

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. ADELO ABEJUELA, DEFENDANT-APPELLEE.

G.R. No. L-29715. March 31, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This joint decision is rendered on an identical question of law on two separate appeals by the State from the dismissal orders issued by the city court of Cagayan de Oro in two criminal cases, on the common ground that the accused therein were not granted a preliminary investigation.

The Court is called upon to decide whether in the prosecution before the city courts of offenses falling within the concurrent jurisdiction of city courts and the courts of first instance, the accused is entitled to be heard in a preliminary investigation conducted by the city fiscal or his assistants, before the filing of the information against the accused.

In Case L-29715, the accused Adelo Abejuela was charged by an assistant fiscal of Cagayan de Oro City in an information filed on June 26, 1968, with the city court of the city, of the crime of qualified trespass to the dwelling of one Teodoro Pagaan.[1] The affidavits of the offended party and three witnesses were submitted with the information. Upon the filing of the information, the lower court issued the warrant of arrest which was served on the accused the next day. The accused subsequently posted the bail fixed at P1,000.00. At the arraignment on July 30, 1968, his counsel manifested that he was filing a motion to quash the information on the ground that the accused had been deprived of the right of preliminary investigation, which motion was filed on August 8, 1968. Acting upon the motion, the lower court ordered on August 20, 1968 the dismissal of the case for lack of preliminary investigation and cancellation of the accused's bail bond.

In Case L-29833, the accused Vidal Endan was likewise charged by an assistant fiscal of the same city in an information filed on September 10, 1968, with the same lower court, of the crime of grave oral defamation against one Dominga de Lecmoan.[2] The affidavits of the offended party and two witnesses were submitted with the information. The arrest warrant was served on September 16, 1968, and the bail bond of P2,000.00 was posted by the accused on the same day. At the arraignment on October 4, 1968, he pleaded not guilty after which his counsel moved to quash the information of the accused for not having been afforded the right of preliminary investigation. The same lower court issued its order of the same date dismissing the case for the same ground of lack of preliminary investigation and cancelling the bail bond.

The State's separate motions for reconsideration in the two cases were denied in the lower court's extended orders of October 2, 1968 and October 23, 1968. The lower court opined that the provisions of Rule 112, section 14 of the Rules of Court, entitled "Preliminary examination and investigation by provincial or city fiscal or by state attorney in cases cognizable by the Court of First Instance" and decreeing that -?

in the absence of an investigation by a judge of first instance, municipal judge or other authorized officer, "no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city

fiscal, or state attorney, without first giving the accused a chance to be heard in a preliminary investigation conduct-ed by him or by his assistant by issuing a corresponding subpoena" and that "the fiscal or state attorney shall certify under oath in the information to be filed by him that the defendant was given a chance to appear in person or by counsel at said examination and investigation" --

are applicable to prosecutions for offenses within the concurrent jurisdiction of both the city courts and the courts of first instance, such as the prosecutions at bar for qualified trespass to dwelling and for grave oral defamation, notwithstanding the mandate of the second paragraph of section 10 of the same Rule 112 that --

"In cases triable in the justice of the peace or municipal courts (now municipal or city courts),[3] the accused shall not be entitled as a matter of right to a preliminary investigation in accord-ance with this section."

The lower court reasoned that "(C)onsidering that all offenses cognizable by the Court of First Instance, the accused is entitled to a preliminary investigation prior to the filing of an information before said court (Sec. 14, Rule 112 of the Rev-ised Rules of Court) it follows that the accused, in the case at bar, x x x is entitled to a preliminary investigation notwith-standing that the case against him is to be tried by the City Court under its concurrent jurisdiction since the latter court in trying said offense sits with equal authority as the Court of First Instance, the proceedings are recorded and judgment thereof is taken directly to the Court of Appeals or to the Supreme Court as the case may be. (Sec. 87, Rep. Act 296, as amended by Rep. Act 2613, and Rep. Act 3828; Antonio Esperat vs. David P. Avila, G. R. No. L-25922, promulgated June 30, 1967). To hold the contrary view, it would establish two different standards in the administration of justice and procedure in connection with prosecution of offenses which are cognizable by the Court of First Instance or the City Court under its concurrent jurisdic-tion, because if the City Fiscal chooses to file an information x x x directly before the Court of First Instance, the accused is entitled to be heard in a preliminary investigation conducted by the City Fiscal or his assistants in which the accused is allowed to be present, cross-examine the complainant and his witnesses, and to offer evidence in his favor, before filing an information against accused. However, if the City Fiscal chooses to file an information for the same offense x x x be-fore the City Court under its concurrent jurisdiction with the Court of First Instance, the accused is denied said substantial right to which said accused is entitled if the case is to be filed directly before the Court of First Instance. This Court believes that the framers of the Revised Rules of Court did not have this situation in mind, when they incorporated the provision of Sec. 14, Rule 112 of the Revised Rules of Court by establishing double standard in the administration of justice and procedure in the prosecution of offenses within the concurrent jurisdiction-al boundary of said two courts. " It concluded that the specific provision of section 10 of Rule 112, quoted above, that the accused is not entitled as a matter of right to a preliminary in-vestigation in cases triable in the municipal or city courts "applies only to cases which are triable by the inferior court under its original exclusive jurisdiction", where the proceed-ings are not recorded and judgment therein is appealable to and tried de novo by the court of first instance.

The State has therefore filed these appeals, assigning as principal error the lower court's dismissal of the cases below for lack of preliminary investigation, when the accused were not entitled thereto as a matter of right under section 10 of Rule 112, since their cases were triable by the lower court under its concurrent jurisdiction with courts of first instance.

The appeals are meritorious and should be sustained.

1. It is settled dogma that the right to a preliminary investigation is of statutory character and the right thereto may be invoked only when specifically granted by the statute. In promulgating the present Revised Rules of Court effective Jan-uary 1, 1964, the Court's intention to withhold the right of preliminary investigation from the accused in cases triable by municipal and city courts was made manifest and of record in the proceedings of the U. P. Law Center's Institute of the Revised Rules of Court conducted on December 12-14, 1963, by Mr. Jus-tice

Alejo Labrador (now retired), chairman, with Mr. Justice J. B. L. Reyes, as member, of the Court's Committee on Rules, thus:

"Now, Section 11 of Rule 108 of the old rules has been amended. Please turn to Section 10 of Rule 112 of the Revised Rules of Court on the right of the accused to preliminary investigation. After the arrest of the accused and his delivery to the court, he shall be informed of the complaint or information filed against him. He shall be given access to the testimony and evidence presented against him at the preliminary examination, and, if he desires to testify or to present witnesses or evidence in his favor, he shall be allowed to do so. The testimony of the witnesses presented at this investigation need not be reduced in writing but the testimony of the accused shall be taken in writing and subscribed by him. x x x .

"Now look at the second paragraph. We inserted that provision. It provides that in cases triable by the justice of the peace or municipal courts, the accused shall not be entitled as a matter of right to a preliminary investigation in accordance with this section. He is not entitled to it because the case goes to trial already. That is the rule the practice, rather. This is a new provision."[4]

During the interpellation period of the proceedings, when queried whether such withholding of the right of preliminary investigation in cases triable by municipal and city courts would work against the accused's right "from being taken by surprise", Mr. Justice Labrador emphasized that "that preliminary investigation can be exercised at the trial.[5] "As a matter of fact, the very contention of the lower court against "two different standards in the administration of justice and procedure" was likewise raised in the proceedings and was thus answered and clarified:

'Atty. Araneta: But this makes a great deal of difference to the accused where a preliminary investigation is a matter of right when the case is to be tried in the Court of First Instance, but not anymore if the case is to be tried in the justice of the peace of the court.

"Justice Labrador: Yes, but in the cases triable in the justice of the peace courts or municipal courts, there is no preliminary investigation because they involve only minor offenses, only misdemeanors. Therefore, there is no need for preliminary investigation. The case goes to trial right away."[6]

Indeed, balancing the considerations, the withholding of the right of the preliminary investigation from the accused in cases triable by the inferior courts involving offenses with lower penalties than those exclusively cognizable by courts of first instance, could not be termed an unjust or unfair distinction. The loss of time entailed in the conduct of preliminary investigations with the consequent extension of deprivation of the accused's liberty, in case he fails to post bail, which at times outlasts the period of the penalty provided by law for the offense, besides the mental anguish suffered in protracted litigations, are eliminated with the assurance of a speedy and expeditious trial for the accused, upon his arraignment (without having to undergo the second stage of the preliminary investigation), and of a prompt verdict on his guilt or innocence. On the other hand, the so-called first stage of preliminary investigation or the preliminary examination, conducted by the duly authorized officer,[7] as borne out by the examination and sworn written statements of the complainants and their witnesses, generally suffices to establish the existence of reasonable ground to charge the accused with having committed the offense complained of.

2. The lower court's construction of the provisions in question is difficult to sustain, furthermore, because it would insert double qualifications in the Rules, where none has been provided. Thus, it would qualify section 14 of the Rule by taking the rule to mean that "no information for an offense cognizable by the Court of First Instance concurrently with the inferior courts shall be filed" without the accused having been given a chance to be heard in a preliminary investigation - when the rule is clearly expressed and intended to apply only when the case is cognizable the Court of First Instance, be it one of its exclusive jurisdiction, or of concurrent jurisdiction filed

with it. In addition, the lower court would further qualify section 10 of the Rule by straining its clear and unambiguous provision to mean that the withholding of the right of preliminary investigation applies only in cases which are triable by the inferior courts under their exclusive original jurisdiction - when the rule plainly provides that there shall be no right of preliminary investigation in cases triable by the inferior courts, without distinction as to whether such cases be of their exclusive or concurrent jurisdiction.

3. The lower court's observation that the State's construction of the Rule's provisions, as sustained by the Court, would leave to the city fiscal the choice of allowing or denying the accused the right of preliminary investigation by filing the information for an offense of concurrent jurisdiction with the court of first instance, or the city court, as the case may be, does not militate against the validity of the rule. It is to be assumed that the right of choice of forum granted to the city fiscal will be exercised properly in the interests of an expeditious and orderly administration of justice, and experience has borne out that informations for such offenses have been invariably filed with the inferior courts - absent an overriding compelling reason to file the same with the courts of first instance whose dockets are generally more taken up with cases requiring protracted trials - for considerations equally of benefit to the State as well as to the accused^[8] since their decisions are given the same weight as those of the courts of first instance and are appealable directly to the Court of Appeals or the Supreme Court, as the case may be.^[9] Similarly, provincial and city fiscals have been granted the choice of forum with regard to the filing of informations for serious crimes within the concurrent jurisdiction of the courts of first instance and the circuit criminal courts,^[10] with a case filed with the circuit court having the advantage or disadvantage, depending upon the accused's viewpoint, of continuous trial until termination and a prompt verdict within thirty days from submittal of the case for decision,^[11] but the validity of the law cannot be seriously challenged. Nevertheless, in order to obviate any apprehension that the fiscal's choice of forum may be exercised arbitrarily and motivated by considerations other than the interests of justice, the Court deems it desirable that definite administrative guidelines for the fiscal's exercise of such choice be issued by the Secretary of Justice, e. g. formalizing the present practice that informations for such offenses of concurrent jurisdiction be filed with the inferior courts rather than the courts of first instance and providing for the proper cases, if any, when the practice may be deviated from.

4. Furthermore, the lower court's observation holds true mainly in cities where prosecutions are generally initiated by the fiscal's office. Elsewhere, however, in municipal courts of capitals of provinces and sub-provinces, which receive an equal, if not greater number of cases, and which courts are given the same concurrent jurisdiction as city courts with the courts of first instance, criminal actions are principally commenced by complaint of the offended party or peace officer filed with the municipal court. The municipal judge, in the same manner as the city fiscal, conducts the preliminary examination and takes the sworn written statements of the complainant and his witnesses, and upon being satisfied on the existence of reasonable ground to hold the accused answerable for the crime complained of, is vested with power (unlike the fiscal) to issue a warrant for his arrest. (Sections 5 and 6 of Rule 112). After the arrest of the accused and his delivery to the court, is when the provisions of section 10 of the Rule come into play, and even though the offense be one of concurrent jurisdiction with the court of first instance, "the accused", as stated by Mr. Justice Labrador, supra, "shall not be entitled as a matter of right to a preliminary investigation in accordance with this section. He is not entitled to it because the case goes to trial already. "

5. The lower court's contention whereby it would qualify the application of section 10 of the Rule providing for no preliminary investigation in cases which are triable by the inferior courts only to cases falling under their exclusive original jurisdiction, - because the trial in such cases is "more of summary in nature since the proceedings are not recorded and judgment thereof is appealable to the court of first instance and it is tried de novo before the appellate court"^[12] - is untenable, in the light of the rule's rationale, as expounded by Mr. Justice

Labrador, supra, that the ensuing trial on the merits takes the place of preliminary investigation, without needless waste or duplication of time and effort, and a final verdict on the innocence (or guilt) of the accused is thereupon rendered, rather than an inconclusive dismissal of the charge by the fiscal in a preliminary investigation which would not constitute jeopardy.

6. The State's ancillary assignment of error that even on the assumption that the accused-appellees were entitled to a preliminary investigation and were denied the same, the lower court erred in dismissing the cases below, is well taken. The Court has consistently held in a series of decisions, the latest of which was last month's decision in *People vs. La Caste*,^[13] 'pointing out once more, as in *Figueroa*^[14] and *Bandiala vs. Court of First Instance*^[15] that where the absence of a proper preliminary investigation has been timely raised and has not been waived, the trial court is called upon 'not to dismiss the information but hold the case in abeyance and conduct its own investigation or require the fiscal to hold a reinvestigation.' This Court, speaking through now Mr. Chief Justice Concepcion, in *People vs. Casiano*,^[16] had stressed this as the proper procedure, pointing out that the 'absence of such investigation did not impair the validity of the information or otherwise render it defective. Much less did it affect the jurisdiction of the Court of First Instance over the present case.'"^[17]

In *People vs. Marquez*,^[18] Mr. Justice Barredo, speaking for the Court, emphasized that "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. " In *Zacarias vs. Cruz*^[19] and *Palanca vs. Querubin*^[20] the Court per Mr. Justice Sanchez^[21] under-scored "that the absence of a preliminary investigation does not impair the validity of a criminal information, does not otherwise render it defective, does not affect the jurisdiction of the court over the case." When the right to a preliminary investigation is seasonably invoked and denied by the trial court, certiorari and prohibition lie to prevent trial until the accused shall have been granted the statutory and substantial right of a preliminary investigation, as in *Bandiala*, supra, where the Court, per Mr. Justice Castro, ordered "that the respondent fiscal shall grant the petitioners (accused) a new preliminary investigation; (and) the respondent court is hereby directed to hold the case below in abeyance until after the outcome of the said preliminary investigation." Any pronouncement to the contrary in the earlier case of *People vs. Monton*^[22] that would justify the quashal or dismissal of the case, rather than the holding in abeyance of the case pending the outcome of the preliminary investigation ordered, since the jurisdiction of the court is not affected and the right to a preliminary investigation is statutory and not a constitutional mandate as affirmed by Justice Laurel^[23] must be deemed to have been overturned by the Court's later pronouncements in the series of cases above cited.^[24]

ACCORDINGLY, the dismissal orders appealed from are hereby set aside and the cases are remanded to the lower court for further proceedings in accordance with law and for trial on the merits. Let a copy of this decision be furnished the Secretary of Justice for his information and guidance, with particular reference to paragraph 3 thereof.

Concepcion, C.J., Reyes, J. B. L. Dizon, Makintal, Zaldivar, Ruiz Castro, Fernando, Barredo, and Villamor, JJ., concur.

Makasiar, J., took no part.

[1] Docketed as Criminal Case No. 15971 of the lower court.

[2] Docketed as Criminal Case No. 16391 of the lower court.

[3] Under Rep. Act 3820, enacted June 22, 1963, "(A)ny provision of law to the contrary notwithstanding the designation of the positions of municipal judges in chartered cities in the Philippines is hereby changed to that of city judges, and that of the municipal courts to that of city courts."

[4] At pp. 73-73, emphasis furnished. The "rule and practice" referred to by Mr. Justice Labrador of no preliminary investigation for the accused in cases triable by inferior courts was but in accordance with existing laws which uniformly provided for such preliminary investigation only in cases involving crimes cognizable by the Court of First Instance viz., Republic Acts 1198 and 1201. This same provision has been carried over in Rep. Act 5180, enacted Sept. 8, 1967, long after adoption of the present 1964 Rules of Court, thus reaffirming and sanctioning the Rules' provision of no preliminary investigation "in cases triable by the inferior courts."

[5] *Idem*, at p. 88, emphasis furnished.

[6] *Idem*, at p. 88; emphasis furnished.

[7] Rule 112, secs. 2, 5 and 6.

[8] *Supra*, paragraph 1.

[9] Rep. Act 296, sec. 87, as amended by Rep. Act 2613 (1959) and 3828 (1963).

[10] Rep. Act 5159 (1967).

[11] *Idem*, section 6.

[12] This no longer holds true under Rep. Act No. 6031 (Aug. 4, 1969), which provides that decisions of inferior courts in such cases of exclusive original jurisdiction, when appealed to the court of first instance shall be decided by the latter "on the basis of the evidence and records transmitted from the city or municipal courts" and "the decision of the latter shall be final: provided that the findings of facts contained in said decision are supported by substantial evidence as basis thereof, and the conclusions are not clearly against the law and jurisprudence."

[13] L-29083-85, (February 27, 1971).

[14] 27 SCRA 1239 (April 30, 1969), citing *People vs. Selfaison* and cases cited, 1 SCRA 235 (January 28, 1961).

[15] 35 SCRA 237 (Sept. 30, 1970).

[16] 1 SCRA 478 (Feb. 16, 1961).

[17] *Figueroa*, *supra*, fn. 14.

[18] 27 SCRA 808, (Mar. 28, 1969).

[19] 30 SCRA 728 (Nov. 29, 1969).

[20] *Idem*, 738 (Nov. 29, 1969).

[21] Retired on Feb. 18, 1970.

[22] 23 SCRA 1024 (June 22, 1968). In this case, the Court actually upheld the quashal of the information due to the obstinate refusal of the city fiscal (who was himself the offended party in a libel case) to afford the accused the right of a proper preliminary investigation, notwithstanding his having been ordered to do so by the trial court on the strength of an earlier decision of this Court on the same issue.

[23] *Hashim vs. Boncan*, 71 Phil. 216 (1941).

[24] See Fernando's Bill of Rights, pp. 196-197.

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