

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT,
CRISTETA GENABE, OFFENDED PARTY AND APPELLANT, VS. SABAS
SAYON, ET AL., DEFENDANT AND APPELLEES.**

G.R. No. L-16986. April 30, 1964

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

On 21 May 1957 the Provincial Fiscal of Davao filed an information in the Court of First Instance of the same province against herein appellees Sabas Sayon, Dalmacio Capin, Marcelino Isable and Candido Legan, charging them with the crime of theft under Article 808, in relation to paragraph 4, Article 309 of the Revised Penal Code. The offense consisted of having cut and carried away abaca plants belonging to complainant Cristeta Genabe, valued at P90.00. In view of the penalty provided for (arresto mayor in its medium period to prision correccional in its minimum period) the case could be filed with the Municipal Court of the City of Davao or directly with the Court of First Instance. A motion to quash was presented on the ground that the Provincial Fiscal of Davao had no authority to initiate and file the information since the alleged crime was committed within the territorial limits of the City and therefore it developed exclusively upon the City Attorney to investigate the same and initiate the prosecution.

The Court of First Instance, by order of 18 June 1958, sustained the motion and dismissed the information. The case is before us on appeal by the Solicitor General from the order of dismissal.

The charter of the City of Davao (Commonwealth Act No. 51, as amended) provides:

"SEC. 19. The City Attorney—There shall be a City Attorney who shall be the chief legal adviser of the City, and who shall have the following general powers and duties:

* * * * *

(e) He shall have charge of the prosecution of all crimes and misdemeanors and violation of city ordinances triable in the Municipal Court. The Provincial Fiscal of Davao shall have charge of all prosecutions of crimes, misdemeanors, and violations of city ordinances appealed to, or brought before, the Court of First Instance of Davao.

(f) He shall investigate all charges of crimes, misdemeanors, and violations of city ordinances and prepare the necessary complaints against the persons accused, and discharge all other duties in respect to criminal prosecutions enjoined upon provincial fiscals generally.

(g) He may conduct investigations in respect to crimes, misdemeanors, and violation of ordinances and for this purpose may, by subpoena, summon witnesses to appear and testify under oath before him, and the attendance of an absent or recalcitrant witness may be enforced by application to the Municipal Court or the Court of First Instance of the Province of Davao."

It should be noted that there is a delimitation of authority between the City Attorney and the Provincial Fiscal

Under paragraph (e): to the first is assigned the prosecution of all crimes, etc., triable in the Municipal Court; and to the latter, that of all crimes, etc., appealed to or brought before the Court of First Instance. The provision, of course, refers to offenses committed in the city itself and not elsewhere in the province.

The lower court ruled, and appellees here now maintain, (1) that the investigation of crimes, misdemeanors and violation of city ordinances (committed within the limits of the City of Davao) and the preparation of complaints with respect thereto are conferred exclusively on the City Attorney; and (2) that the Provincial Fiscal, not being a city official, cannot exercise such power under his general authority given by Republic Act No. 732.[*]

We believe it is sufficiently demonstrable that if the Provincial Fiscal is to have charge of the prosecution of offenses committed in the City of Davao and triable in the Court of First Instance, he should be deemed vested with the power to make the necessary preliminary investigations and to file the corresponding informations. To deny him that power is to hobble him unduly in the exercise of his duty to prosecute and to make the findings and conclusions of the City Attorney conclusive upon him. Prosecution does not begin with the trial of a case after it is filed in court; it includes the process of investigation leading to the formal charge.

The restrictive construction given by appellees to the power of the Provincial Fiscal would imply that a criminal case arising in the City of Davao and triable in the Court of First Instance may come under its cognizance only after preliminary investigation conducted by the municipal court of the city upon an information filed with it by the City Attorney; and that neither the Provincial Fiscal nor the Court of First Instance itself may conduct such investigation in the exercise of the authority given to them by Republic Act No. 732 and by Section 4 of Rule 108, respectively. This result could not have been the intention of Congress in precisely stating that the Provincial Fiscal should have charge of prosecution of such cases and thus making him responsible therefore. That responsibility connotes discretion to determine whether an information should or should not be filed at all—a discretion that cannot be exercised if the City Attorney is held to have the exclusive power to investigate and decide for or against proceeding further with the prosecution.

On the legal issue decisive of this appeal we find for appellant and hold that the order of dismissal issued by the lower court should be set aside. Reference may be made, however, to some circumstances which, we believe should be looked into more closely at the trial. This case—for theft of abaca worth only P90.00—was first investigated by the Assistant City Attorney of Davao in 1955. It was then dropped by him after an ocular inspection of the abaca plantation where the offense was alleged to have been committed. The complainant then appealed to the Provincial Fiscal, who at the time was City Attorney ex-officio for the city of Davao. He reversed the findings of the assistant Provincial Fiscal and filed a criminal case with the Municipal Court of the City of Davao. After eight postponements of the hearing (before arraignment of the accused) the Court issued an order of provisional dismissal. The case was subsequently reinvestigated by a special counsel in the City Attorney's office, but he did not file an information on the ground that there was no evidence of animus lucrandi on the part of the accused. The private prosecutor representing the complainant lodged another complaint directly with the Provincial Fiscal, who filed the case directly in the Court of First Instance. It was once more dismissed upon motion of the Assistant Provincial Fiscal on the ground of lack of jurisdiction. Soon thereafter the Provincial Fiscal himself took a hand and filed the information, which was again dismissed, from which order of dismissal the present appeal has been taken.

The order appealed from is set aside, and the case is remanded for further proceedings. No special pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

[*] R.A. No. 732 authorizes the Provincial Fiscal to conduct investigation of any crime or misdemeanor and to have the necessary information or complaint prepared or made against persons charged with the commission of the crime. If the offense charged falls within the original jurisdiction of the Court of First Instance, the Provincial Fiscal may himself conduct the preliminary investigation and file the information directly with said court.

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