

TITO C. TOLEDO, COMPLAINANT, VS. HON. EMILIO STA. ROMANA, RESPONDENT.

Adm. Matter No. 2030-MJ. May 15, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

In a sworn letter-complaint dated September 10, 1978, Tito C. Toledo charged Municipal Judge Emilio Sta. Romana, Jr. detailed to the Municipal Circuit Court of Culasi-Sebaste-Pandan, Antique with irregularity in conducting and resolving a preliminary investigation of a criminal complaint charging frustrated homicide against one Ismael Buaya.[1]

In his comment,[2] the respondent alleged that a criminal complaint for frustrated homicide was filed in the 5th Municipal Circuit Court of Culasi-Sebaste--Pandan, Antique against Ismael Buaya; that the criminal complaint was docketed as Criminal Case No. 1352; that Judge George M. Valente of said circuit court inhibited himself from conducting the preliminary investigation, hence the Executive District Judge of Antique designated the respondent, Judge Emilio Sta. Romana, Jr. of the 4th Municipal Circuit Court, Barboza-Lawasan-Tibiao, Antique to conduct the preliminary investigation.

On August 29, 1978, the respondent judge conducted the preliminary examination wherein the complainant Tito C. Toledo, his witnesses, Charlie Davao and Dr. Santos Alon, Jr. testified for the prosecution. The Sub-Station Commander, INP, P/Sgt. Amando R. Cadigal, Jr. acted as prosecutor in the absence of the fiscal.

The complainant declared that on July 8, 1978, at 12:00 o'clock noon, while he was diverting part of the canal water at Alojado's field, the accused, Ismael Buaya, who wanted all the water for himself, raised his voice, struck complainant's right forehead with a stone, hacked him twice below the shoulder, and then ran home. The testimony was substantially corroborated by complainant's witness, Charlie Davao.

Dr. Santos Alon, Jr., a resident physician of Culasi Emergency Hospital, testified that the complainant sustained only one wound although interrupted; and that said wound, if treated, would not cause instantaneous death of the complainant unless infected. On July 24, 1978, Doctor Santos Alon, Jr. issued a Medical Certificate to complainant stating: "Probable Disability period of Healing Barring Unforeseen Complications: Not apparent During Physical examination, the wound will heal less 10 days".

The respondent Judge explained that inasmuch as the wound inflicted was not mortal, the accused having hacked the complainant only once, and the accused did not persist in his attack as he immediately ran home thereafter thus negating intent to kill, said respondent Judge issued an order dated August 29, 1978 finding that only the crime of slight physical injuries was committed and directing the Sub-Station Commander to amend the complaint.

On September 7, 1978, the accused was arraigned and pleaded guilty.[3] The respondent Judge rendered his decision finding the accused guilty beyond reasonable doubt of the crime of slight physical injuries.

Appreciating two (2) mitigating circumstances of plea of guilty and voluntary surrender, without any aggravating circumstance, the respondent judge imposed on the accused the penalty of public censure, and ordered him to pay the costs of the action, and to indemnify the complainant in the amount of P20.00 as damages, without subsidiary imprisonment.

The respondent Judge erred in ordering the Sub-Station Commander to file an amended information of slight physical injuries and trying the case on the merits. In the preliminary investigation of a criminal offense, the duty of the municipal circuit judge is to determine whether or not the evidence presented supports prima facie the allegations of fact contained in the complaint. He has no legal authority to determine the character of the crime, and his declaration upon that point can only be re-garded as an expression of opinion in no wise binding on the trial court.[4]

In the case of *Bais vs. Tugaoen*,[5] the Supreme Court said:

"It is not disputed that herein respondent after conducting a preliminary investigation in Criminal Case No. 684, *motu proprio* and over the objection of the prosecution changed the designation of the crime charged from Grave Slander to Slight Slander. Respondent judge justified his action by insisting that he is possessed with such power and that the same was done for the speedy administration of justice. This Court, however, is not prepared to sustain this view for Section 13, Rule 110, Rules of Court is clear that the matter of changing the designation of the appropriate crime in an information or complaint is vested in the prosecution and not in the trial judge, and in the instant case, the change may be done by the prosecution even without leave of court since the defendant or accused has not as yet entered his plea. The law providing that the information or complaint may be amended in substance or form without leave of court any time before the defendant pleads lodges a discretionary power in the prosecuting officer. (*Conde vs. CFI*, No. 21236, October 1, 1923, 45 Phil. 173). So, the person authorized to amend the complaint or information is only prosecuting officer and not the trial judge. The contention of the respondent judge that he had the right to amend the designation of the crime in a preliminary investigation which is not the trial proper is untenable. The purpose of preliminary investigation is primarily to determine whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial. It is not within the purview of the preliminary investigation to give the judge the right to amend, *motu proprio* the designation of the crime. When the crime comes within his jurisdiction, he shall try the case, and only after trial may he convict for a lesser offense. In a case coming within the original jurisdiction of the Court of First Instance, he should elevate the case as it is, even if in his opinion, the crime is less than that charged."[6]

The foregoing rulings of this Court leave no doubt that the respondent judge committed a serious irregularity when he ordered the Sub-Station Commander to amend the information from frustrated homicide to slight physical injuries and tried the case on the merits.

WHEREFORE, the respondent Municipal Circuit Court Judge Emilio Sta. Romana, Jr. is hereby found guilty of ignorance of the law and is imposed the penalty of a fine equivalent to three (3) months salary with warning that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, and Melencio-Herrera, JJ., concur.

[1] Rollo, p. 1.

[2] Rollo, pp. 3-a to 12.

[3] Rollo, p. 5.

[4] People vs. Gorospe, 53 Phil. 960.

[5] Adm. Matter No. 1294-MJ, March 23, 1979, 89 SCRA 101.

[6] Id., pp. 109-110.

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