

**DOMINADOR B. BUSTOS, PETITIONER, VS. ANTONIO G. LUCERO,
JUDGE OF FIRST INSTANCE OF PAMAPANGA, RESPONDENT.***G. R. No. L-2068. October 20, 1948*

Ponente: TUASON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/876a5587f9ac/>**TUASON, J.:**

The petitioner herein, an accused in a criminal case, filed a motion with the court of first instance of Pampanga after he had been bound over to that court for trial, praying that the record of the case be remanded to the justice of the peace court of Masantol, the court of origin, in order that the petitioner might cross-examine the complainant and her witnesses in connection with their testimony, by reason of which, warrant had been issued for the arrest of the accused. The motion was denied and that denial is the subject-matter of this proceeding.

According to the memorandum submitted by the petitioner's attorney to the court of first instance in support of his motion, the accused, assisted by counsel, appeared at the preliminary investigation. In that investigation, the justice of the peace informed him of the charges and asked him if he pleaded guilty or not guilty, to which he entered the plea of not guilty. "Then his counsel moved that the complainant present her evidence so that she and her witnesses could be examined and cross-examined in the manner and form provided by law," The fiscal and the private prosecutor objected, invoicing Section 11 of Rule 108, and the objection was sustained. "In view thereof, the accused's counsel announced his intention to renounce his right to present evidence," and the justice of the peace forwarded the case to the court of first instance.

Leaving aside the question whether the accused, after renouncing his right to present evidence, and by reason of that waiver he was committed to the corresponding court for trial, is estopped, we are of the opinion that the respondent judge did not act in excess of his jurisdiction or in abuse of discretion in refusing to grant the accused's motion to return the record for the purpose set out therein. In *Potenciana Dequito and Carlos Saling Buhay vs. Hon. Hugo O. Arellano*, G. R. No. L-1336, recently promulgated, in which case the respondent justice of the peace had allowed the accused, over the complainant's objection, to recall the complainant and her witnesses at the preliminary investigation, so that they might be cross-examined, we sustained the justice of the peace's order. We said that Section 11 of Rule 108 does not curtail the sound discretion of the Justice of the peace on the matter. We said that "while Section 11 of Rule 108 defines the bounds of the defendant's right in the preliminary investigation, there is nothing in it or any other law restricting the authority, inherent in a court of justice, to pursue a course of action reasonably calculated to bring out the truth."

But we made it clear that the "defendant can not, as a matter of right, compel the complainant and his witnesses to repeat in his presence what they had said at the preliminary examination before the issuance of the order of arrest." We called attention to the fact that "the constitutional right of an accused to be confronted by the witnesses against him does not apply to preliminary hearings; nor will the absence of a preliminary examination be an infringement of his right to confront witnesses." As a matter of fact, preliminary investigation may be done away with entirely without infringing the constitutional right of an accused under the due process clause to a fair trial.

The foregoing decision was rendered by a divided court. The minority went farther than the majority and denied even any discretion on the part of the justice of the peace or judge holding the preliminary investigation to compel the complainant and his witnesses to testify anew.

Upon the foregoing considerations, the present petition is dismissed with costs against the petitioner.

Moran, C. J., Paras, Pablo, Bengzon, and Briones, JJ., concur.

DISSENTING

FERIA, J.:

I am sorry to dissent from the decision.

The petitioner in the present case appeared at the preliminary investigation before the Justice of the Peace of Masantol, Pampanga, and after being informed of the criminal charge against him and asked if he pleaded guilty or not guilty, pleaded not guilty. "Then the counsel for the petitioner moved that the complainant present her evidence so that her witnesses could be examined and cross-examine in the manner and form provided by law." The fiscal and the private prosecutor objected to petitioner's motion invoking Sec. 11, Rule 108, and the objection was sustained. In view thereof, the accused refused to present his evidence, and the case was forwarded to the Court of First Instance of Pampanga.

The counsel for the accused petitioner filed a motion with the Court of First Instance praying that the record of the case be remanded to the justice of the peace of Masantol in order that the petitioner might cross-examine the complainant and her witnesses in connection with their testimony. The motion was denied, and for that reason the present special civil action of mandamus was instituted.

It is evident that the refusal or waiver of the petitioner to present his evidence during the investigation in the justice of the peace, was not a waiver of his alleged right to be confronted with and cross-examine the witnesses for the prosecution, that is, of the preliminary investigation provided for in General Order No. 58 and Act No. 194, to which he claims to be entitled, as shown by the fact that, as soon as the case was forwarded to the Court of First Instance, counsel for the petitioner filed a motion with said court to remand the case to the Justice of the Peace of Masantol ordering the latter to make said preliminary investigation. His motion having been denied, the petitioner has filed the present action in which he squarely attacks the validity of the provision of section 11, Rule 108, on the ground that it deprives him of the right to be confronted with and cross-examine the witnesses for the prosecution, contrary to the provision of section 13, Art. VIII, of the Constitution.

In the case of *Potenciana Dequito and Carlos Salingbuhay v. Hugo O. Arellano*, we did not discuss and decide the question of validity or constitutionality of said Sec. 11 in connection with Sec. 1 of Rule 108, because that question was not raised therein, and we merely construed the provisions on preliminary investigation of Rule 108. In said case the writer of this dissenting opinion said:

"It may not be amiss to state that, modesty aside, the writer of this dissenting opinion, then a practising attorney, was the one who prepared the draft of the Rules of Court relating to Criminal procedure, and the provisions on preliminary investigation in the draft were the same as those of the old law, which gave the defendant the right to be confronted with and to cross-examine the witnesses for the prosecution. But the Supreme Court approved and adopted in toto the draft, except the part referring to preliminary investigation which it modified, by suppressing said right and enacting, in its stead, the provisions of Sec. 11 of Rule 108 in its present form. I prefer the old to the new procedure. But I can not subscribe to the majority decision, which is a judicial legislation and makes the exercise of the right of a defendant to be confronted with and

cross-examine the witnesses against him, to depend entirely upon the whim or caprice of a judge or officer conducting the preliminary investigation."

But now the question of the validity of said Section 11, Rule 108, is squarely presented to this Court for decision, we have perforce to pass upon it.

Section 13, Article VIII, Of the Constitution prescribes that "the Supreme Court shall have power to promulgate rules concerning pleading, practice and procedure in all courts, but said rules shall not diminish, increase, or modify substantive rights." The Constitution added the last part of the above-quoted constitutional precept in order to emphasize that the Supreme Court is not empowered, and therefore can not enact or promulgate substantive laws or rules, for it is obvious that rules which diminish, increase or modify substantive rights, are substantive and not adjective laws or rules concerning pleading, practice and procedure.

It does not require an elaborate argument to show that the right granted by law upon a defendant to be confronted with and cross-examine the witnesses for the prosecution in preliminary investigation as well as in the trial of the case is a substantive right. It is based on human experience, according to which a person is not prone to tell a lie against another in his presence, knowing fully well that the latter may easily contradict him, and that the credibility of a person or veracity of his testimony may be efficaciously tested by a cross-examination. It is a substantive right because by exercising it, an accused person may show, even if he has no evidence in his favor, that the testimonies of the witnesses for the prosecution are not sufficient to indicate that there is a probability that a crime has been committed and he is guilty thereof, and therefore the accused is entitled to be released and not committed to prison, and thus avoid an open and public accusation of crime, the trouble, expense, and anxiety of a public trial, and the corresponding anxiety or moral suffering which a criminal prosecution always entails.

This right is not a constitutional but a statutory right granted by law to an accused outside of the City of Manila because of the usual delay in the final disposition of criminal cases in provinces. The law does not grant such right to a person charged with offenses triable by the Court of First Instance in the City of Manila, because of the promptness, actual or presumptive, with which criminal cases are tried and disposed of in the Court of First Instance of said city. But this right, though not a constitutional one, can not be modified, abridged, or diminished by the Supreme Court, by virtue of the rule making power conferred upon this Court by the Constitution.

Since the provisions of Sec. 11 of Rule 108 as construed by this Court in several cases, (in which the question of constitutionality of validity of said section had not been squarely raised) do away with the defendant's right under discussion It follows that said Section 11 diminishes the substantive right of the defendant in criminal case, and this Court has no power or authority to promulgate it and therefore is null and void.

The fact that the majority of this Court has ruled in the above cited case of *Dequito and Saling Buhay v. Arellano*; that the inferior or justice of the peace court that discretion to grant a defendant's request to have the witnesses for the prosecution recalled to testify again in the presence of the defendant and be cross-examined by the latter, does not validate said provision; because to make the exercise of an absolute right discretionary or dependent upon the will or discretion of the court or officer making the preliminary investigation, is evidently to diminish or modify it.

Petition is therefore granted.

DISSENTING

PERFECTO, J.:

In our concurring and dissenting opinion in the case of Dequito, et al. vs. Arellano, etc., et al., L-1336, we said:

"In our opinion, Section 11 of Rule 108 must be read, interpreted, and applied in a way that will not contravene the constitutional provision guaranteeing to all accused the right 'to meet the witnesses face to face.' (Sec. 1(17), Art. III.)

"Consequently, at the preliminary hearing contemplated by said reglementary section, the defendant is entitled as a matter of fundamental right to hear the testimony of the witnesses for the prosecution and to cross-examine them.

"Although in such preliminary hearing the accused cannot finally be convicted, he is liable to endure the ordeal eloquently depicted in the decision, and the constitutional guarantee protects defendants, not only from the jeopardy of being finally convicted and punished, but also from the physical, mental and moral sufferings that may unjustly be visited upon him in any one of the stages of the criminal process instituted against him. He must be afforded the opportunities to have the charges against him quashed, not only at the final hearing, but also at the preliminary investigation, if by confronting the witnesses for the prosecution he can convince the court that the charges are groundless. There is no justice in compelling him to undergo the troubles of a final hearing if at the preliminary hearing the case can be terminated in his favor. Otherwise, the preliminary investigation or hearing will be an empty gesture that should not have a place within the framework of dignified and solemn judicial proceedings."

On the strength of the above quoted opinion the petition should be granted and so we vote.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.