

DIOSDADO T. ABUGOTAL, PETITIONER, VS. HON. MEYNARDO A. TIRO, JUDGE, CIRCUIT CRIMINAL COURT, 15TH JUDICIAL DISTRICT, CAGAYAN DE ORO CITY, NORBERTO DE LA CRUZ, ALIAS BERTING, ASTE...

G.R. No. L-40552. August 20, 1975

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari with preliminary injunction to declare respondent Judge to have acted without jurisdiction or with grave abuse of discretion in ordering First Assistant City Fiscal Cenon B. Alaba of Gingoog City to reinvestigate Criminal Case No. CCC XV-628-Misamis Oriental.

On February 25, 1975, petitioner City Fiscal of Gingoog City Diosdado Abugotal filed an information for murder[1] against private respondents Norberto de la Cruz, alias Berting, Asterio Hurtado alias Molino and Rosalio Morales alias Rosing through 2nd Assistant Fiscal Nicolas P. Tacondong, Jr. with the Criminal Circuit Court, 15th Judicial District, Cagayan de Oro City, presided by respondent Judge Meynardo A. Tiro.

On March 29, 1975 private respondents through their counsel filed an urgent motion for reinvestigation to be conducted by First Assistant City Fiscal Cenon B. Alaba[2] and a separate petition for bail.[3] No opposition was filed to the motion for reinvestigation but petitioner filed an opposition to the petition for bail.[4] Respondent Judge issued an order on April 4, 1975, granting the reinvestigation and ordering First Assistant City Fiscal Alaba to conduct the same, at the same time holding in abeyance his resolution on the petition for bail.[5]

On April 10, 1975, petitioner filed a Motion for Reconsideration[6] of the said order of April 4, 1975 on the grounds that before the information in question was filed with the Circuit Criminal Court, he had carefully reviewed the work of the investigating Fiscal, Nicolas P. Tacondong, Jr., and that in filing the same Presidential Decree No. 77 had been carefully observed such that there was no need to conduct a reinvestigation. Respondent Judge denied the said motion for lack of merit in his order of April 11, 1975.[7]

Hence, the present petition.

A temporary restraining order was issued by this Court dated May 6, 1975[8] restraining the respondent Judge from enforcing and/or carrying out his orders dated April 4, 1975 and April 11, 1975 ordering First Assistant Fiscal Cenon B. Alaba to reinvestigate Murder Case No. CCC-XV-628-Misamis Oriental, entitled "People of the Philippines, plaintiff versus Norberto de la Cruz, Alias Berting, et al., accused."

In contending that the instant petition is without basis private respondents argue that prior to the preliminary investigation of the murder case in question their counsel wrote a letter addressed to petitioner requesting that the preliminary investigation thereof be handled by either the First Assistant City Fiscal or Special Counsel Valdevilla and not by 2nd Assistant City Fiscal Nicolas P. Tacondong, Jr. because private respondents and their counsel felt that Fiscal Tacondong would be biased in his decision; that for reasons known only to himself

petitioner did not even answer the said letter; that respondent Norberto de la Cruz was not given a chance to present his counter affidavits as no preliminary investigation was conducted as provided for by Presidential Decree No. 77; and that the present case is only one of homicide with respect to respondent Rosalio Morales alone who, however, acted in self-defense.

The petition is meritorious.

Under Presidential Decree No. 77[9], the authority to conduct the preliminary investigation of the murder charge filed against private respondents is vested in the petitioner or his assistants. As chief of the office, petitioner has the right to designate as in fact he did the assistant fiscal who conducted the investigation. While it is true that an assistant fiscal or state prosecutor may file an information only in a case in which he himself conducted the preliminary investigation, he may furthermore do so only with the prior authority or approval of the city or provincial fiscal or chief state prosecutor. These provisions of law show in bold relief the degree of control over his assistants that petitioner exercises as chief of the office.

In the information filed by 2nd Assistant City Fiscal Tacondong, Jr. against private respondents appears this certification:

‘I HEREBY CERTIFY that undersigned conducted a preliminary investigation in this case giving the accused the chance to appear in person and counsel; to cross-examine the witnesses for the prosecution and to adduce testimony in their favor by counter-affidavits, but despite of this accused did not offer counter-statements; that there exists a reasonable ground to believe further that the offense charged has been committed and accused are probably guilty thereof.

SGD. NICOLAS P. TACONDONG, JR.
Assistant City Fiscal

SUBSCRIBED AND SWORN to before me this 24th day of February, 1975, at Gingoog City, Philippines.

SGD. DIOSDADO T. ABUGOTAL
City Fiscal"

This certification is not an idle form. It is a statement made under oath by a public officer — a fiscal no less — and its contents on the face thereof binds respondent Judge. This is so because it is a disputable presumption of law that official duty has been regularly performed.[10] Where, however, the interest of justice so requires and the court orders a reinvestigation of a criminal case pending before it, the court cannot at the same time choose the fiscal who will conduct the reinvestigation. This is a prerogative vested in the city fiscal as head of the office, and certainly beyond the powers of the court to do.

It has not passed our notice that in the course of the preliminary investigation conducted by Fiscal Tacondong, Jr. private respondents were even allowed to cross-examine the witnesses for the prosecution although it is not their right to do so. This fact substantiates petitioner's claim that he carefully followed the requirements of law, and more, in conducting the preliminary investigation of the murder charge against private respondents.

It cannot be denied that in the search for truth, a trial has distinct merits over a reinvestigation. A preliminary investigation or reinvestigation, unlike a trial, is summary in nature. The direct examination of witnesses is substituted by the complainant's sworn statement and that of his witnesses, and by the counter-affidavits of the respondent and his witnesses. While the respondent may be present at the investigation, he has no right to cross-examine the witnesses against him. To ferret out the truth, therefore, a trial is to be preferred to a reinvestigation. Rather than delay the trial of private respondents waiting for the conduct and outcome of a reinvestigation, it is best that respondent Judge set the case for immediate trial.

WHEREFORE, the writ prayed for is GRANTED and the questioned orders of the respondent Judge are ANNULLED and SET ASIDE. The restraining order issued by this Court on May 5, 1975 is made permanent. No pronouncement as to costs.

SO ORDERED.

Makalintal, C.J., Fernando, Barredo, and Aquino, JJ., concur.

[1] Annex A

[2] Annex B

[3] Annex C

[4] Annex D

[5] Annex E

[6] Annex F

[7] Annex G.

[8] Rollo, p. 27.

[9] P.D. No. 77, promulgated December 6, 1972 provides as follows:

* * * * *

"Section 1 of Republic Act No. 5180 is hereby amended to read as follows:

"Section 1. Notwithstanding any provision of law to the contrary and except when an investigation has been conducted by a judge of first instance, city or municipal judge or other officer in accordance with law and the judge or other officer in accordance with law and the Rules of Court of the Philippines, no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or any of his assistants, or by the Chief State Prosecutor or his assistants, without first conducting a preliminary investigation in the following manner:

a. All complaints shall be accompanied by statements of the complainant and his witnesses as well as other supporting documents. The statements of the complainant and his witnesses shall be sworn to before the investigating fiscal or state prosecutor. He shall examine them and satisfy himself that their statements were voluntarily executed and understood by them.

b. If on the basis of the complainant's sworn statements and documents submitted there does not appear to be a prima facie case, the investigating fiscal or state prosecutor shall dismiss the case; if a prima facie case is established by complainant's evidence, he shall notify the respondent by issuing a subpoena requiring him to submit at an indicated date which shall not be more than ten (10) days from receipt of the subpoena, counter-affidavits and other supporting documents. To the subpoena shall be attached a copy of the complaint, the sworn statements and other documents submitted. Other evidence submitted shall be made available for examination of the respondent or his counsel. The statements of the respondent and his witnesses shall also be sworn to before the investigating fiscal.

c. Whenever necessary, the fiscal or state prosecutor may subpoena either or both parties or their witnesses and propound clarificatory question, during which both complainant and respondent shall be afforded an opportunity to be present but without right to examine or cross-examine.

"The investigating fiscal or state prosecutor shall help both the complainant and the respondent and their witnesses in the preparation and execution of their affidavits if so requested to do so."

"The fiscal or state prosecutor shall certify under oath in the information to be filed by him that he has examined the complainant and his witnesses, that on the basis of the sworn statements and other evidence submitted before him that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence: Provided: That no assistant fiscal or state prosecutor may file an information except with the prior authority or approval of the city or provincial fiscal or chief state prosecutor and only in a case in which he himself conducted the preliminary investigation."

* * * * *

[10] Rule 131, Sec. 5, (m)

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