

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. ABUNDIO Z. ARRIETA, AS PRESIDING JUDGE IN THE CFI OF BUKIDNON, BRANCH II, CONRADO DOMINGO, ARNULFO PARAGUYA, ALIPIO DACUT AND EUG...

G.R. No. L-36982. January 31, 1974

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is a special civil action for certiorari to review the order dated May 2, 1973 of Judge Abundio Z. Arrieta of the Court of First Instance of Bukidnon in criminal case 652 directing the office of the provincial fiscal of Bukidnon "to conduct another preliminary investigation" on the information for murder filed against the private respondents Conrado Domingo, Arnulfo Paraguya, Alipio Dacut and Eugenio Fugnit, Jr. The four named private respondents, members of the police force of Maramag, Bukidnon, are charged therein with the unlawful killing of a detention prisoner (Jesus Majadora Berzabal) while in their custody.

It appears that on February 7, 1973 Sgt. Pepito G. Gasendo of the Philippine Constabulary filed with the court a quo a complaint for homicide, hereunder fully reproduced:

"The undersigned, investigator of Bukidnon Constabulary Command, Malaybalay, Bukidnon after having been duly sworn to in accordance with law, accuses DENISON ASOK, IRENEO FERENAL, CONRADO DOMINGO, ARNULFO PARAGUYA, ALIPIO DACUT and EUGENIO FUGNIT, JR. of the crime of 'HOMICIDE' committed as follows:

"That on December 31, 1972, inside the Municipal Jail of Maramag, Municipality of Maramag, Province of Bukidnon, and within the jurisdiction of this Honorable Court, the abovementioned accused, conspiring and confederating together and mutually helping one another, with intent to kill, did then and there, wilfully, unlawfully and feloniously, assault, attack and took turns in boxing, kicking, twisting the neck, fingers and arms causing serious multiple injuries, contusions and fractures on the different parts of the body of JESUS MAJADORA BERZABAL, which injuries, contusions and fractures resulted to the death of the said JESUS MAJADORA BERZABAL shortly thereafter.

"CONTRARY TO LAW.

(SGD.) PEPITO G. GASENDO

SSgt.

PC Investigator

"WITNESSES & EXHIBITS:

- SS of Romeo Peñaranda - Dagumbaan, Maramag, Bukidnon
- SS of Rogelio Peñaranda - Dagumbaan, Maramag, Bukidnon
- SS of Raul Peñaranda - Dagumbaan, Maramag, Bukidnon

- SS of Caridad Berzabal - Kisanday, Maramag, Bukidnon
- SS of Dr. Cenon Tiongson - Dangcagan, Bukidnon
- SS of Herminigildo Sibug - Maramag, Bukidnon
- Autopsy Report dated January 1, 1973
- Certification from the Office of the Municipal Treasurer, Maramag, Bukidnon
- Others - Reserved."

On February 12, 1973 the respondent judge ordered the provincial fiscal's office to conduct a preliminary investigation on Sgt. Gasendo's complaint, none having been made previously, and to file the necessary information upon a finding of probable cause.

Pursuant to the provisions of Presidential Decree No. 77 (reproduced in Department of Justice Memorandum Circular No. 11),^[1] the inquest fiscal issued a subpoena to each of the accused, together with a copy of the complaint and copies of the affidavits of the witnesses mentioned in the complaint, requiring the accused to answer the same by counter-affidavits and other supporting documents. Only the accused Asok and Fernal submitted counter-affidavits. The four private respondents, through counsel, merely submitted a request that the investigation be resolved.

On February 27, 1973 Sgt. Gasendo affirmed before the fiscal the truth of the matters alleged in his complaint, and the prospective witnesses named in the complaint likewise affirmed the truth of the matters asserted in their respective affidavits.

On March 26, 1973 the inquest fiscal filed the following information against the private respondents:

"The undersigned Assistant Provincial Fiscal accuses CONRADO DOMINGO, ARNULFO PARAGUYA, ALIPIO DACUT, and EUGENIO FUGNIT, JR. of the crime of MURDER, committed as follows, to wit:

"That on or about the 31st day of December, 1972 in the morning, noon, and in the evening particularly in the municipal jail of the Municipality of Maramag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who are members of the Police Force of Maramag, conspiring together and mutually helping each other with intent to kill by means of treachery and with cruelty by deliberately and inhumanly augmenting the suffering of the victim, did then and there wilfully, unlawfully, and criminally kick, maul, box, strike, strangulate the neck and twist the hands and head of Jesus Mejjorada Berzabal, a detention prisoner, whose hands were tied and was unable to defend himself inflicting on his person the following injuries:

- Contusion right eye;
- Contusion right side of the head with slight fracture;
- Rope indentation marks over the left wrist and neck;
- Dislocation of the first and second cervical vertebrae and fracture of the odontoid process;
- Epistaxis or nose bleeding;
- Subluxation between the fifth and sixth cervical vertebrae;

which caused the death of the latter the following morning.

"The crime was committed with the following aggravating circumstances of:

- That advantage was taken by the offenders of their public position.
- Means were employed to weaken the defense.
- It was committed with abuse of superior strength.

"Contrary to and in violation of Article 248 in relation to Article 14, paragraphs 1 and 15 of the Revised Penal Code.

(SGD.) FLOR M. RECINA
Fifth Assistant Provincial Fiscal

"WITNESSES:

1.

Romeo Peñaranda

-

Dagumbaan, Maramag, Bukidnon

2.

Raul Peñaranda

-

- do -

3.

Rogelio Peñaranda

-

- do -

4.

Caridad Berzabal

-

Kibangay, Maramag, Bukidnon

5.

Ciriaco Ducusin

-

Musuan, Maramag Bukidnon

6.

Dr. Cenon Tiongson

-

Dangcagan, Bukidnon

7.

Dr. Ascario E. Marty and others.

-

Valencia, Bukidnon

"No bailbond recommended.

"APPROVED:

"(Sgd) Arcadio D. FABRIA
Acting Provincial Fiscal

"C E R T I F I C A T I O N

"I HEREBY CERTIFY that I have conducted the proper preliminary investigation on this case in accordance with the provision of Section 1687 of the Revised Administrative Code, as amended by R.A. 732 and as further amended by R.A. 1799, in relation to Republic Act 5180 as amended by Presidential Decree No. 77 dated December 6, 1972, and have examined the complaint* and his witnesses under oath and that on the basis of their sworn statements and other evidence submitted, there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty as complained of.

"I likewise certify under oath that the accused was informed of the complaint and of the evidence submitted against him and that he was given opportunity to submit controverting evidence.

"Malaybalay, Bukidnon, March 26, 1973.

(SGD.) FLOR M. RECINA
Fifth Assistant Provincial Fiscal

"SUBSCRIBED AND SWORN to before me this 26th day of March, 1973 at Malaybalay, Bukidnon.

(SGD.) FLORENTINA R. VILLANUEVA
Deputy Clerk of Court"

On April 18, 1973 the private respondents filed a motion to quash the information on the ground that the fiscal erred in charging them with the more serious crime of murder on the basis of a complaint for mere homicide without a new preliminary investigation, invoking *Bandiala vs. Court of First Instance of Misamis Occidental*.^[2]

On May 2, 1973 the respondent judge, without granting the motion to quash, ordered the fiscal to "conduct another preliminary investigation after requiring PC Investigator Pepito G. Gasendo to amend his complaint from Homicide to Murder."

Hence, the present recourse: a special civil action for certiorari and mandamus filed on June 14, 1973 by the petitioner, questioning the applicability in the case at bar of the rule laid down in *Bandiala*.

We hold that *Bandiala* is inapropos in the case before us.

In *Bandiala* the municipal judge, with whom the complaint for "robbery in band" against *Bandiala* was filed, upon determination of the existence of a probable cause after preliminary investigation, remanded the case to the court of first instance for trial on the merits. However, the fiscal filed instead, without a new preliminary investigation, an information for "robbery with kidnapping." The fiscal had denied *Bandiala's* request for a copy of an alleged written confession of *Bandiala* upon which the inclusion of the offense of "kidnapping" in the questioned information was apparently based.

This evidence was withheld by the fiscal at the preliminary investigation conducted by the municipal court, only to uncover and reveal it later for the purpose of raising the category of the offense to be charged by him in the information. In condemning this action of the fiscal, we pointedly expressed the reminder that "the role of a fiscal is not mainly to prosecute, but essentially to do justice to every man and to assist the courts in dispensing that justice." Trite to add, the facts in *Bandiala* are a world disparate from those obtaining in the case at bar.

In this case before us, when Sgt. Gasendo filed his complaint in the court a quo, no preliminary investigation had as yet been had thereon, and none was ever conducted by the respondent judge who, instead, directed the office of the provincial fiscal to conduct one. It is not disputed that the inquest fiscal faithfully complied with the provisions of Presidential Decree No. 77, *supra*, governing preliminary investigation of cases filed with the fiscal's office.

Moreover, a close scrutiny of all the exhibits adduced before the inquest fiscal completely satisfies this Court that the explicit allegations in the information of qualifying and aggravating circumstances, namely, treachery, cruelty, taking advantage of public position, employment of means to weaken the defense, and abuse of superior strength, find ample basis in the positive declarations contained in the affidavits of the witnesses listed in the complaint. Consequently, the fiscal cannot be faulted for arriving at the opinion that an information for murder, and not merely for homicide, should be filed against the private respondents.

ACCORDINGLY, the order of the respondent judge dated May 2, 1973 in criminal case 652 is annulled and set aside. The respondent judge is hereby ordered to set the said criminal case forthwith for arraignment and trial in accordance with law. Costs de officio.

Makalintal, C.J., Makasiar, Esguerra, and Muñoz Palma, JJ., concur.
Teehankee, J., in the result.

[1] The said Circular reads, *inter alia*:

"Quoted hereunder is Presidential Decree No. 77 dated December 6, 1972 amending Section 1 of Republic Act No. 5180 prescribing a uniform system of preliminary investigation:

‘1. 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 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 questions 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 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, and that on the basis of the sworn statements and other evidence submitted before him 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.

‘2. All provisions of existing laws, orders, rules and regulations contrary to or inconsistent with the provisions of this Decree are hereby repealed.

‘3. This Decree shall take effect immediately.’”

* This word should be "complainant."

[2] L-24652, Sept. 30, 1970, 35 SCRA 237.

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