

ERNESTO SOMERA, MARIANO LLAGAS, BOY SOMERA, PURING P. LLAGAS, BENING GOROSPE, WARLITO PAREL, GREGORIO LLAGAS AND ALFONSO GOROSPE, PETITIONERS, VS. THE HON. DEOGRACIAS SOLIS, IN ...

G.R. No. L-25857. June 30, 1971

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

On election day, November 9, 1965, a shooting incident occurred in the municipality of Bantay, province of Ilocos Sur, resulting in the death of Justino Fontano and Jaime Pilon and the wounding of Pio Carmelo and Ernesto Narciso. On November 12, 1965 two persons, Modesto Paz and Jose Carmelo, who were eye-witnesses to the shooting incident, were investigated at the headquarters of the 8th PC Co., and they gave statements regarding the incident and named the persons who attacked the victims. It was not until February 1966 when moves were taken to prosecute the persons alleged to have committed the violent acts against the said victims.

On February 21, 1966 Felicitas Fontano, the widow of the deceased Justino Fontano, signed a criminal complaint to be filed in the municipal court of Vigan, the provincial capital of Ilocos Sur, charging Ernesto Somera, Bening Gorospe, Gregorio Llagas, Alfonso Gorospe alias Ponso, Mariano Llagas, Turing P. Llagas, Warlito Parel and Boy Somera with having committed the crime of double murder and double frustrated murder in connection with that shooting incident in Bantay on November 9, 1965.[1] On that same day, February 21, 1966, Modesto Paz and Jose Carmelo subscribed, and swore to, before the Clerk of Court of the Court of First Instance of Ilocos Sur at Vigan, the statements that they made at the headquarters of the 8th PC Co. on November 12, 1965, which statements were taken down in writing in the form of questions and answers at the time of the investigation. Likewise, on February 21, 1966, Felicitas Fontano addressed a letter to the Executive Judge of the Court of First Instance of Ilocos Sur[2], attaching thereto copies of the criminal complaint which she had signed and the sworn statements of Modesto Paz and Jose Carmelo, which letter partly reads as follows:

"I respectfully request that the municipal judge of the capital be authorized to conduct the preliminary examination or investigation of the crime of double murder and double frustrated murder, wherein one of the victims was my late husband, committed on November 9, 1965. This request is being made pursuant to the provisions of Sec. 2 in relation to Sec. 13, of Rule 112 of the Rules of Court, on the ground that the witnesses that I intend to present are afraid to tes-tify in the municipal court of Bantay, Ilocos Sur."

On February 22, 1966 Hon. Deogracias Solis, Judge of the Court of First Instance of Ilocos Sur, acting on the aforementioned letter of Mrs. Felicitas Fontano, "ordered and authorized the Municipal Judge of Vigan, Ilocos Sur to conduct the preliminary investigation of the instant case in accordance with law." [3]

Accordingly, on February 23, 1966, the Office of the Clerk of the Court of First Instance of Ilocos Sur indorsed to the Municipal Court of Vigan the letter of Felicitas Fontano together with the documents attached thereto, consisting of the copies of the criminal complaint, the sworn statements of the two witnesses and the order of

Judge Solis of February 22, 1966 ordering and authorizing the Municipal Judge of Vigan to conduct the preliminary investigation. Also on that day, February 23, 1966, Mrs. Felicitas Fontano presented to Acting Municipal Judge Melanio F. Lazo of the Municipal Court of Vigan the originals of the criminal complaint and of the sworn statements of Modesto Paz and Jose Carmelo, copies of which she had attached to her letter to the Executive Judge of the Court of First Instance of Ilocos Sur on February 21, 1966. She also presented to Judge Lazo copy of her letter to the Executive Judge of February 21, 1966 and copy of the order of Judge Deogracias Solis ordering and authorizing the Municipal Judge of Vigan to conduct the preliminary investigation. On February 23, 1966 the acting Municipal Judge only received the criminal complaint and the accompanying documents but did not conduct the preliminary examination of the case because the complainant, Mrs. Felicitas Fontano, did not bring with her the two witnesses, Modesto Paz and Jose Carmelo. The acting Municipal Judge set the preliminary examination for February 28, 1966.

In the morning of February 28, 1966, Mrs. Fontano appeared with witnesses Modesto Paz and Jose Carmelo, and in open court the preliminary examination was conducted. The questions and answers during the preliminary examination, as well as the order of the acting Municipal Judge, were taken down by the municipal court stenographer.[4] The two witnesses were examined on the written statements that they made at the PC headquarters on November 12, 1965 which they signed and swore to before the Clerk of the Court of First Instance of Ilocos Sur on February 21, 1966. These two witnesses ratified under oath those statements before acting Municipal Judge Melanio F. Lazo.[5] After the preliminary examination, Judge Lazo issued an order declaring, that the evidence presented by the prosecution during the previous inquiry (preliminary examination) had established that the crime complained of was committed and that the accused were probably responsible thereof, that the criminal complaint was valid and admissible and should, therefore, be admitted and docketed. Judge Lazo ordered that a warrant of arrest against the accused be issued, with no bail fixed for temporary release of those arrested.[6] The case was thereby docketed as Criminal Case No. 3109 of the Municipal Court of Vigan, Ilocos Sur. Two warrants of arrest were issued accordingly.[7]

Contending, that in ordering the Municipal Judge of Vigan to conduct the preliminary examination and investigation of Criminal Case No. 3109, Judge Deogracias Solis had acted without jurisdiction, arbitrarily, and in violation of law; that Acting Municipal Judge Melanio F. Lazo of the Municipal Court of Vigan had acted without jurisdiction in conducting the preliminary examination of said criminal case and in thereafter issuing the warrants of arrest for their apprehension; that the proceedings in the municipal court of Vigan are complete nullities; that the law enforcement agencies are determined to execute the warrants of arrest issued under those illegal proceedings; and that they have no appeal or other adequate remedy in the ordinary course of law to protect their constitutional rights to due process of law, herein petitioners Ernesto Somers, Mariano Llagas, Boy Somera, Puring P. Llagas, Bening Gorospe, Warlito Parel, Gregorio Llagas, and Alfonso Gorospe -- who are the accused in said Criminal Case No. 3109 -- filed with this Court, on March 24, 1966, a petition for prohibition with preliminary injunction, naming as respondents the Hon. Deogracias Solis in his capacity as Judge of the Court of First Instance of Ilocos Sur; Hon. Melanio F. Lazo in his capacity as Judge of the Municipal Court of Vigan, Ilocos Sur; the Chief, Philippine Constabulary; Director, National Bureau of Investigation; and the Chiefs of Police of Manila, Quezon City and Vigan, Ilocos Sur. The petition prays that respondent Judge of the Court of First Instance of Ilocos Sur be prevented from enforcing his order of February 22, 1966 directing respondent Municipal Judge of Vigan, Ilocos Sur to conduct the preliminary investigation of Criminal Case No. 3109 of the municipal court of Vigan; that respondent Judge of the Municipal Court of Vigan be prevented from enforcing the warrants of arrest issued on February 28, 1966 against the persons of the petitioners and from further proceeding with the preliminary investigation of Criminal Case No. 3109; and that respondents Chief of the Philippine Constabulary, Director of the National Bureau of Investigation, and Chiefs of Police of Manila, Quezon City and

Vigan, Ilocos Sur, be prevented from executing the warrants of arrest issued on February 28, 1966 in Criminal Case No. 3109 against the persons of petitioners.

On March 25, 1966 this Court ordered the respondents to file an answer to the petition for prohibition within ten days from receipt of the summons. This Court, how-ever, did not issue the preliminary injunction prayed for in the petition.

In due time respondents Chiefs of Police of Manila and Quezon City filed their answers. Both respondents allege in their answers that as of the date of their respective answers they had not received the warrant of arrest issued by the Municipal Court of Vigan in its Criminal Case No. 3109, but that they would submit to any order of this Court regarding the execution of said warrant of arrest when they receive the warrant.

Respondents Chief of the Philippine Constabulary, Director of the National Bureau of Investigation, and the Chief of Police of Vigan, Ilocos Sur, did not file an answer to the petition.

Respondent Judge Deogracias Solis and Acting Municipal Judge Melanio F. Lazo filed their respective answers. Both respondents admitted some allegations of the petition for prohibition and denied others. Both respondents, in their answers, maintain that they had acted in accordance with the law and the Rules of Court, and that the proceedings in the Municipal Court of Vigan were conducted in accordance with the Rules of Court, so that the warrants of arrests issued in Criminal Case No. 3109 of the Municipal Court of Vigan for the apprehension of herein petitioners were valid.

On April 2, 1966 the petitioners filed with this Court a motion for reconsideration, praying that its order of March 25, 1966 in so far as it did not issue the writ of preliminary injunction prayed for in the petition for prohibition be reconsidered. In a resolution of April 18, 1966, this Court denied petitioners' motion for reconsideration.

This case was set for hearing on oral argument on July 18, 1966. At the hearing, the petitioners prayed for a temporary restraining order, which this Court granted. And so, on July 18, 1966 a temporary restraining order was issued restraining, until further order from this Court, (1) the respondent Judge of the Court of First Instance of Ilocos Sur from enforcing his order of February 22, 1966 directing the respondent Municipal Judge of Vigan, Ilocos Sur, to conduct the preliminary investigation of Criminal Case No. 3109 entitled "People of the Philippines vs. Ernesto Somera, et al."; (2) the respondent Judge of the Municipal Court of Vigan, Ilocos Sur from enforcing the warrants of arrest issued on February 28, 1966 against the persons of all herein petitioners and from further proceeding with the preliminary investigation of said Criminal Case No. 3109; and (3) the respondents Chief, Philippine Constabulary, Director, National Bureau of Investigation, and Chiefs of Police of Manila, Quezon City and Vigan, Ilocos Sur, their agents, representatives and/or any person or persons acting upon their orders, from enforcing the warrants of arrest issued on February 28, 1956 in Criminal Case No. 3109 against the person of herein petitioners.

The main issue in this case boils down to the question of whether or not the warrants of arrest that were issued by respondent acting Municipal Judge Melanio Lazo in Criminal Case No. 3109 of the Municipal Court of Vigan are valid and enforceable. In resolving this question We have to determine whether respondent Judge Melanio Lazo had lawful authority to conduct the preliminary examination, or previous inquiry, which was the basis of his order for the issuance of the said warrants of arrest.

Based upon the facts and circumstances appearing in the record of this case, this Court is of the considered view that the actuation of respondent Judge of the Court of First Instance of Ilocos Sur and the proceedings had in the Municipal Court of Vigan were in accordance with law and the Rules of Court, and the warrants of arrest issued by the Municipal Court of Vigan in its Criminal Case No. 3109 were valid. The second paragraph of Section 2 of

Rule 112 of the Rules of Court provides as follows:

"Sec. 2. Officers authorized to conduct preliminary examination. -

x x x x

"The justice of the peace (municipal judge) of the provincial capital or of the municipality in which the provincial jail is located, when directed by an order of the Court of First Instance, shall have authority to conduct such preliminary examination or investigation of any offense committed anywhere within his province at the expense of the municipality wherein the same was committed." [8]

Under the provisions of the aforementioned second paragraph of Section 2 of Rule 112 of the Rules of Court, the municipal judge of the provincial capital may conduct the preliminary examination and investigation of any offense committed anywhere within his province when directed by an order of the Court of First Instance. [9] All that is necessary, therefore, for the municipal judge of the provincial capital to have authority or jurisdiction to conduct the said preliminary examination and investigation is an order from the Court of First Instance directing him to conduct the preliminary examination and investigation. This authority may be given *motu proprio* by the Court of First Instance [10], or it may be secured at the instance of the prosecuting officer or of the complainant [11], upon such grounds as would subserve the interest of justice. The authority may be secured by filing a petition or motion in the Court of First Instance, or by letter addressed to the Judge of the Court of First Instance, or even upon a verbal petition or request with said Judge. What matters is that the Court of First Instance finds that it is in the interest of justice that the municipal judge of the provincial capital be authorized to conduct the preliminary examination and investigation, and he issues a written order to that effect. It is within the discretion of the Judge of the Court of First Instance to grant, or not to grant, such authority. Of course, the order of the Court of First Instance must be predicated upon the existence of an information or criminal complaint charging the commission of an offense that had taken place within the province and cognizable by the Court of First Instance. It is not necessary that a criminal complaint or an information had been previously filed before the Court of First Instance. It may happen, for instance, that the offense was committed in a municipality where there is no incumbent municipal judge (and there is no auxiliary municipal judge), or for some valid reason the municipal judge can not act on the case and the municipal mayor does not want to conduct the preliminary examination himself; or the circumstance may be that the witnesses for the prosecution are afraid, or refuse, to testify if the preliminary examination and investigation is held in the municipal court of the municipality where the offense was committed. Under those circumstances the complaint or information may be filed in the municipal court of the municipality where the offense was committed, but the preliminary investigation may be conducted by the municipal judge of the provincial capital; or the complaint or information may be filed with the municipal court of the provincial capital after an order has been secured from the Court of First Instance directing the municipal judge of the provincial capital to conduct the preliminary examination and investigation. [12]

In the case now before Us, Mrs. Felicitas Fontano addressed a letter to Hon. Deogracias Solis, the executive judge of the Court of First Instance of Ilocos Sur, requesting that the municipal judge of Vigan be authorized to conduct the preliminary examination and investigation of the crime of double murder and double frustrated murder which was committed in the municipality of Bantay on November 9, 1965, of which her husband was one of the victims, alleging as ground for said request the circumstance that the witnesses that she intended to present were afraid to testify in the municipal court of Bantay. Mrs. Fontano attached to her letter copies of the criminal complaint which she had signed and the sworn statements of witnesses supporting the criminal complaint, the original of which documents were to be filed in the municipal court of Vigan if the municipal judge of Vigan were authorized to conduct the preliminary examination and investigation as requested by her. Respondent Judge Solis found the request of Mrs. Fontano meritorious, and forthwith he issued an order which "ordered and authorized"

the municipal judge of Vigan to conduct the preliminary investigation. Having with her the order of Judge Solis, Mrs. Fontano filed with the municipal court of Vigan the originals of the criminal complaint and the supporting affidavits of witnesses, copies of which she had attached to her letter-request to the executive judge of the Court of First Instance of Ilocos Sur. She also filed with the municipal court of Vigan a copy of her letter-request to the executive judge and a copy of the order of Judge Solis authorizing the municipal judge of Vigan to conduct the preliminary investigation. Respondent Judge Melanio Lazo accepted the criminal complaint filed by Mrs. Fontano and the documents accompanying it, but he did not docket the case right then. Acting pursuant to the authority granted him by the Court of First Instance of Ilocos Sur, Judge Lazo set the preliminary examination of the case for February 28, 1966. On February 28, 1966 Judge Lazo examined witnesses Modesto Paz and Jose Carmelo on their sworn statements attached to the criminal complaint, and those witnesses affirmed and swore to their statements before Judge Lazo, and their testimonies before Judge Lazo were taken down by the municipal court stenographer in the form of questions and answers. Having satisfied himself, after examining the witnesses, that there was sufficient evidence to establish that the crime complained of had been committed and that the accused named in the criminal complaint had probably committed the crime, Judge Lazo ordered the issuance of the warrant of arrest for the apprehension of the accused. Accordingly, two warrants of arrest were issued. The criminal complaint was then docketed as Criminal Case No. 3109 of the Municipal Court of Vigan.

We find that respondent Judge Deogracias Solis had acted in accordance with the provisions of the second paragraph of Section 2 of Rule 112 of the Rules of Court.[13] He had properly authorized, and clothed with jurisdiction, the municipal judge of Vigan to conduct the preliminary examination and investigation of the criminal case against herein petitioners.

Likewise, We find that respondent Municipal Judge Lazo, in conducting the preliminary examination and in ordering the issuance of the warrants of arrest, had acted in accordance with the provisions of Sections 1, 2, 4, 5 and 6 of Rule 112 of the Rules of Court. The fact that the accused, who are the petitioners herein, were not given a chance to be present at the preliminary examination did not affect the validity of the proceedings had before respondent municipal judge. Under section 5 of Rule 112 of the Rules of Court the municipal judge who conducts the preliminary examination must take under oath, either in the presence or absence of the accused, the testimonies of the witnesses for the prosecution. The accused has no constitutional right to be present during the preliminary examination.

IN VIEW OF THE FOREGOING, the petition for prohibition is dismissed. The restraining order issued by this Court on July 18, 1966 is lifted. No pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Ruiz Castro, J., on leave.

[1] Exh. A, attached to petition for prohibition, p. 15, record.

[2] Exhs. B, B-1 and B-2, attached to petition, pp. 16-20, record.

[3] Exh. C, attached to petition, p. 21, record.

[4] Exh. D, attached to petition, p. 22, record.

[5] See Exhs. B-1 and B-2 (bottom of second pages).

[6] Exh. E, attached to petition, p. 25, record.

[7] Exhs. F and G, attached to petition, pp. 26 and 27, record.

[8] Underscoring supplied. In the case of Sanidad, et al., vs. Hon. Aladin Bermudez, et al., G. R. No. L-25223 and Mariano Bañez, et al., vs. Hon. Aladin Bermudez, etc., et al., G. R. No. L-25632, May 19, 1971, this Court said: "...the Court is of the view that the word 'or' used in Sec. 2 of Rule 112, between the word 'examination' and 'investigation' should be understood to mean 'and', because the municipal judge, under the authority given him by the Court of First Instance, must conduct what was formerly called the two stages of the preliminary investigation -- the first stage, consisting of the preliminary examination (Secs. 4, 5, and 6 of Rule 112), and the second stage, consisting of the preliminary investigation proper (Sec. 10 of Rule 112)."

[9] For the purposes of this opinion, what we say re-garding "municipal judge of the provincial capital" should also apply to "municipal judge of the municipality in which the provincial jail is located."

[10] Regpala, et al., vs. Justice of the Peace of Tubod, 109 Phil. 373.

[11] People vs. Abner, 87 Phil. 566; Sanidad, et al., vs. Bermudez, et al., L-25223 and Bañez, et al., vs. Bermudez, et al., L-25632, May 19, 1971.

[12] In this connection, when we talk of "informa-tion" We refer to that information filed by the fiscal for the purpose only of commencing a criminal action and laying the basis for the proceedings relative to the con-duct of the preliminary examination and preliminary inves-tigation as provided in sections 1, 2, 3, 4, 5, 6 and 10 of Rule 112 of the Rules of Court. See Sanidad vs. Bermudez, and Bañez vs. Bermudez, supra.

[13] In the cases of Sanidad, et al., vs. Bermudez, et al., and Bañez, et al., vs. Bermudez, supra this Court held that the Court of First Instance may authorize the municipal judge of the provincial capital pursuant to the provisions of the second paragraph of Section 2, Rule 112 independently of what is provided in Section 13 of the same rule.

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