

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. VICENTE MARQUEZ, DEFENDANT-APPELLEE.

G.R. No. L-23654. March 28, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by the People from the order of the Court of First Instance of Albay in its Criminal Case No. 3544, granting the motion to dismiss filed by the appellee, Vicente Marquez.

On November 12, 1962, a complaint for frustrated homicide was filed with the then Justice of the Peace Court of Camalig, Albay, against appellee Vicente Marquez. The said complaint was signed by one Consolacion Musa Solano, mother of the offended party, Wenceslao Solano, who was then confined in the Albay Provincial Hospital, in consequence of the crime charged. A warrant of arrest was issued, but this was not carried out because the accused had filed a bail bond in the amount of P12,000.00. When the case was later called for purposes of conducting the second stage of the preliminary investigation, the accused, thru counsel, waived his right thereto; accordingly, the record of the case was remanded to the court a quo; and on July 9, 1963, the Provincial Fiscal of Albay filed the corresponding information with the said court.

Upon being arraigned on August 22, 1964, appellee entered a plea of not guilty to the charge.

On the day of the trial on September 25, 1964, without asking for leave to withdraw his previously-entered plea, appellee filed a motion to dismiss on the ground that the information filed by the Provincial Fiscal of Albay - based on the complaint signed by Consolacion Musa Solano in behalf of her victim-son or offended party - was null and void and the court had no jurisdiction to hear, try and decide the case.

Resolving the grounds raised in said motion to dismiss as well as those in the oppositions thereto, separately filed by the private prosecutor and the Assistant Provincial Fiscal of Albay, on October 1, 1964, the court dismissed the case, with costs de oficio, and ordered the cancellation of the bail bond of appellee. The Assistant Provincial Fiscal concerned has appealed from the dismissal aforesaid directly to this Court.

The People's appeal is premised on the following assignment of errors:

"I. The lower court erred in dismissing the case after the appellee had already pleaded to the information.

"II. The lower court erred in holding that it did not acquire jurisdiction to try the case."

On the other hand, as herein earlier intimated, the main point of appellee which was sustained by the trial court is that the complaint signed by the mother of the offended party which initiated the proceedings in the justice of the peace court was invalid because under Section 2 of Rule 110, a complaint may be subscribed and sworn to only by "the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated" and, consequently, the information based on the said complaint filed by the Provincial Fiscal of Albay, without said fiscal having conducted another preliminary

investigation, did not grant jurisdiction to the court.

The People's appeal should be sustained.

We do not hesitate to agree with the Solicitor General that the trial court's questioned order of dismissal is erroneous, being based, as it is, on the ground that it had no jurisdiction over this case because the initial complaint filed with the justice of the peace court was not signed by the offended party and was, therefore, invalid. It may be conceded that, as appellee argues, apart from what is provided in the Rule cited, there are precedents to the effect that, except as to the government officers authorized by said Rule, the filing of a complaint is personal to the offended party.[1] This is not, however, the only principle involved under the complete factual setting of this case. It must be remembered that appellee did not attack the said complaint while his case was still in the justice of the peace court, where, on the contrary, he waived the preliminary investigation proper; he allowed the case to be remanded to the court of first instance and folded his arms when the provincial fiscal filed the corresponding information; and, he did not object to his being arraigned, instead he merely entered a plea of not guilty at said arraignment. In these circumstances, We hold that the initial complaint has lost its importance and the case can be viewed only in the light of the information subsequently filed by the provincial fiscal, as suggested by the Solicitor General.

We do not lose sight of the fact that in truth the fiscal did not conduct any preliminary investigation of his own and, as a matter of fact, the information filed by him with the court a quo did not carry with it the sworn certification of the fiscal, required by section 14 of Rule 112, that the appellee was "given a chance to appear in person or by counsel at said examination and investigation." Neither are We overlooking precedents to the effect that absence of a preliminary investigation is a grave irregularity which nullifies the proceedings because it violates the right to due process.[2] We perceive, however, that the situations involved in those precedents cannot be equated with the circumstances obtaining here, for while there, the objections to the procedure followed were opportunely raised before the accused entered their pleas, here, appellee sought the dismissal of this case long after he had already entered his plea of not guilty to the information filed by the fiscal.

Therefore, the question to determine in this case is, what was the effect of appellee's failure to object to the information before or at the time he entered his plea of not guilty. Assuming that said information was defective because it did not contain the requisite certification regarding the fiscal's having held a preliminary investigation where the accused was given an opportunity to be present personally or thru counsel, such an omission is not necessarily fatal. It should be observed that section 3 of Rule 110 defines an information as nothing more than "an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court." Thus, it is obvious that such certification is not an essential part of the information itself and its absence cannot vitiate it as such. True, as already stated, section 14 of Rule 112 enjoin that "no information . . . shall be filed, without first giving the accused a chance to be heard in a preliminary investigation", but, as can be seen, the injunction refers to the non-holding of the preliminary investigation, not the absence of the certification. In other words, what is not allowed is the filing of the information without a preliminary investigation having been previously conducted, and the injunction that there should be a certification is only a consequence of the requirement that a preliminary investigation should first be conducted. Logically, therefore, inasmuch as the settled doctrine in this jurisdiction is that the right to the preliminary investigation itself must be asserted or invoked before the plea, otherwise, it is deemed waived,[3] it stands to reason, that the absence of the certification in question is also waived by failure to allege it before the plea. After all, such certification is nothing but evidence of a fact, and if the omission of the fact itself to be certified is waived, if not properly raised before the accused enters his plea, why should the omission merely of the certification be given more importance than the absence of the fact itself to be certified to? Is it to be sustained that if in a given case, there were such a

certification although in fact no preliminary investigation has been held, this Court is going to hold that the requirement of a preliminary investigation has been complied with? To ask the question is to immediately expose the absurdity of the affirmative answer to it.

To be sure, the situation of appellee may be compared with another case where the fiscal, for one reason or another, files an information without holding any preliminary investigation and without any such preliminary investigation having been conducted, by the municipal court concerned. After all, under the Rules, a criminal action may also be initiated by the fiscal filing an information with the proper court. (section 3, Rule 110) On the other hand, as already stated, this Court has consistently held that the defense of absence of a preliminary investigation must be raised before the entry of the plea, otherwise, it is waived. Accordingly, even assuming, for the sake of argument, that the complaint in the justice of the peace court was void, as contended by appellee, on the other hand, the filing of the information in question with the court a quo made the issue of validity of said complaint already academic, considering that the said complaint had already been superseded by the said information. And since the said information is sufficient in form and substance, and the absence of a preliminary investigation may only be raised before the accused enters his plea, otherwise, it is waived, it follows that appellee forfeited his right to question both the complaint and the information under discussion by entering his plea of not guilty and otherwise submitting to the jurisdiction of the court for trial.

WHEREFORE, the order appealed from is reversed, and this case is hereby remanded to the lower court for further proceedings, with costs against appellee.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, and Teehankee, JJ., concur.

[1] U.S. vs. Malabon, 1 Phil. 731; Guevarra, et al. vs. Del Rosario, et al., 77 Phil. 615.

[2] Albano, et al. vs. Arranz, et al., L-24403, December 22, 1965; People vs. Monton, L-23906, June 22, 1968, 23 SCRA 1024.

[3] People vs. Solon, 47 Phil. 443; People vs. Oliveria, supra; People vs. Magpale, 70 Phil. 176; People vs. Lambino, 103 Phil. 504; People vs. Selfaison, et al. L-14732, January 28, 1961, 1 SCRA 235; People vs. Casiano, February 16, 1961, 1 SCRA 479.

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