

DELFIN B. ALBANO, ET AL., PETITIONER, VS. THE HON. MANUEL ARRANZ, ET. AL., RESPONDENTS.*G. R. No. L-24403. December 22, 1965*

Ponente: BAUTISTA ANGELO, J.

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At about 2:30 in the afternoon of March 18, 1965, when the Court of First Instance of Isabela was about to hear the election protest for mayor in Civil Case No. 1641 entitled Albano vs. Aggabao, a shooting incident occurred right in front of the courthouse wherein some bodyguards or followers of Congressman Delfin Albano and his brother were involved. As a result two persons were killed, namely, Marcial Aggabao and Damaso Decena. Immediately after the shooting the culprits fled from the scene of the crime, whereupon after gathering sufficient evidence the provincial fiscal filed an information directly with said court charging with multiple murder Delfin Albano, his brother Florencio, and some of his bodyguards or followers.

Giving due course to the information, the Court of First Instance of Isabela conducted an investigation allegedly in accordance with Section 13, Rule 112 of the new Rules of Court, by taking the declarations of Macario Bautista, Melecio Gumaru, Melecia Mabbayad and Lorenzo C. Aggabao, and on the basis thereof as well as of the medical certificates issued concerning the death of the victims which show that the crime has been probably committed, it issued a warrant of arrest for their apprehension. Incidentally, the court referred the case to the provincial fiscal in order that he may file the corresponding information as required by the rule fixing no bail for the provisional liberty of the accused, except Delfin Albano and his brother Florencio, against whom the evidence of guilt does not appear to be strong, who may be freed if they so desire upon filing a bond in the amount of P40,000.00.

Considering that the information filed by the provincial fiscal as well as the warrant of arrest issued against the accused are patent nullities for having been filed or issued in violation of pertinent provisions of the rules relative to cases that are directly filed with the court of first instance, Delfin Albano and his co-accused filed before this Court the present petition for certiorari imputing grave abuse of discretion to respondents and praying that, pending the determination of the case on the merits, a writ of preliminary injunction be issued restraining them from enforcing and giving effect to said information and warrant of arrest upon the filing of a bond that the Court may deem proper to fix in the premises.

This Court gave due course to the petition requiring respondents to file their answer within 10 days from notice, and, upon their filing of a bond in the amount of P1,000.00, it issued the injunction prayed for.

Respondents in their answer averred that respondent Judge conducted the investigation prescribed in Section 13 of Rule 112 of the Rules of Court by examining and taking down the testimony of four witnesses relative to the guilt of the accused, and that, as a result of said investigation, respondent judge issued the requisite warrant of arrest because he found that there was probable cause for the commission of the offense charged. They prayed that the petition be dismissed.

Section 13 of Rule 112, under which respondent judge claims to have conducted the investigation leading to the arrest of the herein accused, reads as follows:

"Sec. 13. Preliminary examination and investigation by the judge of the Court of First Instance.—Upon complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the justice, of the peace referred to in the second paragraph of section 2 hereof for preliminary examination and investigation, or himself conduct both preliminary examination and investigation simultaneously in the manner provided in the preceding sections, and should he find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information."

It clearly appears from the above that when a complaint is filed directly with a court of first instance the judge may himself conduct both the preliminary examination and investigation simultaneously in the manner provided in the pertinent section of the same rules and if he finds reasonable ground to believe that the crime has been committed he shall refer the case to the fiscal for the filing of the corresponding information.

The first question then that may be asked is: Was the particular case in question properly filed before the Court of First Instance of Isabela?

The answer must necessarily be in the negative for the rule speaks of a complaint and not of any other pleading if it is desired that the case be initiated in said court. And here what was filed is not a complaint but an information. And this we say because under Section 2 of Rule 110 only three persons may file a criminal complaint, namely, (1) the offended party; (2) any peace officer, and (3) an employee of the government or governmental institution in violation of the enforcement or execution of the law violated.

The provincial fiscal certainly is not one of these three, and so the information filed by the fiscal which initiated this proceeding cannot be considered as the complaint referred to in the above-quoted rule. Consequently, the proceedings conducted by respondent judge which respondents claim to be the preliminary examination and preliminary investigation required by said rule were without any legal basis.

In this connection, it is pertinent to point out that whereas Section 4 of Rule 108 of the old Rules of Court authorized a judge of first instance to conduct a preliminary investigation "upon complaint or information filed directly with him", under the section under consideration the judge can act only "upon complaint filed with the court", the word "information" having been eliminated. This elimination supports our view on this point.

The contention that respondent judge has substantially complied with the rule in that he had conducted the preliminary examination and investigation prescribed therein because he had examined and taken down the testimonies of at least four witnesses which led him to conclude that there was reasonable ground to believe that the crime charged has been committed, has no legal basis. What respondent judge has done is not the examination and investigation required in Section 13 of Rule 112 which was erroneously interpreted as meaning simply the preliminary examination intended in the old rule. The correct interpretation is that both the examination and investigation should be undertaken, albeit simultaneously, as these terms were originally conceived or intended in the old rules, and this may be seen by a brief comparison of the new and old rules on the matter.

Thus, Section 4 of Rule 108 of the old rules provides:

"SEC. 4. Investigation by the judge of the Court of First Instance.— Upon complaint or information filed directly with the Court of First Instance the judge thereof shall conduct a preliminary investigation in the manner provided in the following sections, and should he find a reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest and try the case on the

merits."

Note that Section 4 merely provides that the judge shall conduct the preliminary investigation in the manner provided in the following sections which have reference to the investigation to be conducted by the justice of the peace or the fiscal which merely consists in taking the testimony of the complainant and his witnesses, or what we know as the first stage of the preliminary investigation. In fact, under the old rule that is the only meaning of preliminary investigation for the accused had then no right to be heard until after his arrest (Sections 6, 7 and 11). The only thing a judge has to do is merely to examine the complainant and his witnesses and if afterwards he has reasonable ground to believe that the accused has committed the crime he may then issue a warrant for his arrest. And it is only after his arrest that the defendant, if he so desires, may request that he be heard or allowed to present evidence in his defense. In substance, this is what this Court has said in interpreting similar provisions of General Orders No. 58 concerning the preliminary investigation to be conducted by judge of first instance in the following leading case:

"* * * when the investigation is held by the Judge of the Court of first Instance of the province where the crime is committed, there is but one proceeding, and that is the one prescribed by section 18 of General Orders No. 58, the making of an investigation necessary for determining whether or not a crime was committed and whether or not there are reasonable grounds to believe that the accused committed it, in which event the Judge of the Court of First Instance "will issue warrant of arrest for the detention of the accused." (People vs. Solon, 47 Phil., 443)

But the new Rules of Court introduced an innovation in the proceedings when the investigation is to be conducted by a court of first instance. The innovation consists in Squiring said court not only to conduct the preliminary examination proper but the preliminary investigation as well, as it is clearly seen in Section 13 of Rule 112 already quoted above.

Thus, it is interesting to note that the aforequoted Section 13 requires that both examination and investigation be conducted by the judge simultaneously, that is, on the same occasion, by receiving the evidence of the complainant in the presence of the accused, as well as the evidence of the latter, if he so desires, and that only when he finds reasonable ground to believe that the accused had committed the offense charged that he shall issue a warrant for his arrest. Hence it is a mistake to claim that it merely contemplates one proceeding, or the holding of preliminary examination which may be conducted ex parte, or in the absence of the accused. This is precisely an innovation which, according to Mr. Justice Alejo Labrador, was introduced to dispel the ambiguity existing in the old rules,[1] as may be gleaned from the following comment:

"Now, we come to Section 13. The old rule is found in Rule 108, Section 4, with regard to investigation by the Judge of the Court of first Instance. We have changed that considerably. The section heading is now 'Preliminary Examination and Investigation by the Judge of the Court of First Instance' Under Section 13, if the judge of the Court of First Instance decided to make an inquiry on a complaint filed directly with his court, he can conduct both the preliminary examination and investigation simultaneously in a manner provided in the preceding sections. If he finds reasonable ground to believe that the defendant committed the offense charged, he should issue a warrant of arrest, and thereafter refer the case for the fiscal for the filing of the corresponding information. Now, does the fiscal investigate further? No more! The judge of the Court of First Instance has already conducted the preliminary examination and investigation." (Proceedings of the Institute on the Revised Rules of Court, p. 75)

Since compliance with such procedure is a requirement of due process, it is clear that its non-observance has the effect of nullifying the proceedings of the court. And since in this particular case such procedure was not followed our opinion is that the proceedings had by respondent judge leading to the arrest of petitioners herein are null and void and should be set aside.

Wherefore, petition is granted. The order of arrest issued by respondent judge is set aside. No costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

Petition granted.

[1] Justice Labrador is the main architect of the changes made the new rules.

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