

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. BENJAMIN NAPAGAO, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-7612. October 29, 1955*

Ponente: PARAS, C.J.

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Arsenio Napagao was charged with homicide in a complaint filed with the Justice of the Peace Court of Oton, Iloilo. As the accused waived his right to preliminary investigation, the case was forwarded to the Court of First Instance of Iloilo. Thereupon the provincial fiscal conducted a preliminary investigation, with the result that an information was filed not only against Arsenio Napagao but also against Benjamin Napagao and Bernan Napagao. The latter two filed a motion to quash, alleging that the preliminary investigation conducted by the provincial fiscal was irregular and violative of Republic Act No. 732, in that they were not present at said investigation. Over the opposition filed by the fiscal, the Court of First Instance of Iloilo dismissed the information as against Benjamin and Bernan Napagao who were ordered released. The prosecution has appealed.

In case of *Lozada vs. Hernandez, et al.*, (92 Phil., 1051), decided on April 29, 1953, we already hinted that the provincial fiscal is not required to give notice of the preliminary investigation so that the accused may be present thereat, unless the accused has made the proper request. In the portion pertinent to the issue herein involved, Republic Act No. 732 provides as follows:

"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. The attendance or evidence of absent or recalcitrant witnesses who may be summoned or whose testimony may be required by the provincial fiscal under the authority herein conferred shall be enforced by proper process upon application to be made by the provincial fiscal to any Judge of First Instance of the Judicial District. But no witness summoned to testify under this section shall be compelled to give testimony to incriminate himself."

It is quite obvious from the foregoing provision that the legal duty of the provincial fiscal to notify the accused of the preliminary investigation, arises only after the latter expressly requests that said investigation be made in his presence. Counsel for defendants-appellees, in contending otherwise, stresses the fact that the above quoted provision recites that "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," and "that the attendance or evidence of absence or recalcitrant witnesses who may be summoned or whose testimony may be required by the provincial fiscal * * * shall be enforced by the proper process upon application

to be made by the provincial fiscal to any Judge of the First Instance of the Judicial District." Insamuch, however, as the sentences referred to by counsel for defendants-appellees, are introduced by the phrase "to this end", they are to be construed in relation to the preceding provision, namely, that the accused should make the corresponding request if he desires to be present at the investigation. The clause "if the latter so requested," appearing in the second sentence of the above quoted provision of Republic Act No. 732 would be meaningless, if in all cases the fiscal is bound⁴ to notify and require the presence of the accused.

Wherefore, the appealed order is reversed and the case remanded to the Court of First Instance of Iloilo for further proceedings. So ordered, without costs.

Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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