

GAVINO CONJURADO AND JORGIA MORALES, PETITIONERS, VS. HONORABLE MODESTO R. RAMOLETE, JUDGE OF THE COURT OF FIRST INSTANCE OF SURIGAO, AND VEDASTO R. NIERE, ASSISTANT PROVINCIAL ...

G.R. No. L-8874. May 18, 1956

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/aa4e4c1dc49e/>

MONTEMAYOR, J.:

This is petition for certiorari and prohibition filed by Gavino Conjurado and Jorgia Morales against respondents Judge Modesto R. Ramolete of the Court of First Instance of Surigao, and Assistant Provincial Fiscal Vedasto R. Niere of the same province. The following facts pertinent to the case are not disputed.

On November 27, 1950, petitioners herein were accused of frustrated murder in the Justice of the Peace Court (later referred to as Peace Court) of Dapa, Surigao, in Criminal Case No. 4388. The corresponding warrant of arrest was issued and sent to the Court of First Instance for certification for service in another province. The district Judge believing that the crime charged in the complaint was that of serious physical injuries instead of frustrated murder, returned the warrant to the Peace Court, without certification.. Thereafter, the Chief of Police of Dapa amended the charge from frustrated murder to serious physical injuries and another warrant was issued by the Peace Court. The warrant, however, was never served because the whereabouts of the petitioners-accused were unknown. So, on April 4, 1951, the Chief of Police moved for the provisional dismissal of the case (Criminal Case No. 4388) which was granted on the same day.

On December 11, 1952, respondent Fiscal revived the case in the same Peace Court by charging petitioners with the crime of serious physical Injuries in Criminal Case No. 4449, which was later amended on April 17, 1953. Petitioners-accuse in said Criminal Case No. 4449 moved to quash the amended information on the ground that the Peace Court had no jurisdiction over their persons for the reason that the first stage of the preliminary investigation had not been conducted by the said court. Said . motion to quash was denied, the court holding that the first stage of the preliminary investigation conducted in Criminal Case No. 4388 which had been dismissed, served the same purpose. Petitioners-accused brought an action for prohibition before the Court of First Instance against the Justice of the Peace, Civil Case No. 639. In a decision dated February 15, 1954, Judge Francisco Area held that when Criminal Case No. 4388 iwas dismissed, all proceedings had therein by the Justice of the Peace were erased and terminated; consequently, the first stage of the preliminary investigation conducted in said case could not be applied to Criminal Case No. 4449, and there was need of another preliminary investigation, because Criminal Case No. 4449 was a new case. Judge Area granted the petition for prohibition and directed the Justice of the Peace to refrain from further taking cognizance of Criminal Case No. 4449 without conducting the first stage of the preliminary investigation. He further held that after the first stage of the preliminary investigation was conducted and probable cause was found, respondent may issue the corresponding warrant of arrest against the accused therein, and "after the accused are arrested or have filed their bond, then and only then can the respondent (Justice of the Peace) proceed with the hearing of Criminal Case No. 4449 in his court."

On March 1, 1954, respondent Fiscal filed an amended information in Criminal Case No. 4449 with the Peace Court charging petitioners with frustrated murder. After conducting the first stage of the preliminary investigation the Peace Court issued the corresponding warrant of arrest against the accused and the latter filed bond for their provisional release. The Peace Court proceeded to conduct the second stage of the preliminary investigation but the accused (petitioners herein), after entering a plea of not guilty waived their right to the preliminary investigation and the case was sent up to the Court of First Instance where respondent-Fiscal filed the corresponding information for frustrated murder on April 28, 1954, docketed as Criminal Case No. 1575. When arraigned in said case on January 31, 1955, petitioners moved to quash the information on several grounds, among them that the court had no jurisdiction over the case; that the criminal action had prescribed; that the Fiscal had committed grave abuse of discretion in amending the information in Criminal Case No. 4449 charging frustrated murder; and because of double jeopardy.

In an order dated February 9, 1955, respondent Judge Ramolete found and held that there was no prescription for the reason that on the basis of the information, the crime committed was frustrated murder, the period of prescription of which was 15 years; that it was perfectly proper for the Fiscal to file the new information in Criminal Case No. 4449 for the reason that in Criminal Case No. 4388, the accused were never arrested and no rights of theirs had been placed at stake and so, as to them nothing happened and the situation stood as if no case at all had been filed against them; that as to the amendment of the information, under the authority of section 13, Rule 106, of the Rules of Court, the information may be amended in substance or form, without leave of court, at any time before the defendant pleads; and as to the alleged lack of jurisdiction, the court acquired said jurisdiction because the case was sent up to the Court of First Instance by the Justice of the Peace after he had conducted the first stage of the preliminary investigation to justify his issuance of the warrant of arrest and that after being arrested and after entering a plea of not guilty, they (petitioners) waived their right to the preliminary investigation. Acting on a motion for reconsideration respondent Judge denied the same in an order dated February 26, 1955.

The present petition for certiorari and prohibition was brought in order to annul the orders of February 9 and 26, 1955, and to set aside the amended information filed by the respondent Fiscal on March 1, 1954, in Criminal Case No. 4449 of the Peace Court and the information filed on April 28, 1954, in Criminal Case No. 1575 of the Court of First Instance of Surigao, "and to restrain the said respondent Assistant Provincial Fiscal from further harassing the herein petitioners with new information."

Considering the proceedings before the Justice of the Peace Court of Dapa, Surigao, and in the Court of First Instance of Surigao as above related, we see no irregularity or error, much less, abuse of discretion on the part of respondent Judge or respondent Assistant Provincial Fiscal. In filing Criminal Case No. 4449 in the Justice of the Peace Court, there was no double jeopardy as against petitioners for the reason that they were never placed in jeopardy in the first case, Criminal Case No. 4388, for the accused therein were never arrested and arraigned. For the same reason respondent Fiscal was perfectly warranted in amending the information in Criminal Case No. 4449, charging frustrated murder instead of serious physical injuries, having done so before the accused pleaded. (Rule 106, section 13, Rules of Court.) Respondent Judge acquired jurisdiction over Criminal Case No. 1575 of this Court, because the Fiscal filed the corresponding information in said case after Criminal Case No. 4449 had been, elevated to him and to respondent Judge by the Peace Court after the latter had conducted the first stage of the preliminary investigation against the petitioners and after the latter had waived their right to a preliminary investigation.

In view of the foregoing, the petition for certiorari and prohibition is hereby denied, with costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and

Endencia, 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.