

ALFREDO APAO, ROMEO APAO, RUDY BAYUTAS, TIRSO BONGATO, DEOGENES GENSON, ANDRES GRADO, PRIMO MASONG, SANTIAGO OLIDIANA AND FELIX TAGALOG, PETITIONERS, VS. HON. TITO V. TIZON, AS ...*G.R. No. L-20121. November 29, 1968*

Ponente: DIZON J.

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This is an original petition for mandamus and habeas corpus filed by Alfredo Apao and others against the Honorable Tito V. Tizon as Judge of the Court of First Instance of Zamboanga del Sur, Vicente Cerilles as Assistant Provincial Fiscal, and the Honorable Javier Arriosa as Provincial Governor and Jailer, of the same province.

On or about January 28, 1960 petitioners and other persons were charged with double murder in a complaint filed in the Justice of the Peace Court of Molave, Zamboanga del Sur. On August 27 of the same year the court dismissed the complaint upon motion of the Special Prosecutor detailed to handle the case. On July 10, 1962, however, a second complaint was filed in the same Justice of the Peace Court against the same parties charging them with the commission of the same offense. After their arrest and an express waiver of their right to a preliminary investigation, the case was remanded to the Court of First Instance of the province where on July 17, 1962 petitioners filed an urgent motion for bail. After some delay in the hearing upon this motion, on July 24 of the same year the respondent judge denied it upon the ground that it was filed prematurely in view of the fact that, up to that time, the Provincial Fiscal had not yet filed the corresponding information. Petitioners' motion for reconsideration of this ruling was denied.

It appears that thereafter petitioners urged the office of the Provincial Fiscal to take immediate action so as to enable the Court to consider their motion for bail, but this notwithstanding no information was immediately filed because the Fiscal in charge of the case had not been able to confer with the prosecution witnesses who resided in far away muni-cipalities. In view thereof, petitioners filed the present action.

The petition having been given due course on August 16, 1962, the respondents were duly summoned and required to file their answer within two days from notice. On August 29 of the same year the respondent Assistant Provincial Fiscal of Zamboanga del Sur filed his answer, while the respondent Pro-vincial Governor and the respondent judge filed their own separate answer days later.

On September 11, 1962 the respondent Assistant Provincial Fiscal filed a supplemental answer alleging therein that on the 4th of said month an information had been filed in the Court of First Instance of Zamboanga del Sur charging herein petitioners with double murder (Criminal Case No. 2073), and praying that the present action be dismissed because it had become moot. In view thereof We issued a resolution on the same date ordering the respondent judge or, in his absence, the justice of the peace of the provincial capital of Zamboanga del Sur, to expeditiously hear and resolve the motion for bail filed by petitioners herein. Finally, the record shows that,

pursuant to our resolution, the respondent judge set the hearing on the motion for bail on September 13, 1962 and that on the 28th of the same month and year, His Honor had issued an order in Criminal Case No. 2073 mentioned above denying the aforesaid motion for bail.

The foregoing facts and circumstances show that the present case has become moot and academic, for which reason it is hereby dismissed, without costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Fernando and Capistrano, JJ., concur.

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