

**ROMEO N. PORTUGAL AND PEOPLE, PETITIONERS-APPELLANTS, VS.
HON. RODRIGO R. REANTASO, MUNICIPAL JUDGE, DESIGNATE OF
GUINOBATAN, ALBAY, HON. ARSENIO G. SOLIDUM, JUDGE CFI,
ALBAY, B...**

G.R. No. L-46078. November 24, 1988

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari seeking the nullification and setting aside of (1) the order of respondent Acting Municipal Judge of Guinobatan, Albay[1] dated December 5, 1975 dismissing Criminal Case No. 4514 and his orders dated January 12 and 30, 1976 denying herein petitioner's motion for reconsideration in the same case; and (2) the order of respondent Judge of the Court of First Instance of Albay, Branch IV[2] dated November 19, 1976 denying petitioner's petition for certiorari in Civil Case No. 5382 and his order dated December 14, 1976 denying petitioner's motion for recon-sideration in the same case.

The questioned order of respondent Municipal Judge issued on December 5, 1975 (Rollo, p. 58) states:

"For failure of the prosecution to adduce evidence in today's hearing, despite due notice to them, and upon motion of counsel for the accused, this case is hereby dismissed, with costs de officio.

The bail bond filed by the accused for their provisional liberty is hereby ordered cancelled and released.

SO ORDERED. December 5, 1975."

The questioned order of respondent CFI Judge of Albay, Branch IV, dated November 19, 1976 (Rollo, p. 77) reads as follows:

"It appearing that pursuant to the latest amendment to the Judiciary Act of 1948 ordinary municipal courts have con-current jurisdiction with the Courts of First Instance in the trial of parties charged with offenses in which the penalty does not exceed prision correccional or imprisonment for not more than six years or a fine not exceeding six thousand pesos or both (Sec. 87, /c/ 4th par.), the proceedings consisting of the preliminary investigation and trial before the respondent municipal Judge were legally conducted and its consequent dismissal of the case for failure to prosecute likewise valid. The petition for certiorari is therefore DENIED.

SO ORDERED."

The facts of the case are as follows:

On January 4, 1973, herein petitioner Romeo N. Portugal filed a criminal complaint in the Municipal Court of Guinobatan, Albay, against private respondents Enrique Sexon, Gerardo Baliat, Elias Nimo Nunez and Rogelio Sexon for "Qualified Trespass to Dwelling," docketed as Criminal Case No. 4514 (Rollo, p. 43). The case was set for preliminary investigation on March 12, 1974 but was reset to April 25, 1974 on urgent motion for postponement filed by the accused. In his order resetting the date for the preliminary investigation of the case, the

then Acting Municipal Judge of Guinobatan, Albay[*] made the observation that the jurisdiction to try the case falls within the jurisdiction of the Court of First Instance of Albay, and in view thereof, the proceedings before the Municipal Court will only be for the second stage of the preliminary investigation (Rollo, p. 46).

On March 24, 1974, the Court of First Instance of Albay designated Judge Rodrigo Reantaso, Municipal Judge of Jovellar, Albay, to try Criminal Case No. 4514, the Acting Municipal Judge of Guinobatan having inhibited himself from trying the aforesaid case (Rollo, p. 47). On the same date, the accused filed with the municipal court a waiver to preliminary investigation and prayed that the records of the case be remanded to the Court of First instance of Albay for hearing on the merits (Rollo, p. 48). Respondent Judge denied the motion in his order of October 9, 1975 ruling that the case falls within the original exclusive jurisdiction of the Municipal Court pursuant to the provision of the Judiciary Act of 1948, as amended (Rollo, p. 49).

On November 18, 1975, private respondents moved to quash the case on the grounds that (1) there was no valid complaint filed as it was sworn to by the complainant and witnesses before Judge Jesus Rebastillo, then incumbent Municipal Judge of Malilipot, Albay whose designation as Acting Municipal Judge of Guinobatan was questioned in Civil Case No. 4768 for certiorari with prohibition wherein in a decision dated May 16, 1973, the Court of First Instance of Albay declared the designation of Judge Rebastillo as irregular and without legal basis and all proceedings conducted by him on February 24, 1973 null and void; and consequently, (2) the court had not acquired jurisdiction over the accused as the arrest order was made after a preliminary examination conducted by Judge Rebastillo who was without authority to conduct the same (Rollo, p. 50).

The motion was denied by respondent municipal judge in an order dated December 5, 1975 on the ground that it is implied from the decision rendered in Civil Case No. 4768 relied upon by private respondents that only the actuations of the then designated judge on February 24, 1973 were categorically declared null and void which implies that the actuations of said Judge from November 25, 1972 to February 24, 1973 were valid and regular (Rollo, p. 56). On the same date (December 5, 1975), respondent Acting Municipal Judge of Guinobatan issued another order dismissing the case for failure of the prosecution to adduce evidence in the hearing conducted on the same date and ordered the bond filed by the accused cancelled and released (Rollo, p. 58).

The motion for reconsideration and/or reinstatement of the case (Rollo, p. 59) filed by petitioner herein as complainant in Criminal Case No. 4514 and his second motion for reconsideration (Rollo, p. 63) were both denied by respondent Judge for lack of merit in his orders dated January 12, 1976 (Rollo, p. 62) and January 30, 1976 (Rollo, p. 65).

On February 12, 1976, private petitioner filed a petition for certiorari with the Court of First Instance of Albay, Branch IV, docketed as Civil Case No. 5382 alleging that respondent judge issued the questioned orders arbitrarily with grave abuse of discretion, in excess of and/or without jurisdiction and prayed for (1) the annulment of the orders of respondent Municipal Judge dated October 9, 1975, December 5, 1975, January 12 and January 20, 1976; (2) the reinstatement of Criminal Case No. 4514 in the docket of the Municipal Court of Guinobatan; and (3) that respondent judge be ordered to conduct the preliminary investigation, second stage of said criminal case (Rollo, p. 38). The petition was denied by the Court of First Instance in the questioned order of November 19, 1976 (Rollo, p. 77). Petitioner's motion for reconsideration dated November 29, 1976 was also denied by the said court, ruling that:

"The order of this court which movant seeks to be reconsidered resolved the only issue that the parties through their lawyers agreed to be resolved, namely, whether or not the Municipal Court of Guinobatan, Albay took cognizance of the case of qualified trespass to dwelling in its concurrent jurisdiction with the Court of First Instance of Albay. This Court, in the questioned order ruled that the Municipal Court of Guinobatan, Albay, enjoyed concurrent jurisdiction with the Court of First Instance of Albay in the case aforesaid as the penalty

therein impossible did not exceed six (6) years or a fine of not exceeding P6,000.00 or both.

The court in effect considered itself not the proper tribunal to entertain certiorari proceedings and to rule on the questioned actuations of the municipal court, the case having been taken cognizance of by the latter in exercise of its concurrent jurisdiction. As correctly argued by counsel for respondent in the oral argument today, the proper court to which this case may be elevated thru a petition for certiorari, appeal or otherwise should have been the Court of Appeals.

The instant motion for reconsideration is DENIED.

SO ORDERED." (Rollo, pp. 87-88)

Petitioner filed his notice of appeal with the CFI on January 5, 1977 (Rollo, p. 89). The original record of the case was transmitted to the Court on April 6, 1977 (Rollo, p. 1). On April 22, 1977, the court resolved to require the petitioner to pay the docket and legal research fund fees and to file his petition for review on certiorari in the form required for petition for review on certiorari of the decisions of the Court of Appeals within fifteen (15) days from notice of the Court's resolution.

This petition was filed with the Court on May 28, 1977 (Rollo, p. 12). On June 15, 1977 the Court resolved (a) to require the private respondents to comment on the petition within ten (10) days from notice thereof; (b) to consider the People of the Philippines impleaded as party petitioner in the case; and (c) to furnish the Solicitor General with a copy of the petition and to require him to comment thereon within ten (10) days from notice thereof (Rollo, p. 96).

The Court resolved to give due course to the petition in its resolution dated November 4, 1977 (Rollo, p. 154). In the same resolution the court required both parties to submit simultaneous memoranda within thirty (30) days from notice thereof which was complied with by the parties.

The main issues in the case are:

- Whether or not respondent Municipal Judge acted without and/or in excess of his jurisdiction in trying Criminal Case No. 4514 for Qualified Trespass to Dwelling; and
- Whether or not respondent Municipal Judge acted with grave abuse of discretion amounting to lack of jurisdiction in conducting the trial on the merits without notice to the complainant, his witnesses and the provincial fiscal and in denying the motion for reconsideration filed.

I

Under Sec. 87 (b) of the Judiciary Act of 1948 as amended by R.A. 3828, the original jurisdiction of municipal courts include "trespass on Government or private property." It has been held that said provision of law gives the municipal judges and the municipal courts original jurisdiction over specific crimes without qualification; that is, regardless of imposable penalty; otherwise, it would be absurd to think that such jurisdiction, expressly conferred by law, can be defeated by an allegation in the complaint of a claim of indemnity in an amount exceeding that which the court could award and thus place in the hands of the offended party the power to disposses or deprive a court of its jurisdiction (*Paringit v. Masakayan* 2 SCRA 967-968 /1961/).

Moreover, the first issue in the case at bar, has been squarely settled by this Court in the case of *Natividad v. Robles* (87 Phil. 834) holding among others, that the jurisdiction of municipal and city courts over criminal cases relating to trespass on government or private property extends to the offense of qualified trespass to dwelling. Thus, this Court ruled:

"One of the specific offenses over which justice of the peace courts have now jurisdiction is 'trespass on

Government or private property.' And the question is whether 'trespass on private property' includes qualified trespass to dwell-ing, the offense charged against petitioners. There can be no doubt that 'private property' includes all property, personal or real, and there-fore, it included dwelling. The jurisdiction of the Municipal Court of Manila over this offense was first vested by Act No. 267 of the Philippine Commission who undoubtedly employed the words 'trespass on private property' in the sense in which they were understood in the United States of America. And under the American Criminal Law, trespass on private property includes trespass to dwelling. (52 Am. Jur. p. 848).

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"Our conclusion is that the offense of trespass to dwelling with violence as charged against the petitioners, falls within the original jurisdiction of the justice of the peace court of Malabon, concurrent with that of the Court of First Instance of Rizal. In the instant case, the Court which first exercised jurisdiction was the justice of the Peace Court of Malabon, which already acted on the case though erroneously in the form of preliminary investigation. The Court of First Instance to which the case was elevated did nothing but return the same to the court of origin." (pp. 837-838).

Under the same circumstances, there can be no question that the respondent municipal judge has jurisdiction over the subject-matter of the case at bar.

II

As to the second issue, it will be recalled that counsel for private respondents filed a motion to dismiss the case on November 18, 1975 which was opposed by the petitioner on November 25, 1975. Both the motion to dismiss and the opposition thereto were set for hearing on December 5, 1975 (Rollo, p. 54). Respondent municipal judge denied private respondents' motion to dismiss in an order dated December 5, 1975 and on the same date called the case for hearing on the merits. The records do not show however, that notice was given to the prosecuting officer or to petitioner and his witnesses before the case was tried on the merits on the aforesaid date. In fact, petitioner expected that the incident to be resolved on December 5, 1975 was only the motion to dismiss filed by private respondents. This also explains the absence of the special counsel from the Office of the Provincial Fiscal of Albay (Rollo, p. 151; Memorandum of Petitioner, p. 8). But respondent judge ordered the complainant, petitioner herein, to proceed with the trial and present his evidence. Atty. Rolando Alberto asked for postponement on the ground that the complainant and his witnesses were not duly notified of said hearing and therefore, not prepared for the trial aside from the fact, that there was no representative from the fiscal's office. Atty. Alberto could not on his own, conduct the trial as private prosecutor without an authority from the fiscal's office (Memorandum of Petitioner, p. 10).

However, respondent municipal judge acting with grave abuse of discretion amounting to lack of jurisdiction dismissed the case on motion of the counsel for the accused, solely on the ground of failure of the prosecution to adduce evidence during the day's hearing which as above demonstrated is not possible. Petitioners' motions for reconsideration were denied.

The need for proper notice of any material action in all cases is fundamental to due process (*Aribon v. Workmen's Compensation Commission*, 139 SCRA 492 /1987/). What due process abhors is not lack of previous notice but absolute lack of opportunity to be heard (*Tajonera v. Lamaroza*, 110 SCRA 438 /1981/). Litigants should be given the fullest opportunity to establish the merits of their cases (*Vda. de Haberer v. Court of Appeals*, 104 SCRA 534 /1981/).

Accordingly, this case must be reinstated in the docket of the municipal court of Guinobatan, Albay. The defense of double jeopardy cannot be availed of where the order of dismissal or acquittal was made with grave abuse of discretion amounting to lack of jurisdiction (*People v. Pablo*, 98 SCRA 289 /1980/) and where the case was dismissed on motion of the accused and before the prosecution had presented its evidence (*People v. Cuevo*, 104

SCRA 312 /1981/; *People v. Jardin*, 124 SCRA 167 /1983/).

Private respondents alleged that petitioners' appeal by certiorari is devoid of merit as the latter is not the proper party to appeal the criminal aspect of the case but the People of the Philippines or the fiscal (Rollo, p. 169).

While the correctness of such assertion may in general be conceded, it will be noted that in the resolution of June 15, 1977 (Rollo, p. 96), the First Division of this Court has considered the People of the Philippines impleaded as party petitioner in this case and required the Solicitor General to comment thereon.

But private respondents insist on the observance of technicalities, claiming that in the interregnum before the issuance of the aforementioned resolution of the Supreme Court, finality of the order of dismissal and laches had long set in (Rollo, p. 170).

Apart from the fact that private respondents admit that the assailed petition for review is still pending consideration in this Court, it has been established that there is no laches or finality of judgment to speak of where the decision under question is null and void for having been rendered without jurisdiction for failure to observe the notice requirements prescribed by law (*Alabang Development Corp. v. Valenzuela*, 116 SCRA 261 /1982/).

WHEREFORE, the assailed orders of respondent Acting Municipal Judge of Guinobatan, Albay dated December 5, 1975, January 12 and 30, 1976 and of respondent CFI Judge of Albay, Branch IV, dated November 19, 1976 and December 14, 1976, are hereby Annulled and Set Aside; and Criminal Case No. 4514 is ordered reinstated in the docket of the Municipal Court of Guinobatan, Albay to be tried on the merits, where both parties should be given an opportunity to be heard and present their respective evidence.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

[1] Judge Rodrigo R. Reantaso, Municipal Judge of Jovellar designated by the Executive Judge of Albay to hear Criminal Case No. 4514 of the Municipal Court of Guinobatan, Albay.

[2] Judge Arsenio G. Solidum.

[*] Municipal Judge Gregorio A. Consulta.

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