

GABINO LOZADA AND ISIDRO LOZADA, PETITIONERS, VS. HONORABLE FERNANDO HERNANDEZ, ETC., ET AL., RESPONDENTS.

G. R. No. L-6177. April 29, 1953

Ponente: REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9b811b7a093c/>

REYES, J.:

This is a petition for certiorari to annul an order of the Court of First Instance of Capiz denying petitioner's motion to dismiss an information against them for robbery with homicide.

It appears that on July 1, 1952, the provincial fiscal of Capiz filed an information in that court, charging the petitioners with the crime of robbery with homicide, the fiscal certifying under oath that he had conducted a proper preliminary investigation of the case on the 27th of the preceding month. Arrested on the strength of this information, petitioners asked the court to fix the amount of their bail, and the court did so on July 16. Some three weeks thereafter petitioners were arraigned, and they then pleaded not guilty. This they did with the assistance of counsel.

With trial scheduled for August 20 but postponed to September 19 at their own request, petitioners moved to have the case against them dismissed on the grounds that they had been deprived of their right to a preliminary investigation without due process of law, and when this motion was denied, they brought the present action for certiorari.

There is no question that before filing the information the provincial fiscal first conducted an investigation as the law requires. But petitioners contended that they were not given the right to participate in that investigation for they were not even notified thereof.

It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. (U. S. vs. Yu Tuico, 34 Phil. 209; People vs. Badilla, 48 Phil. 716). The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. (II Moran, Rules of Court, 1952 ed., p. 673). And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase "due process of law". (U. S. vs. Grant and Kennedy, 18 Phil., 122).

At present the law conferring upon the accused the right to participate in the preliminary investigation is contained in section 1687 of the Revised Administrative Code, as amended by Section 2 of Republic Act No. 732, approved on June 18, 1952. It says:

"Sec. 1687. Authority of Fiscal to conduct investigation in criminal matter.—A provincial fiscal shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same. If the offense charged falls within the original jurisdiction of the Court of First Instance, the defendant shall not be

entitled as a matter of right to preliminary investigation in any case where the provincial fiscal himself, after due investigation of the facts made in the presence of the accused if the latter so requested, shall have presented an information against him in proper form and certified under oath "by the said provincial fiscal that he conducted a proper preliminary investigation. To this end, he may, with due notice to the accused, summon reputed witnesses and require them to appear before him and testify and be cross-examined under oath by the accused upon the latter's request. The attendance or evidence of absent or recalcitrant witnesses who may be summoned or whose testimony may be required by the provincial fiscal under the authority herein conferred shall be enforced by proper process upon application to be made by the provincial fiscal to any Judge of First Instance of the Judicial Districts. But no witness summoned to testify under this section shall be compelled to give testimony to incriminate himself."

The petitioners construe the above provision as requiring the provincial fiscal conducting the preliminary investigation to give notice thereof to the accused so that he could be present thereat. The Solicitor General, on his part, contends that such notice is required only after the accused has requested to be present at the investigation, for "To hold that the provincial fiscal is required to give notice to the accused before conducting the investigation would make it impossible for him to conduct such investigation in cases where the whereabouts of the accused is unknown, since the law has not provided for notice by publication, nor allows him to dispense with such notice in a case similar to that just mentioned." There is weight to this reasoning. And in any event, even supposing that petitioners had a right to be notified of the preliminary investigation so that they could participate in it despite the fact that they had not "so requested", such right was waived when they pleaded not guilty upon arraignment. For it is now settled that the right to preliminary investigation is waived by failure to claim it before the accused pleads not guilty. (People vs. Magpale, 70 Phil, 176; People vs. Solon, 47 Phil, 443.)

In view of the foregoing, the petition is denied, with costs against the petitioners.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

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.