

TOMAS B. TADEO, PETITIONER-APPELLANT, VS. ROMULO VISPERAS, JUSTICE OF THE PEACE OF MANGALDAN, PANGASINAN, LEONCIO MAICON AND EMILIA ACOSTA, RESPONDENTS-APPELLEES.

G.R. No. L-20891. May 23, 1968

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

An appeal from the decision of the Court of First Instance of Pangasinan, rendered on October 16, 1962 in its Civil Case No. D-1367, dismissing the petition for certiorari filed by herein petitioner.

The facts of this case are not disputed. Petitioner Tomas B. Tadeo was charged with estafa in a criminal complaint filed on April 30, 1957 before the Justice of the Peace Court of Mangaldan, Pangasinan, where-in it was alleged that on or about March 27, 1948 petitioner willfully and feloniously, with deceit and intent to defraud, made complainants Leoncio Maicon and Emilia Acosta - herein respondents and appellees - sign a document which he represented to complainants as the deed of partition that they had asked him to prepare, but complainants later found the deed to be that of a sale of their land in favor of petitioner's brother-in-law Francisco Bongato for the sum of P400.00, and that on April 11, 1948 petitioner, in conspiracy with his brother-in-law, sold the same property to Nicolas Perez for P700.00, thereby fraudulently depriving complainants of their land to their damage and prejudice.

After conducting the first stage of the preliminary investigation, respondent Justice of the Peace Romulo M. Visperas found probable cause that petitioner had committed the crime of which he was charged, and so said Justice of the Peace issued a warrant for his ar-rest. Petitioner was arrested, but he was later released upon his having posted the requisite bond.

Subsequently, respondent Justice of the Peace set the case for the second stage of the preliminary investigation. But at the scheduled hearing petitioner, instead of presenting evidence in his favor, moved for the reinvestigation of the case, alleging that the criminal complaint was inherently defective in that it is therein alleged that complainants suffered moral and exemplary damages in the amount of P5,000.00 when under the law the determination of the penalty for estafa is only the actual damage suffered by the offended party, and the fact was that the land in question had an area of only one-half hectare and was later sold for P700.00. The motion for reinvesti-gation was denied by respondent Justice of the Peace. On the day when the second stage of the preliminary investigation was again set, petitioner verbally prayed the court that he be given ten days within which to file a motion to quash. Respondent Justice of the Peace, after discussing with counsel for petitioner the grounds upon which the motion to quash would be based, considered the move as a di-latory tactic and forthwith denied the motion to file a motion to quash. When petitioner's motion to file a motion to quash was denied, petitioner manifested that he would introduce evidence in his behalf at the next hearing, scheduled for September 7 and 12, 1962. However, before the date of the hearing, petitioner filed a petition for certiorari with the Court of First Instance of Pangasinan, alleging that respondent Justice of the Peace committed grave abuse of discretion in

denying both his motion for reinvestigation and his motion to file a motion to quash. On October 16, 1962, the Court of First Instance of Pangasinan rendered a decision dismissing the petition for certiorari, and ordered the respondent Justice of the Peace to continue with the proceedings in the criminal case against the petitioner. From said decision petitioner filed a notice of appeal to the Court of Appeals, but the lower court ordered that the appeal be forwarded to this Court because only questions of law are involved.

We do not find merit in this appeal.

In contending that respondent Justice of the Peace committed grave abuse of discretion in denying his motion for reinvestigation and his motion to file a motion to quash, petitioner claims: (1) that the penalty of the crime of estafa is based only on the value of the fraud, without including the damages that the offended party may have suffered; (2) that in the instant case the value of the land which complainants were alleged to have been fraudulently deprived was P400.00, or at most P700.00, and not the exaggerated sum of P2,000.00 - it being alleged in the criminal complaint that complainants had been damaged and prejudiced "in the sum of P2,000.00 the actual current value (market) of the property at the time of the sale, plus moral damages and exemplary damages in the amount of P5,000.00 x x x"; (3) that using as basis the sum of P400.00 or P700.00, the penalty imposable would be such that the criminal action had already prescribed, since the crime was alleged to have been committed on March 27, 1948 while the criminal complaint was filed only on April 30, 1957. It is the stand of petitioner that when respondent Justice of the Peace denied his motion for reinvestigation and his motion to file a motion to quash, he was thereby deprived of his right to due process because he was not given opportunity to be heard and to bring out all his defenses.

Petitioner's stand cannot be sustained. When petitioner asked for reinvestigation he was practically asking the respondent Justice of the Peace to reopen the preliminary examination that he had previously conducted - which was the first stage of the preliminary investigation when he had ascertained that a crime had been committed and that there was probable cause that the accused (petitioner herein) committed it. It was on the basis of his finding in that preliminary examination that respondent Justice of the Peace issued an order for the arrest of petitioner. It is apparent that the purpose of the petitioner in asking for reinvestigation was to have the complainants and their witnesses recalled in order that he could cross-examine them and perhaps elicit from them a statement of the actual value of the property involved so he could have a basis for setting up the defense of prescription. It is the settled rule, however, that it is not a matter of right for the accused to confront the witnesses against him during the preliminary examination prior the issuance of the warrant of arrest. The accused cannot as a matter of right ask that the complainant and his witnesses be made to repeat in his presence what they had said in the preliminary examination before the issuance of the order of arrest.[1] It is discretionary for respondent Justice of the Peace to grant petitioner the privilege of cross-examining the witnesses against him in that preliminary examination which is known as the first stage of the preliminary investigation under Section 6 of Rule 108 of the old Rules of Court.[2] It was after the petitioner was arrested - as in fact he had filed the requisite bond - during the second stage of the preliminary investigation pursuant to Section 11 of Rule 108 of the old Rules of Court when petitioner was precisely afforded the opportunity to present evidence in his favor.[3] If in that second stage of the preliminary investigation the petitioner could show, by his evidence, that the crime of which he was charged had already prescribed, it was within the power of respondent Justice of the Peace to dismiss the complaint against him. He did not even have to file a motion to quash. All that he had to do was to call the attention of respondent Justice of the Peace that as shown by his evidence the proceedings against him should not continue because the crime of which he was charged had already prescribed.

The petitioner claims that if the reinvestigation that he asked was granted and he could show that the value of the land involved in the criminal complaint for estafa was at most P700.00, the crime of which he was charged had

already prescribed. This claim of petitioner has no merit. Even granting that the value of the property is only P400.00 still the penalty imposable for the crime of estafa under Paragraph 3, Article 315 of the Revised Penal Code, is arresto mayor in its maximum period to prision correccional in its minimum period. Article 90 of the same Code provides that "Those (crimes) punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years." When the penalty fixed by law is a compound one, the higher penalty is made the basis in determining whether the crime has prescribed or not. Inasmuch as in the instant case the imposable penalty of the crime of which petitioner is charged - even if the value of the land involved is only P400.00 - is a compound one, that is, arresto mayor in its maximum period to prision correccional in its minimum period, the higher penalty being correccional, the crime prescribes in ten years.[4] It appearing that the crime was allegedly committed by petitioner on March 27, 1948 and the complaint was filed on April 30, 1957, the crime had not yet prescribed because from March 27, 1948 to April 30, 1957, only 9 years 1 month and 3 days had elapsed.

We agree with the observation of the court a quo that what petitioner should have done was to proceed with the second stage of the preliminary investigation when he would have the opportunity to demonstrate the falsity of the charge against him by presenting his own evidence, and that what petitioner had done as revealed by the record was only to delay the case.

WHEREFORE, the decision appealed from is affirmed, with costs against petitioner-appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro and Angeles, JJ., concur.

[1] *Dequito v. Arellano*, 81 Phil., 128; *Bustos v. Lucero*, 81 Phil., 640; *Lozada v. Hernandez, et al.*, 92 Phil., 1051; *Abrera v. Muñoz, et al.*, L-14743, May 25, 1960.

[2] Now Section 6 of Rule 112 of the New Rules of Court.

[3] Now Section 10 of Rule 112 of the New Rules of Court.

[4] *People v. Cruz*, L-15132, May 25, 1960.

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