

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. JOSE SIERRA, JR., BIENVENIDO G. GARRA, LUCIO M. CAYABA, AND ENRIQUE JAVIER, DEFENDANTS AND APPELLEES.*G.R. No. L-27611. August 30, 1972*

Ponente: FERNANDO, J.

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The fundamental assumption in this appeal by the People of the Philippines from an order of the lower court dismissing three informations[1] against defendants, now appellees,[2] for an alleged violation of Section 3602 in connection with Section 3604 of the Tariff and Customs Code of the Philippines,[3] is its failure to respect the power of the state to determine who should conduct the prosecution of offenses and how it is to be commenced, without raising a due process question in the absence of unfairness. It is thus contended that the reliance in the challenged order on the constitutional safeguard of due process as a basis for sustaining the motion to quash is misplaced. It could be that the lower court felt called upon to thus buttress its stand considering that authoritative precedents leave no doubt as to the broad authority conferred on a special prosecutor designated by the Secretary of Justice to assist in accordance with law a city fiscal.[4] There is justification then, as will be more fully explained, for this appeal. We have to reverse.

The informations in all three criminal cases were filed on the same day, November 29, 1966, each one signed by the then State Prosecutor, now Court of First Instance Judge, Delia P. Medina. There were subsequently motions to quash filed by the defendants, now appellees, in December of 1966 and in January, 1967 based on the alleged absence of authority of the state prosecutor as well as the claim that they were not heard before the informations were filed. Then came, on February 10, 1967, the order now on appeal dismissing two of three criminal cases above noted and quashing the indictment in the third one insofar as appellees Jose Sierra, Jr., Carlos Carluen and Hartman Montero. The lower court in such order, while apparently not unaware of the controlling doctrines as to the powers lodged in a special prosecutor, was reluctant to accord it full deference. Thus: "The Court is of the view that under the said authority Miss Medina was actually designated to work with the City Fiscal by assisting the City Fiscal in the said investigation and prosecution. Therefore, inasmuch as her work was merely to assist, she is required to coordinate her work with the City Fiscal by getting her orders from the City Fiscal who assigns to her the work she is to do under her authority derived from the Administrative Order. Therefore, any criminal case to be investigated by the State Prosecutor Medina must have been commenced by complaint lodged with the Office of the City Fiscal, docketed therein as in other cases and actually assigned by the City Fiscal to State Prosecutor Medina. This is in line with the intent of the law that the State Prosecutor is only to assist the City Fiscal. Under this view, State Prosecutor Medina may not work independently of the Fiscal, may not herself receive complaints from complainants and docket them in her own records, and may not herself assign unto herself the case she is to investigate which is the prerogative of the City Fiscal. Therefore, her function is limited to merely assisting the Fiscal, and not to initiate investigations independent of the Fiscal. She is subject to the control of the latter to whose Office she is assigned by virtue of the Administrative Order issued by the Secretary

of Justice.”[5] The next paragraph made clear how far it would deviate from what this Court had ruled, for as set forth in such order, it did add the following: “However, the Court recognizes the power of the State Prosecutor to file the corresponding information under her own signature and proceed with the prosecution of the case after the proper preliminary investigation had been conducted and even independently of the Fiscal, and in extreme cases, even against the wishes of the Fiscal because, as decided in the case of *People vs. Henderson III*, * * *, reiterating the doctrine enunciated by the Supreme Court in the *Dinglasan* and *Lo Cham* cases, the State Prosecutor need not obtain the consent of the Fiscal to start prosecution. However, as already stated above, this important function of the State Prosecutor to start prosecution does not mean that in the initiation of investigation before prosecution, the State Prosecutor is absolutely independent of the Fiscal because at this state in the performance of the duties of the State Prosecutor, she must be governed by directives issued by the Fiscal in connection with investigations of cases actually filed and docketed in the Office of the City Fiscal.”[6] In addition, the lower court would fortify a ruling which perhaps even to it was characterized by unorthodoxy by invoking the alleged denial of due process. Thus: “In the case of State Prosecutor Medina, she was duty bound to grant unto the accused the right to be heard on preliminary investigation in their capacity as accused in complaints actually filed in the Office of the City Fiscal. Notwithstanding the certification of State Prosecutor Medina in the three informations that she conducted the preliminary investigations, the records do not bear out the holding of such investigations after the proper complaints had been filed in the Office of the City Fiscal of Manila against the accused herein as accused in said cases, and not merely as witnesses, nor is there any evidence to show that they were granted the right to be heard in a regular preliminary investigation conducted for the purpose not only to determine whether a probable cause exists but also to grant unto the accused the right to present evidence in their own behalf with the assistance of counsel if they so desired. This denial of the right of the accused to a preliminary investigation is fatal to the further continuation of these cases with respect to the accused who filed motions to quash.”[7]

The appealed order, even if thus sought to be given the impress of plausibility, cannot be sustained, disregarding as it does the authoritative pronouncements of this Tribunal. As noted at the outset, it cannot stand scrutiny. The judgment must be one of reversal.

1. Greater care should have been exercised by the lower court in its analysis of the doctrines of this Court as to the scope of the authority which is vested in a special prosecutor duly appointed as such under the aforesaid Section 1686 of the Revised Administrative Code. The first decision where this question was passed upon, and which until now is controlling, is *Lo Cham vs. Ocampo*,[8] a 1946 decision. As noted in the opinion of Justice Tuason, the sole question presented was whether or not the special prosecutor named therein, later Judge Gregorio T. Lantin, could sign informations as Assistant City Fiscal. The answer was categorically in the affirmative. Thus: “There is nothing so sacrosanct in the signing of complaints, making of investigations and conducting of prosecutions that only an officer appointed by the President or one expressly empowered by law may be permitted to assume these functions. Certainly a lawyer who is invested with the same authority as might be exercised by the Attorney General or Solicitor General is presumed to be competent to be entrusted with any of the duties, without exception, devolving on a prosecuting attorney. That the person designated in a particular instance does not measure up to the educational specifications imposed by law is beside the point. It does not detract from the conclusion that, in the light of the high standard of training and experience required, there is no anomaly and no injustice is committed in lodging on the person designated by the Secretary of Justice those powers of the prosecuting attorney which we have named.”[9] In *Go Cam vs. Gatmaitan*,[10] this Court through the then Justice Padilla held that a special prosecutor detailed by the Secretary of Justice “possesses the authority and power to sign and file the information in question.”[11] Then came *People vs. Henderson III*,[12] where precisely one of the questions raised was the validity of a criminal charge with a special prosecutor filing an information after an investigation without the consent of the City Fiscal of Manila. In the opinion of the then Justice, later Chief

Justice Bengzon, it was stated: “The question is not new. We have held in [Lo Cham vs. Ocampo] that a lawyer appointed by the Secretary of Justice, pursuant to Section 1686 of the Revised Administrative Code, as amended, to assist the City Fiscal is authorized to sign informations make investigations and conduct prosecutions.”[13]

Even on the assumption that there was still an aspect of the question left untouched by previous adjudications, a decision, *Secretary of Justice vs. Maglanoc*,^[14] rendered five months later after the order now on appeal was issued, should remove any doubt about its being bereft of support in law. As was so clearly put by Justice Makalintal speaking for the Court: “The two principal grounds relied upon by herein respondents in their petition below are manifestly unmeritorious and the orders complained of, particularly the injunctive writ, constitute a grave abuse of discretion. The first of said grounds is that petitioning special prosecutors could not legally conduct the investigation in the absence of the Provincial Fiscal. No authority for this novel proposition was or has been cited. The mere fact that the special prosecutors were designated to 'assist' the Provincial Fiscal does not mean that the latter must always be present at every stage of the investigation. It was held by this Court in another case: 'A lawyer appointed by the Secretary of Justice, pursuant to section 1686 of the Revised Administrative Code, as amended, to assist the City Fiscal, is authorized to sign informations, make investigations and conduct prosecutions. This lawyer does not need to secure the consent of the corresponding Fiscal to start a prosecution. In fact, it is not a secret that the power in said section has often been exercised by the Department of Justice, whenever it did not see eye to eye with the Fiscal on certain matters involving offenses and/or prosecutions.' (People vs. Henderson, G. R. No. L-10829-30, May 29, 1959.) If consent of the Fiscal is not required so that a prosecutor designated in the manner above described may discharge his duties, it stands to reason that the physical presence of the Fiscal is likewise not indispensable. Otherwise the purpose for which the special prosecutor has been designated can be easily defeated by an indifferent or uncooperative Fiscal.”[15]

The lower court was thus clearly in error in refusing to recognize the authority of the special prosecutor to conduct the preliminary investigation.

2. The lower court could not have been totally oblivious of the weakness from which its order did suffer. As a result, by way of lending reinforcement, it would find fault with the manner in which the preliminary investigation was conducted by the special prosecutor and would condemn it as a denial of due process. It did admit though that appellants were heard although “merely as witnesses” but would insist on what it was pleased to call “a regular preliminary investigation” and presumably one, which contrary to the above decided cases, could solely be initiated by a regular fiscal. It was then satisfied that the due process guarantee was ignored and that a dismissal was called for. The law is anything but that.

The weakness of such a position was pointed out in the brief of the People of the Philippines as appellant submitted by the then Solicitor General, now Associate Justice, Antonio P. Barredo. Thus: “Records of the proceedings during the preliminary investigation conducted by the State Prosecutor, which was conducted in accordance with Section 14, Rule 112 of the Revised Rules of Court, disclosed the following: a) Accused Jose Sierra, Jr. and Lucio Cayaba appeared personally and were assisted by counsel during the whole proceedings and were given the right to cross-examine complainant and witnesses. Their failure to adduce evidence in their favor and the manifestation of their counsel to submit the case for resolution were their own decision. b) Accused Bienvenido G. Garra, was duly subpoenaed to appear during the preliminary investigation to enable him to cross-examine the complainant and witnesses and adduce evidence in his favor if he so desire, is borne out by Exhibits 'A' and 'A-1'. His failure to appear during said investigation [would] not preclude the investigating officer to proceed with the investigation and act accordingly pursuant to Section 14, Rule 112 of the Revised Rules of Court. c) The failure of accused Enrique Javier, Hartman Montero, and Carlos Carluen to appear in the preliminary investigation after having been duly subpoenaed by the investigating officer as borne out by Exhibits

'B' and 'B-1', to enable them to cross-examine complainant and witnesses and adduce evidences in their favor if they so desire; [would] not preclude the investigating officer to act in accordance with Section 14, Rule 112 of the Revised Rules of Court.”[16]

Assuming, however, that there was no preliminary investigation, still its absence, in the language of the then Justice, now Chief Justice, Concepcion, speaking for this Court in the leading case of *People vs. Casiano*[17] “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. Hence, had defendant-appellee been entitled to another preliminary investigation, and had his plea of not guilty upon arraignment not implied a waiver of said right, the court of first instance should have, either conducted such preliminary investigation, or ordered the Provincial Fiscal to make it, in pursuance of section 1687 of the Revised Administrative Code (as amended by Republic Act No. 732), or remanded the record for said investigation to the justice of the peace court, instead of dismissing the case, as it did in the order appealed from.”[18] It was the considered judgment of this Court then that no due process question arose simply because of such a circumstance. In a 1969 decision, *People vs. Figueroa*,[19] after referring to the above *Casiano* doctrine, this Court, through Justice Teehankee, expressly negated the concept that the failure to conduct preliminary investigation would offend against such a constitutional right.[20] No other conclusion is warranted if there be adherence to the principle uninterruptedly adhered to that only where an accused is held to answer for a criminal offense in an arbitrary or oppressive manner is there a disregard thereof. The requirement of the proceeding being unjust or unreasonable must be met. This is not to rule out cases where such infirmity could be predicated on a showing that the disregard of this procedural safeguard did infect the prosecution with unfairness. In that sense, what was held in *People vs. Monton*[21] as to such a failing nullifying the proceeding because of the due process protection could still be conceivably relied upon. Since no such infirmity did vitiate the present proceeding, the correct doctrine that ought to have been applied by the lower court is that set forth above, reiterated in *Zacarias vs. Cruz*,[22] with Justice Sanchez as ponente. Thus: “To be underscored here is that the absence of a preliminary investigation does not impair the validity of a criminal information, does not otherwise render it defective, does not affect the jurisdiction of the court over the case.”[23]

Again the People of the Philippines had successfully met the burden thrust on appellant to demonstrate that a grave error was in fact committed by the lower court.

WHEREFORE, the Order of February 10, 1967 is reversed and set aside and the lower court in which these three criminal cases are assigned is ordered forthwith to resume the proceedings in accordance with law. Costs against appellees.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Makasiar, Antonio, and Esguerra, JJ., concur.

Teehankee and Barredo, JJ., did not take part.

[1] The informations were filed in Criminal Case Nos. 84771, 84772 and 84782 of the Court of First Instance of Manila, Branch XV presided by the then Judge Felix R. Domingo. The informations in the first two cases were ordered dismissed. As for Criminal Case No. 84782, it is ordered dismissed only with respect to the accused Jose Sierra, Jr., Carlos Carluen and Hartman Montero.

[2] The appellees are Jose Sierra, Jr., Bienvenido G. Garra, Lucio M. Cayaba, Enrique Javier and the aforesaid Carlos Carluen and Hartman Montero.

[3] Section 3602 of the Tariff and Customs Code, Republic Act No. 1937 (1957) reads as follows: “Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent

invoice, declaration, affidavit, letter, paper, or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or by the payment of less than the amount legally due, or knowingly, and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit, abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission, shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section.” Section 3604, paragraphs e, f and g penalizes every official, agent or employee of the Bureau of Customs or of any other agency of the government charged with the enforcement of such Code if it could be shown that he willfully makes opportunity for any person to defraud the customs revenue or who do or fail to do any act with intent to enable any person to defraud said revenue, negligently or designedly permits the violation of the law by any other person, makes or signs any false entry or entries in any book, or makes or signs any false certificate or return in any case where the law requires the making by them of such entry, certificate or return.

[4] According to Section 1686 of the Revised Administrative Code (1917): “The Secretary of Justice may appoint any lawyer, being either a subordinate from his office or a competent person not in the public service, temporarily to assist a fiscal or prosecuting attorney in the discharge of his duties, and with the same authority therein as might be exercised by the Solicitor General.”

[5] Order, February 10, 1967, Record of the case, pp. 16-17.

[6] Ibid, p. 17.

[7] Ibid, p. 20.

[8] 77 Phil. 635.

[9] Ibid, p. 638.

[10] 85 Phil. 802 (1950).

[11] Ibid, p. 805.

[12] 105 Phil. 859 (1959). Cf. *People vs. Mapa*, L-15345, May 26, 1962, 5 SCRA 95; *Guevarra vs. Gimenez*, L-17115, Nov. 30, 1962, 6 SCRA 807; *People vs. Alvarez*, L-19072, Aug. 14, 1965, 14 SCRA 901, and *Ocampo vs. Duque*, L-23812, April 30, 1966, 16 SCRA 962.

[13] Ibid, p. 865.

[14] L-19600, July 19, 1967, 20 SCRA 683. Cf. *Siazon vs. Hon. Judge of the Court of First Instance of Cotabato*, L-29354, Jan. 27, 1969, 26 SCRA 664; *Estrella vs. Orendain*, L-19611, Feb. 27, 1971, 37 SCRA 640; *Oliveros vs. Villaluz*, L-33362, July 30, 1971, 40 SCRA 327.

[15] Ibid, pp. 685-686.

[16] Brief for Appellant, *People of the Philippines*, pp. 15-16.

[17] L-15309, Feb. 16, 1961, 1 SCRA 478.

[18] Ibid, p. 483.

[19] L-24273, April 30, 1969, 27 SCRA 1239.

[20] According to the Constitution: “No person shall be held to answer for a criminal offense without due process of law.” Art. I, sec. 1, clause 15.

[21] L-23906, June 22, 1968, 23 SCRA 1024.

[22] L-25899, Nov. 29, 1969, 30 SCRA 728.

[23] Ibid, p. 731.

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