

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
PEDRO FIGUEROA, BOY AHIJAL, CELEDONIO CARINGAL, KARIM
JAUKAL, RAJAH MAHAMMAD, MUSTALI GAJALI, ALI MAHAMMAD,
STAJI BADTANG...**

G.R. No. L-24273. April 30, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal by the State from the Order of the Court of First Instance of Palawan sustaining the motion to quash the information on the ground, that in the Court's opinion, the accused were not given ample chance and opportunity to be heard in the preliminary investigation conducted by the investigating fiscal.

The accused were apprehended on December 13, 1964 by officers and crew of the Philippine Navy RPS "Antique" off the island of Tara within the province of Palawan, having in their possession and custody, aboard the kumpit M/L "Pershia" three hundred eighty-eight cases (of 50 cartons per case) of "Old Gold" blue seal cigarettes, without first having paid the Government the, specific taxes due thereon in the amount of P102,432.00. The accused with their cargo were brought to Philippine Navy Headquarters at Manila, where they were investigated on December 14, 1964 by investigating officers of the Naval Judge Advocate General and before whom they individually executed affidavits in question and answer form. All nine accused admitted the fact of their hav-ing been apprehended off Tara Island aboard the kumpit loaded with the untaxed cigarettes, which they had gotten from Jolo, Sulu and which, according to the patron of the vessel, Pedro Figueroa he was taking to Hulugan, Tanza, Cavite to sell there.[1] Provincial Fiscal Zoilo Alviar of Palawan later on the sane day showed up at the Navy Headquarters and conducted a preliminary investigation, taking the sworn written statements of the arrest-ing officers, among them Servicemen Rodolfo Baltazar and Esteban Sumil[2] as well as of the accused. The accused jointly executed, a statement stating that they knew they would have to face criminal charges before the Court as a result of their apprehen-sion, that they were agreeable to Fiscal Alviar conducting the preliminary investigation of their case in Manila and that they were waiving the provision of Section 125 of the Revised Penal Code, as follows:

”SA SINUMANG KINAUUKULAN:

“Kaming nakalagda sa ibaba ay nagsasabing kami ay nahuli ng sasakyang dagat ng Philippine Navy sa dagat na pumapaligid sa isla ng Tara; malapit sa Busuanga, Palawan sa umaga ng December 13, 1964;

Na hinuli kami dahil sa ang aming sasakyang dagat (Unnamed) ay kinapapalagyan ng mga sigarilyong blue seal nangangahulugang walang bayad ng tax sa BIR;

Nanalalaman naming dahil sa pagkakahuli so amin ay mapapaharap kami sa husgado upang harapin sakdal laban sa amin;

Nang dahil dito, kami ay sumasangayon na humarap sa Provincial Fiscal ng Palawan, si Fiscal ZOILO Q.

ALVIAR, dito rin so Maynila at nakunan ng karapatang 'preliminary investigation' sangayon sa batas ng korte suprema (Rules of Court);

Upang mabigyan ng kaukulang panahon ang nasabing Fiscal, ay pumapayag kaming itatwa ang aming karapa-tang sangayon sa Sec. 125 ng kodigo penal na naguutos sa sinumang opisyal ng gobierno na dalhin ang sinumang tao, na nahuli hinggil sa isang paglabag sa batas sa opisyal ng husgado (judicial authorities) sa loob ng anim na oras.

Maynila, December 14, 1964.”

Fiscal Alviar then interrogated the accused individually, confronted them with their affidavits in the presence of the arresting officers Servicemen Baltazar and Sumil, and had the accused identify their respective affidavits and signatures thereon; the accused testified further that the contents of their affidavits were explained to them and that the facts stated therein were true; the fiscal further asked them whether they had any questions to ask from Sirvicemen Baltazar and Sumil, to which they replied in the negative.[3]

On the next day, December 15, 1964, Fiscal Alviar sent from Manila a telegram to his assistant at Puerto Princesa, Pala-wan, stating that he had conducted a preliminary investigation in Manila and instructing his assistant to file the corresponding in-formation for illegal possession of the untaxed 388 cases of cigarettes against the accused.[4]

On the following day, December 16, 1964, Fiscal Alviar wrote a letter to Assistant Fiscal R. Abaca, stating that the accused would be brought by the Philippine Navy to Puerto Princesa by the same arresting officers, Servicemen Baltazar and Sumil. He suggested to his assistant that while he had already conducted a preliminary investigation in Manila, the latter should conduct still another investigation in Puerto Princesa, by asking all of the respondents and the arresting officers to identify and affirm the truth and correctness of their previous sworn statements given before Fiscal Alviar in Manila, "to obviate any technical defect of the preliminary investigation that I conducted.”[5] This was what Assistant Fiscal Abaca did upon the arrival of the accused and the arresting officers at Puerto Princesa on December 19, 1964, at 8:15 A. M.[6] He advised the accused that they were entitled to counsel,[7] but they declined and readily reaffirmed their previous sworn statements before Fiscal Alviar in Manila.[8] Their sworn statements to this effect were again taken down in writing before Assistant Fiscal Abaca, who thereafter filed on the same day, December 19, 1964, the corresponding information for violation of Section 174 in relation to Section 183 of the National Internal Revenue Code, as amended by Republic Act No. 4097.[9] The information bore the earlier date of December 16, 1964 but was subscribed and sworn and filed in court on December 19, 1964 by Fiscal Abaca. Fiscal Abaca later stated under oath at the hearing that he prepared the information on December 19, 1964 and that the date of December 76, appearing on the information was but a clerical error.[10] The accused Pedro Figueroa and Celedonio Caringal posted bail, while their co-accused remained under detention, and the case was scheduled for arraignment on January 19, 1965.

On January 11, 1965, counsel for the accused filed a Motion to Quash, alleging that in violation of Section 14, Rule 112 of the new Rules of Court, the information against the accused was “filed by the Provincial Fiscal without conducting a preliminary investigation or if there was any, it was conducted in Ma-nila and not in Palawan, the province where the alleged crime was committed.”[11] The motion was heard on the next day and Fiscal Alviar filed a written opposition where he informed the Court that "According to the records of this case 2nd Assistant Provincial Fiscal Abaca conducted a preliminary investigation on December 19, 1964, in which investigation he interrogated the witnesses for the prosecution as well as the accused under oath and recorded their testimonies. x x x In their statements, both the prosecution witnesses and those of the accused, all admitted and affirmed the truth and correctness of their statements which were shown to them and were read to them by the

investigating Fiscal, Fiscal Abaca. Although these statements that were referred to in the investigation conducted by Assistant Provincial Fiscal Abaca, were taken by Provincial Fiscal Alviar in the City of Manila, this fact makes no difference in the validity of the preliminary investigation conducted by 2nd Assistant Provincial Fiscal Abaca, because the witnesses were only reiterating before him what they have already testified to before Fiscal Alviar. There can be no irregularity in the investigation conducted by 2nd Assistant Provincial Fiscal Abaca, by the mere fact that instead of retaking their statements, he showed and read to them their previous statements and asked each and every one of them whether, these were their statements and whether they affirm the truth and correctness of the fact stated, in which case, they all acknowledged that those were their statements and each affirmed the truth thereof. In said investigation, the accused did not raise any defense nor adduce any fact to exculpate them. Under these circumstances, there is no ground to say that accused were not given a chance to be heard or any opportunity to interpose their defenses in the preliminary investigation.”[12]

Fiscal Alviar further presented to the Court the records of the investigation of the accused.[13] Notwithstanding all these, the lower court took the extraordinary step of placing Assistant Fiscal Abaca on the stand, questioned him extensively[14] and likewise had him cross-examined extensively by defense counsel[15] at the end of which he announced the granting of the motion to quash, denied summarily the fiscal's motion for reconsideration, and thereafter dictated in open court his order, dismissing the information, and ordering the Fiscal "to conduct a new preliminary investigation in this case in order to afford the accused all the chances to be heard in the preliminary investigation." The pertinent portions of his Order read:

“It appears that a preliminary investigation of this case was conducted by the Provincial Fiscal in Manila. Then the accused were brought to Puerto Princesa, Palawan by the apprehending officers on December 19, 1964. The Provincial Fiscal sent a telegram to First Assistant Provincial Fiscal Mi-lat, Exh. 'A', requesting him to file a rush case of illegal Possession of Smuggled Goods against the herein accused, which telegram was received by Second Assistant Provincial Fiscal Abaca who was then in charge of office in the absence of First Assistant Provincial Fiscal Mi-lat. The accused and the prosecution witnesses saw Fiscal Abaca on December 19, 1964. Lt. Hernandez of the Philippine Navy delivered to Fiscal Abaca a letter from Fiscal Alviar dated December 16, 1964, Exh. '1' which is self-explanatory. Right then on December 19, 1964, when the prosecution witnesses went to the office of the Provincial Fiscal, Fiscal Abaca supposedly conducted a preliminary investigation. The first questions appearing in the statement of the prosecution witnesses were the very questions which were suggested by Fiscal Alviar to Fiscal Abaca in his letter to him Exh. '1'. After the investigation of the prosecution witnesses, the accused were investigated also. The investigation was made hurriedly on the understanding of the investigating Fiscal that they were under custody. There is no showing at all whether they waived their rights to Section 125 of the Revised Penal Code or not to warrant an immediate preliminary investigation without giving the accused the chance to prepare. Besides, the Fiscal, in the opinion of the Court, Was of the notion that the investigation made in Manila was sufficient as could be gleaned from the telegram Exh. 'A'.”

x x x x x

"From the facts obtaining in this case, the Court is of the opinion, and so holds, that the accused in this case were not given ample chance and opportunity to be heard in the preliminary investigation which is against the provisions of Sec. 14, Rule 112 of the Rules of Court. Honestly speaking, the Court believes that Sec. 14 of Rule 112 of the Rules of Court has not been substantially complied with by the investigating Fiscal.”[16]

We hold the lower court's order quashing the information for lack of substantial compliance with Section 14 of Rule 112 of the Rules of Court to be patently erroneous and set it aside.

1. Assuming that the trial court felt that the accused should have been given more "ample chance and opportunity to be heard in the preliminary investigation", then what it could properly have done, since in its own Order it

recognized that Fiscal Abaca had conducted a preliminary investigation although "hurriedly" in its opinion, was not to dismiss the information but to hold the case in abeyance and conduct its own investigation or require the fiscal to hold a reinvestigation. This Court, speaking through now Mr. Chief Justice Concepcion in *People vs. Casiano*,^[17] had stressed this as the proper procedure, pointing out that "the absence of such investigation 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."

2. The record amply shows, however, that in compliance with the requirements of Rule 112, section 14 on preliminary in-vestigations by provincial or city fiscals or state attorneys, the assistant fiscal of Palawan conducted the investigation in the presence of the arresting officers and the accused^[18] and afforded them "the right to be heard, to cross-examine the complainant and his witnesses, and to adduce evidence in (their) favor." The fiscal duly advised respondents of their right to counsel but the accused chose merely to reiterate their sworn statements previously given before Fiscal Alviar in Manila, and their affirma-tion thereof under oath was duly taken down in writing before the fiscal. The accused chose not to raise any defense nor adduce any evidence to exculpate themselves. The fact that the ques-tions asked by the fiscal of the prosecution witnesses and the accused "were the very questions which were suggested by Fis-cal Alviar to Fiscal Abaca, in his letter to him, Exh. '1'", i.e. to affirm the truth and correctness of their previous statements, did not affect the validity and regularity of the investigation proceedings. Where a witness or accused has previously given a statement, it is a perfectly valid procedure often availed of to avoid needless waste of time to just ask him whether he affirms the same statement and the truth and correctness of the contents thereof. To require the investigating fiscal to repeat the same questions asked of, and answered by, the complaining witnesses and the accused in their previous testimonies before Fiscal Alviar, as the lower court would apparently indicate as the appropriate procedure would have served no useful purpose nor added a whit of evidence as to the reasonable probability of the guilt of the accused, for purposes of the filing of the informa-tion, in the light of their statements admitting their apprehension in flagrante delicto for possession of the untaxed cigarettes, which statements remain unrepudiated by them. There was no basis, therefore, for the lower court's finding that the investigating fis-cal had failed to substantially comply with the requirements of Rule 112, section 14 of the Rules of Court.

3. The lower Court's finding that "there is no showing at all whether (the accused) waived their rights to Section 125 of the Re-vised Penal Code or not to warrant an immediate preliminary in-vestigation without giving the accused the chance to prepare" is not borne out by the record. The joint waiver executed by the accused is reproduced hereinabove,^[19] and the investigating fiscal had precisely informed the Court that "(N)otwithstanding such waiver the investigation must be terminated within seven days from its inception, so that in this case there is that element of expediency. If we will have the investigation later, the accused have to be released"^[20] pursuant to Section 15 of Rule 112, which provides:

"SEC. 15. Investigation of persons in custody. -- Where the accused is detained without a warrant for his arrest, he may ask for a preliminary investigation by a proper officer in accordance with the preceding sections, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended. Notwithstanding such waiver the investigation must be terminated within seven (7) days from its inception.

If the case has already been filed in court and no preliminary investigation has been conducted by the fiscal because the accused has not made the waiver referred to in the preceding paragraph, the accused may, within a period of five (5) days from the time he learns of the filing of the information, ask for a reinvestigation thereof with the same right to cross-examine the witnesses against him and adduce evidence in his favor."

The immediate and "hurried" investigation conducted on December 19, 1964 by the investigation fiscal in Puerto Princesa, con-sidering that the accused were under detention by virtue of their lawful arrest on December 13,

1964 was but in compliance with the requirements of the above-quoted rule.[21]

4. But assuming that the lower Court had correctly found that there was no waiver by the accused of the provisions of Section 125 of the Revised Penal Code, neither would it have been justified in dismissing the information. For Rule 112, section 15 expressly authorizes the fiscal to immediately file the case in court against a detained person arrested without a warrant, without conducting a preliminary investigation, where the accused has not made such waiver. The right granted by the Rule to the accused in such cases is "within a period of five (5) days from the time he learns of the filing of the information, (to) ask for a reinvestigation thereof with the same right to cross-examine the witnesses against him and adduce evidence in his favor." This, the accused failed to do, for the information against them was filed on December 19, 1964 and they did not ask for such reinvestigation within a 5-day period thereafter. Their Motion to Quash was filed much later only on January 11, 1965.

5. The lower Court erred in choosing to believe against the uncontradicted sworn testimony of the investigating fiscal that the information was prepared on December 16, 1964, three days before it was actually subscribed and filed with the Court. It refused to believe the fiscal's explanation that the date "16" appearing on the information was a typographical error x x x because if it was really so the subscribing fiscal should have corrected it." But such overlooked typographical errors do occur frequently. At any rate, this was a mere triviality which was of no relevance to the issues. The Information was not complete until it was subscribed together with the fiscal's sworn certification on December 19, 1964, the date when the preliminary investigation was conducted", as held by the Court itself in its Order.

6. This Court finds also that the procedure adopted by the lower court of placing the investigating fiscal on the witness stand and subjecting him to cross-examination by defense counsel was highly improper. Aside from the sworn certification in the information by the investigating fiscal that he had duly conducted a preliminary investigation, the entire record of the investigation with the sworn statements of the complaining witnesses and the accused had been presented to the Court. The lower Court may have had its reasons for directing questions to the fiscal to satisfy itself that the accused's rights had been duly safeguarded, such as giving them a chance to cross-examine the complaining witnesses. But to have the fiscal placed on the witness stand and have the defense counsel cross-examine and argue with him on points of law, as to whether the affirmation by the arresting officers and the accused of their previous testimonies without retaking them was sufficient compliance with the Rules of Court and impertinent questions as to whether "the statement of the Philippine Navy as complainant" was taken, was uncalled for. The lower Court disregarded the presumption that official duty has been regularly performed[22] and the well-settled rule that when nothing appears affirmatively on the record that a preliminary investigation was not in fact held, an objection on the ground of denial or deprivation thereof deserves scant consideration by virtue of the presumption that both the court as well as the prosecution proceeded in accordance with law.[23] Certainly, defense counsel must first overcome the presumption of regularity in the performance of official duty and present strong prima facie evidence of irregularity or falsification of the investigating fiscal's certification and record of the investigation for the Court to deny them the faith and credence properly due them.

7. A final word on the summary nature of preliminary investigation proceedings seems appropriate, in order to obviate the recurrence of these cases, where the State's efforts at great expense and zeal to thwart traffickers in smuggled goods who undermine the national economy are frustrated by a distorted view of the nature and purpose of preliminary investigations. The late Mr. Justice Jose P. Laurel, speaking for this Court in 1941, placed the role and object of preliminary investigations in proper perspective, thus: "x x x Its oft-repeated purpose is to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial and also to protect the State from useless and expensive prosecutions. The new Rules were drafted in the light of the Court's experience with cases

where preliminary investigations had dragged on for weeks and even months. The Court had intended to remove this clog upon the judicial machinery and to make a preliminary investigation as simple and as speedy as is consistent with the substantial rights of the accused. The investigation is advisedly called preliminary, to be followed by the trial proper. The investigating judge or prosecuting officer acts upon probable cause and reasonable belief, not upon proof beyond a reasonable doubt. The occasion is not for the full exhaustive display of the Parties' evidence; it is for the presentation of such evidence only as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. When all this is fulfilled, the accused will not be permitted to cast about for fancied reasons to delay the proceedings; the time to ask for more is at the trial. x x x"[24]

ACCORDINGLY, the order appealed from is hereby set aside and the lower Court is directed to proceed with the arraignment and trial of the accused upon the information filed in the case. With costs in solidum against defendants-appellees.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Barredo, JJ., concur.
Concepcion, C.J., and Ruiz Castro, J., voted for the setting aside of the order appealed from and the remanding of the case to the lower court for further proceedings in accordance with the decision.
Capistrano, J., did not take part.

[1] Record, pp. 13-20.

[2] Record, pp. 21-25.

[3] Record, pp. 3-10.

[4] Exhibit "A".

[5] Exhibit "1".

[6] Record, pp. 47-51; T.S.N., p. 36.

[7] T.S.N., p. 13.

[8] T.S.N., p. 14.

[9] Record, page 1, Criminal Case 3252.

[10] T.S.N., p. 15.

[11] Record, p. 38.

[12] Record, p. 41.

[13] T.S.N., pp. 8-9.

[14] T.S.N., pp. 11-16.

[15] T.S.N., pp. 16-31; 37-44.

[16] Record, pp. 52-54.

[17] *People vs. Casiano*, 1 SCRA 478, 483.

[18] T.S.N., pp. 12-13.

[19] See page 2.

[20] T.S.N., pp. 41-42.

[21] We do not here rule upon the validity of the preliminary investigation conducted by Provincial Fiscal Alviar at Manila pursuant to the accused's conformity thereto with their waiver, as the parties appear by common consent to have foregone it as an issue both in the lower court and here.

[22] Rule 131, section 5(m).

[23] People vs. Selfaison, 1 SCRA, 235 and cases cited.

[24] Hashim vs. Boncan, 71 Phil. 216, 225, emphasis ours. Cited in Mayuga vs. Maravilla, 18 SCRA 1115 (1966).

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