

JESUS S. RODRIGUEZ, AS PROVINCIAL FISCAL OF NEGROS OCCIDENTAL, PETITIONER, VS. FRANCISCO A. ARELLANO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL AND VICENTE MO...

G.R. No. L-8332. April 30, 1955

Ponente: LABRADOR, J.

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LABRADOR, J.:

The present action involves the interpretation of Republic Act No. 732. On August 4, 1954 the Provincial Fiscal of Negros Occidental filed an information against Vicente Monteverde for dereliction of duty. Attached to the information is a certification by the said fiscal that he had personally conducted the preliminary investigation on July 31, 1954, in accordance with Republic Act 732, and that according to the evidence of record la crime had really been committed and that there is probable cause to believe that the accused was. the author thereof. This information was amended on August 20, 1954, the facts being alleged in detail, but the amended information contains the same certification as above quoted. On August 20, 1954 the accused moved to quash the information on the ground that the fiscal did not notify the accused of the investigation. On August 28, 1954 the court sustained this motion, declaring that the accused had the right to be present at the time of the investigation conducted by the provincial fiscal, and, consequently, should have been notified so that he can take advantage of his privilege to request for his presence at the time of the investigation. It, therefore, remanded the case to the fiscal for further investigation in order to give opportunity to the accused to be present thereat. Upon the court's refusal to reconsider this order, the provincial fiscal brought this petition for certiorari in this Court, alleging that the Court of First Instance of Negros Occidental acted in excess of its jurisdiction or with grave abuse of discretion in ordering the criminal case against Vicente Monteverde to be returned to the fiscal for another preliminary investigation and in that new investigation to grant the accused the right to be present. The law involved is Section 2 of Republic Act No. 732, which provides as follows:

"Sec. 1687. Authority of Fiscal to conduct investigation in criminal matter.—A provincial fiscal shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same. If the offense charged falls within the original jurisdiction of the Court of First Instance, the defendant shall not be entitled as a matter of right to preliminary investigation in any case where the provincial fiscal himself, after due investigation of the facts made in the presence of the accused if the latter so requested, shall have presented an information against him in proper form and certified under oath by the said provincial fiscal that he conducted a proper preliminary investigation. To this end, he may, with due notice to the accused, summon reputed witnesses and require them to appear before him and testify and be cross-examined under oath by the accused upon the latter's request * * *."

We have had occasion to rule on the question now presented before us in the case of *Lozada & Lozada vs. Hernandez, et al.*, G. R. No. L-6177, promulgated April 29, 1953, where we held that it is not necessary for the provincial fiscal to notify the accused for the purpose of granting him the right to exercise his right to be present

during the preliminary investigation. Had it not been for the fact that in that case our decision was based on the additional ground that the defendant had also waived his right to demand to be present in the investigation, it would not have been necessary for us to consider the question further.

For the purpose of determining the question at issue, it is convenient for us to go back to the origin of Republic Act 732. The law authorizing the fiscal to conduct a preliminary examination (or investigation) without the presence of the accused was originally adopted for the city fiscal of Manila, under the provisions of section 2 of Act 612, amending Act 183, as amended, which provides as follows.

"* * * In cases triable only in the Court of First Instance in the city of Manila, the defendant shall have a speedy trial, but shall not be entitled as of right to a preliminary examination in any case where the Prosecuting Attorney, after a due investigation of the facts, under section thirty-nine of the Act of which this is an amendment, shall have presented an information against him in proper form: * * *."

This procedure was attacked as unconstitutional in the cases of *U. S. vs. Ocampo*, 1b Phil., 1 and *U. S. vs. Grant ana Kennedy*, 18 Phil., 122. This Court held in these cases that the procedure indicated in Act 612 constitutes due process of law, inasmuch as the right to preliminary investigation is not guaranteed in the Constitution and is a mere statutory right (*Marcos, et al. vs. Cruz*, 68 Phil., 96).

This form of preliminary investigation was adopted for the City of Manila to avoid lengthy proceedings like that outlined in sections 7 and 11 of Rule 108, and secure promptness and speediness in the dispatch of the many criminal cases being filed in the city. In the cases above cited, it was explained that because of the high qualifications demanded for the positions of fiscal and assistant city fiscals there is a sufficient guarantee of promptness and impartiality in investigations conducted by the latter even if the accused were not present. We are positive that the Legislature in adopting a similar procedure for provincial fiscals was impelled by the same desire for the prompt and speedy investigations that motivated the adoption of Act 612.

With the above considerations in mind, we now come to the contention of the respondent that the provisions of Republic Act 732, which grants the accused the right to be present "if he so requests", impliedly imposes upon the fiscal the duty of notifying the accused so that the latter may be present during the preliminary investigation. We do not agree with this contention, and we hold that the implication sought to be inferred from the grant of the right to be present, is not justified by the purposes, intention and philosophy of the provision.

It will be noted that the preliminary investigation provided in the Rules of Court consists of the preliminary examination (section 1 of Rule 108) and the preliminary investigation proper (section 11 of the same rule). In the first stage, which is preparatory to the issuance of the warrant of arrest, the accused is not present, but in the preliminary investigation proper, the second stage, which takes place after the accused has been arrested, the accused has the right to be notified not only of the substance of the information but also of the substance of the testimony and evidence presented against him. The import of the respondent's contention, that the accused must be notified of the investigation to be conducted by the provincial fiscal, is that under Republic Act 732 the accused should be given notice of the proceedings in the same manner as under section 11 of Rule 108. Were we to accept this contention there would be no practical difference between the investigations conducted by the provincial fiscal under Republic Act 732 and that conducted by a justice of the peace under section 11 of Rule 108, because in both cases the accused will have to be notified of the proceedings. This would render impossible the speedy investigation contemplated in the original law, Act 612.

Both Act 612 and Republic Act 732 expressly provide that a preliminary investigation is not a matter of right on the part of the accused. If the preliminary investigation (which is that outlined in section 11 of Rule 108) is not a matter of right on the part of the defendant, his presence thereat is not also a matter of right. To recognize the

defendant's right to be notified of the proceedings would render nugatory the express provision that the preliminary investigation is not a matter of right on his part.

The Legislature must have seen the speed and efficacy in which investigations by the city fiscal of Manila are conducted, in contrast to those before justice of the peace courts (in accordance with the provisions of section 11 of Rule 108), and it must have found it wise in the interests of the speedy dispatch of criminal cases to adopt the same procedure outlined in Act 612 for the provincial fiscals. There is a guaranty of efficiency and impartiality on the part of provincial fiscals because they have better qualifications than justices of the peace and are less amenable to influence than officials of municipalities. This legislative intent and desire would be frustrated were we to uphold the respondent's contention.

For the above considerations and following our ruling in the case of *Lozada & Lozada vs. Hernandez, et al.*, supra, we hold that it is not the duty of the provincial fiscal conducting a preliminary investigation under the authority of Republic Act 732, to notify the accused thereof so that the latter may exercise his right to request his presence in the investigation. We hold, however, that if during an investigation and prior to the filing of the information, the accused requests to be present, the fiscal must conduct the investigation in his presence. In the case at bar, we hold that the respondent judge exceeded his powers in remanding the case for a new investigation and requiring the provincial fiscal to comply with the demand of the respondent accused that he be notified thereof, because the investigation by the fiscal had already been finished and the information filed, when the demand of the accused was made. The writ of certiorari prayed for in the petition is granted and the order appealed from annulled, with costs against the respondent Vicente Monteverde. So ordered.

Pablo, Acting C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, and Reyes, J. B. L., JJ., concur.

Petition granted.

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