

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. EULOGIO F. DE GUZMAN, AS JUDGE OF THE II BRANCH OF THE COURT OF FIRST INSTANCE OF PANGASINAN, AND ROMEO GERMENIANO, RESPONDENTS.

G.R. No. L-2617. December 29, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

The respondent Romeo Germaniano was charged in the People's Court by the Office of Special Prosecutors with the crime of treason under a single count, to wit: that on or about December 12, 1944, in the municipality of Aguilar, Pangasinan, said accused took part in the apprehension and arrest of one Victor Pastorin; a person suspected of being a guerilla, and in his subsequent confinement. The accused is at liberty on bail and has not yet been arraigned.

After the abolition of the People's Court the case was transferred to the Court of First Instance of Pangasinan in accordance with section 2 of Republic Act No. 311. Subsequently and on September 21, 1948, a Special Attorney of the Office of the Solicitor General filed an amendment to the information consisting of two new counts which refer to two overt acts distinct from that alleged in the original information. The respondent judge admitted the amended information and ordered the justice of the peace of the capital to conduct a preliminary investigation with respect to the new counts in accordance with the Rules.

The present petition for certiorari has been presented in behalf of the People to annul the order of the respondent judge insofar as it requires a preliminary investigation of the new counts alleged in the amended information.

Petitioner relies on the decision of this court in *Guinto vs. Veluz*, G.R. No. L-980. In that case the Office of Special Prosecutors filed in the People's Court after the expiration of the six-month period provided in Commonwealth Act No. 682 an amended information adding new counts or alleged overt acts, and the question there presented was whether the information could be so amended in the People's Court subsequent to the expiration of the deadline for the filing of an original information therein. This court held that the amended information was properly admitted because it did not constitute a new information since it did not charge another crime different from that charged in the original one, and because to hold otherwise would necessitate the filing of another information in the proper Court of First Instance, thereby splitting the single crime of treason committed by the accused into two and putting him in jeopardy of being convicted twice for the same offense.

That case does not control the present. The question here presented is whether the respondent judge acted in excess of his jurisdiction or with grave abuse of discretion in requiring a preliminary investigation of the new counts alleged for the first time before him in the amended information. There is no question that if the amendments had been presented in the People's Court, there would have been no need of a previous preliminary investigation in virtue of the proviso contained in section 22 of Commonwealth Act No. 682 "that, in cases triable before the People's Court, a preliminary examination and/or investigation shall not be required." But, although

Commonwealth Act No. 682 has not been expressly repealed by Republic Act No. 311 abolishing the People's Court and the Office of Special Prosecutors, we are of the opinion that the proviso contained in section 22 of Commonwealth Act No. 682 is no longer in force and may not be invoked with regard to new cases or new counts filed in the Court of First Instance. The People's Court having been abolished, there are no more cases triable before it.

Although the new counts may be added to the one alleged in the original information, they constitute distinct overt acts of treason which may not be tried before the Court of First Instance without a preliminary investigation. In the event the prosecution be unable to prove the overt act alleged in the original information, the accused would be entitled to an acquittal; and if the overt acts alleged in the amendment to the information be not established prima facie at the preliminary investigation, the accused would be entitled to dismissal without having to go to trial thereon. A preliminary investigation is a right of the accused which cannot be denied in the absence of a law specifically dispensing with it.

The petition is denied, without costs.

Moran, C.J., Paras, Bengzon, Padilla, Tuason, Reyes, and Torres, JJ., concur.

DISSENTING

MONTEMAYOR, J.:

As well stated in the majority opinion, after the abolition of the People's Court, by virtue of section 2 of Republic Act 311, the case of *People vs. Borneo Germaniano*, under indictment for treason on only one count was transferred to the Court of First Instance of Pangasinan where the Special Counsel of the Office of the Solicitor General filed an amendment to the information consisting of two (2) new counts which referred to two overt acts distinct from that alleged in the original information. The respondent Judge of Pangasinan admitted the amended information and dispensed with the preliminary investigation as to the first count contained in the original information but ordered the preliminary investigation by the Justice of the Peace of the capital of the two new additional counts. I regret to dissent from the majority opinion which sustains the ruling of the respondent Judge as to the necessity of a preliminary investigation of the two additional counts but dispenses with said investigation as to the original count.

It will be remembered that under section 22 of Commonwealth Act 682, in cases triable before the People's Court, a preliminary investigation was not required. The majority opinion states that this preliminary investigation is a right of the accused which cannot be denied in the absence of a law specifically dispensing with it. I have no quarrel with that statement of the law. But the majority overlooks the fact that in this case there is a law dispensing with the preliminary investigation namely, Commonwealth Act No. 682. It is true that the People's Court was abolished but Commonwealth Act 682 was not repealed. In my opinion said Act is still in force and still governs as far as possible the trial of cases originally filed and triable before said People's Court but now transferred to the Courts of First Instance, at least in the sense that in said cases, preliminary investigation shall not be required. That is the very reason why the respondent Judge, with the apparent acquiescence, if not approval of the majority, dispensed with the preliminary investigation of the one count in the original information.

In the case of *Guinto vs. Veluz*, G. R. No. L-980, this Court held that an information charging a person with treason filed within a period of six (6) months from the passage of Commonwealth Act 682 may be amended after said period before the defendant has pleaded thereto by alleging additional overt acts committed by the defendant within the period of time alleged in the original information, and that said amendment relates back to the date

when said original information was filed because the amendment did not constitute a new information since it did not charge another crime different from that charged in the original information, and because to hold otherwise, would necessitate the filing of another information in the proper Court of First Instance, thereby splitting the single crime of treason into two and putting the accused in double jeopardy of being convicted twice of the same offense.

But the ruling of the respondent Judge and of the majority would result in splitting the single crime of treason in this case into two, thereby creating the possibility of placing the defendant in double jeopardy of being convicted twice of the same offense. Let us suppose that the accused herein insisted in being tried on the first count "because he wanted a speedy trial to clear himself and could not stand the delay caused by the preliminary investigation of the two additional counts, all this time having as it were the sword of Damocles hanging over his head (as a matter of fact, without the preliminary investigation ordered by the respondent Judge, this case could and should have been tried over a year ago, since September, 1948), or because he was so sure and confident that the additional counts are groundless and cannot be proven by the Government. Let us suppose further that after trial, he is acquitted, But thereafter; the Justice of the Peace Court conducting the preliminary investigation of the two additional counts finds probable cause and binds the defendant over for trial before the Court of First Instance which later finds him guilty. We shall then witness the sad spectacle of one being placed in double jeopardy of being convicted of the same offense.

The law providing for the holding of a preliminary investigation is intended mainly for the benefit of the accused. As stated by this Court through Mr. Justice Trent in the case of *U. S. vs. Grant*, 18 Phil. 122, 147, quoted in *Marcos et al. vs. Cruz* (G.R. No. 16584 - Res.), 40 Off. Gaz. (1st Supp.) P. 174:

"The object or purpose of a preliminary investigation, or a previous inquiry of some kind, before an accused person is placed upon trial, is to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from an open and public accusation of crime, from the trouble, expense, and anxiety of a public trial, and also to protect the State from useless and expensive trials."

In the present case, however, apart from the fact that under Commonwealth Act No. 682, cases like the present which were originally triable before the People's Court, tho now transferred to the Court of First Instance do not in any opinion need preliminary investigation, there is no danger, not even possibility of a hasty, malicious and oppressive prosecution because the amendment to the original information containing the two additional counts was filed by Special Attorney Victor G. Santillan detailed by the Office of the Solicitor General, who, after a thorough investigation "based on evidence on hand sufficient in their opinion to prove beyond reasonable doubt the guilt of the accused in accordance with the two witness rule." (Quoted from petition for reconsideration with the trial Court.) Unlike ordinary criminal cases wherein the complaint in the Justice of the Peace Court is ordinarily filed by the Chief of Police, ordinarily not a lawyer and without any legal training thereby resulting in some cases in hasty and unfounded prosecutions, the amendment herein was filed by a trained lawyer, perhaps one who had acted as special prosecutor in the People's Court, selected and found fit to prosecute treason cases.

Moreover, in the present case there cannot exist the consideration "to protect him from an open and public accusation of crime, from the trouble, expense, and anxiety of a public trial, and also to protect the State from useless and expensive trials," contemplated and stated by this Court in the case of *U.S. vs. Grant*, supra, for the reason that even when this preliminary investigation was conducted and the defendant was absolved from the charge, he will, anyway face trial before the Court of First Instance on the first count and he will, just the same, go through the trouble, expense and anxiety of a public trial and the State will incur expenses anyway. In other words, the defendant herein has nothing to gain by the holding of this preliminary investigation ordered by the respondent Judge, On the contrary, he stands to lose. If the two additional counts were consolidated with the first

count and tried all at the same time without any preliminary investigation, he goes to court only once, employs a lawyer only for his appearance and legal services in the Court of First Instance, But with this preliminary investigation he also has to employ a lawyer to represent him at the preliminary investigation before the Justice of the Peace Court, perhaps taking with him his witnesses in order to refute the testimony of the witnesses for the prosecution. All this represents extra trouble and expense and even if the case is dismissed in the Justice of the Peace Court, the Government may still appeal to the Court of First Instance where the proceedings will again be renewed. That is why I believe that the splitting of these counts, the first one without, preliminary investigation and the last two to be preliminarily investigated by the Justice of the Peace Court, gains the defendant and the Government nothing in the way of avoiding a supposed hasty and malicious prosecution and the trouble and expenses of a public trial for the reason that with or without the preliminary investigation, there will be a public, trial just the same, at least on the first count.

In the City of Manila, the law does not require a preliminary investigation of criminal cases. The law presumes that the Office of the City Fiscal with trained attorneys in it can be trusted to conduct the necessary preliminary investigation so as to rule out and avoid hasty, malicious, and groundless prosecutions. The same thing obtained in the People's Court. With the body of Special Prosecutors, the Legislature believed that preliminary investigation could well be dispensed within the present case, the amended information was filed by a Special Attorney who under section 3 of Republic Act No. 311 may have been one of the Special Prosecutors of the People's Court, or at least was selected by the Secretary of Justice and remunerated each with P7,2000.00 a year. There is every reason to believe that these Special Attorneys are competent and well trained, and would conduct the same through preliminary investigation conducted by the Manila City Fiscal and the Office of Special Prosecutors of the People's Court before filing; an information or an amendment to the same.

In view of the foregoing, I believe that aside from the fact that the amended information relates back to the date of the original information filed before the People's Court and therefore enjoys the exemption from the legal requirement of preliminary investigation, and to avoid splitting the different counts in the amended information which might result in placing the defendant in double jeopardy of being convicted twice of the same offense, and because the reasons contemplated by law for holding a preliminary investigation in ordinary criminal cases do not exist in the present case, I differ from the majority and hold that there is no need of preliminary investigation of the two additional counts, and that consequently, the petition for certiorari should be granted.

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