to lay bare the falsity of complainant's evidence."

Amplifying on the powers of the court in a preliminary investigation, this Court in the above case said—

"The power of the judge emanates from a principle of law more ample than the procedure outlined by Sec. 11, Rule 108. There are an infinite number of things which a party may not in strict law do or cause to be done but which may be permitted by the court in the exercise of its discretion and in the interest of justice. Specially is this true in matters affecting the conduct of the trial and the calling, recalling and examination of witnesses.

"* * * Above all, his is the great responsibility of safeguarding the accused from groundless or vindictive prosecution. If the justice of the peace were to ascertain, as he must, whether a crime has been committed and,

if so, whether there is probable cause that the accused committed it, his authority cannot be confined as in a straight jacket to the stiffness of medieval and outmoded technicalities of practice."

We are not unmindful of the fact that the case cited above dealt on whether the defense could be permitted to confront and cross-examine the prosecution's witnesses presented against the accused prior to his arrest (not as a right but being discretionary on the judge), but the reasons therein advanced equally apply to the prosecution as well as to the defense.

It is urged by petitioner-appellant that the vesting of such powers in the examining judge or officer could be dangerous as it could lead to a capricious exercise of judgment. Suffice it to say that in this case, there is no showing that there has been such an abuse.

Having reached the above conclusion, this Court finds it unnecessary to discuss the other points raised.

Wherefore, the order appealed from should be and is affirmed. Costs against petitioner-appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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