

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT VS. PEDRO LANCANAN, DEFENDANT AND APPELLEE.

*G.R. No. L-6805. June 30, 1954*

Ponente: LABRADOR, J.

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### LABRADOR, J.:

This is an appeal from an order of the Court of First Instance of Samar, dismissing an information on a motion to quash. The motion to quash is based on the alleged failure of the information to allege facts sufficient to constitute a cause of action.

The principal allegations of the information which originated this criminal case are:

"That on or about the 13th day of November, 1951 \* \* \* the above-named accused, being then the Chief of Police \* \* \* and while entrusted with the custody or charge and vigilance of (name of persons detained), who were detention prisoners \* \* \*, then and there willfully, unlawfully and feloniously consent to the escape of said prisoners and evade detention by releasing them without the order of the court \* \* \*."

The motion to quash alleged:

"The original complaint for Illegal Possession of Firearms in Criminal Case No. 2580 was filed on December 19, 1951 although the six accused were arrested without warrant on November 12, 1951 at about 9:30 in the evening. The fact therefore is clear that on November 13, 1951 when these six persons were allegedly released by the accused, there was no pending charge against them."

The provincial fiscal opposed the motion to quash, alleging that it is not predicated on the insufficiency of the facts alleged, but on the claim that the persons released were not yet charged with any valid complaint on November 13, 1951, so their release was made when they were not yet prisoners detained by a court order—facts which do not appear in the information, but which go to the merits of the case. The court *a quo* examined the records of the case and found that on November 12, 1951, the complaint was sworn to before the municipal mayor. It was to be presented to the Justice of the Peace, but the latter was absent; as a matter of fact the following note was placed on the complaint RECEIVED AND FILED THIS 12TH DAY OF NOV. '51, but no signature appears on the typewritten name of the justice of the peace below the note. Below the above note, the following note appeared RECEIVED AND FILED THIS 19TH DAY OF NOV, under which appeared the signature of the justice of the peace. There were affidavits attached to the complaint, also dated November 12, 1951, but nowhere does it appear that the municipal mayor made a preliminary investigation, or issued a warrant for the arrest of the accused therein. On the basis of the above facts and findings the trial court held that "the herein accused Pedro C. Luncanan has not committed the crime of infidelity in the custody of the prisoners \* \* \*" and ordered the dismissal of the case.

The first error imputed to the trial court is its consideration of facts not alleged in the information. The facts, however, are apparent from the record and these facts are not denied by the provincial fiscal. Though they may not constitute admissions on the part of the fiscal, they certainly fall within the spirit and principle contained in

People vs. Navarro, 75 Phil., 516. We find no difference between facts merely admitted and undeniable facts appearing on the record of a case. If one is allowed, there is no reason for denying admission of the other. As the facts are clear and not susceptible of contradiction, it would be idle ceremony to return the case to the trial court for trial at which the same facts of record will have to be introduced. It seems more in accord with expediency for us to overlook the technical irregularity that the trial court is claimed to have committed, which irregularity we do not here admit to exist because it was sanctioned by us in the case of Navarro, supra, and proceed to determine the validity of the order of the court on the basis of the facts found in the record, rather than remand the case to the trial court. The claim that the court acted improperly in the consideration of the motion to quash must be dismissed.

The conclusion of the trial court that the case was not filed until December 19, 1951 is borne out by the record and is correct. The note RECEIVED AND FILED THIS 12TH DAY OF NOV. 1951 with the typewritten name of the justice of the peace, but without his signature, shows that the complaint was merely intended to be filed with said official. If the mayor had intended to receive it for filing, he should have signed the above note. There was, therefore, merely an attempt and intent to file it with the justice of the peace, which attempt was not carried out because the justice of the peace was absent. An attempt to file, which was not carried out because the official before whom it was to be presented for filing was absent, can not be confused with actual filing. And swearing a complaint before a municipal mayor is no filing either. The latter official is not a clerk or officer of the court; no provision of the rules authorizes him to act for and on behalf of the justice of the peace in the acceptance of complaints for filing. The fact also that the justice of the peace on December 19, 1951 may have believed that on that day the complaint was being refiled, is no reason why we may conclude that it was filed previously, i. e. on November 12. The alleged error imputed to the trial court for dismissing the complaint is, therefore, also without merit.

For the foregoing reasons, the order appealed from is hereby confirmed. Without costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo and Concepcion, JJ., concur.

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