

JAIME BANDIALA AND GABRIEL ANDAYA, PETITIONERS, VS. THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, PRE-SIDED BY THE HON. MARIANO A. ZOSA AND HON. DIOSDADO BACOLOD, PROVINCIA...

G.R. No. L-24652. September 30, 1970

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

Original action for certiorari and prohibition with preli-minary injunction.

On April 10, 1962 an amended complaint for robbery in band was filed by the Philippine Constabulary authorities against the petitioners Jaime Bandiala and Gabriel Andaya (and two other persons) with the justice of the peace (now municipal) court of Sapangdalaga in the province of Misamis Occidental. The complaint reads as follows:

"That on or about the 23rd day of February 1962, more or less 4:20 o'clock in the afternoon, at Barrio Bitibot, Municipality of Sapangdalaga, province of Misamis Occidental, Philippines and within the preliminary jurisdiction of this Honor-able Court, the above-named accused with delibe-rate intent to gain and with force or intimidation, conspiring and confederating together, wearing uniform in the guise of PC to afford impunity armed with assorted firearms, did then and there willfully, unlawfully and feloniously hold-up Lim Bing San at gunpoint, hogtied him together with one passenger Inocencio Co while riding on a car driven by the other co-accused Gabriel Andaya, and robbed the said Lim Bing San of cash paper bills amounting to P60,000.00 ... all belonging to Lim Bing San in the name of Lee Gee & Com-pany, to the damage and prejudice of the said Lim Bing San of Lee Gee Co. of the aforementioned amount."

The requisite preliminary investigation, second stage, was thereafter conducted by the court. The petitioners, assisted by counsel, asked for and were given copies of the affidavits submit-ted to support the complaint. One of these affidavits was that of Lim Bing San, one of the alleged offended parties, which contains a recital that he was carried, with his hands tied, from Sapang-dalaga to Ozamis City (a distance of about 90 kilometers) at which latter place he was released. (Other documentary proof adduced shows that only two of the alleged offenders were armed).

Only Bandiala went through the second stage of preliminary investigation, as Andaya waived the same, and the two other ac-cused were then still at large.

During the investigation, Bandiala presented one witness, a PC sergeant, who testified on the circumstances leading to his arrest, and on his alleged confession of criminal participation. This supposed confession, which appears to have been subscribed and sworn to before Judge Joaquin T. Maabong of Cebu City, re-cites explicitly that one of the victims was hogtied and carried in-side his car from Sapangdalaga to Ozamis City. Bandiala's re-quest for a copy of this written confession, made during the inves-tigation, was refused by the respondent fiscal.

On February 28, 1963 the presiding judge of the municipal court, finding a prima facie case against the petitioners (accused therein), forthwith remanded the case to the respondent Court of First Instance for trial on the merits. The dispositive portion of the court's decision reads as follows:

"This Court, after a serious study of the records of this case, and taking further into consideration the circumstances attendant during the preliminary investigation of this case, FINDS that there is a PRIMA-FACIE case against the accused herein."

Thereafter, the respondent Fiscal filed with the respondent CFI an information dated June 11, 1963 charging the petitioners with "Robbery with Kidnapping." This information reads as follows:

"The undersigned accuses Gabriel Andaya and Jaime Bandiala of the crime of Robbery with Kidnapping, committed as follows:

"That on or about the 23rd day of February 1962, in barrio Bitibot, municipality of Sapang Da-laga, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together in their common intent of gain with Francis-co Lacaya and John Doe alias Tony who are still at large, and simulating public authority as Constabulary soldiers with uniform, patches and guns, did then and there willfully, unlawfully, feloniously and by means of violence and intimidation of persons, stop the automobile of the complainant at the uninhabited section of the national highway at said barrio, and then hogtied the passengers at gun-point, after which, the said accused ransacked the car and took possession of the money therein amounting to Sixty Thou-sand Pesos (P60,000.00) which they carried away in escaping to Ozamis City in the same car, to the damage and prejudice of Lee Gee & Co., the owner, in the said sum of P60,000.00; and then, while thus running away with the rich booty, the said accused likewise willfully, unlawfully and feloniously took along with them, kidnapped or deprived of his liberty, one Lim Bing San whom they detained inside the car from Bitibot, Sapang Dalaga to Ozamis City whereat he was released.

"Contrary to par. 4, Art. 294 in connection with Art. 295 and par. 2, Art. 267 of the Revised Penal Code, with the aggravating circumstances of (1) disguise and (2) use of motor vehicle; and abuse of confidence as against Gabriel Andaya only."

On March 10, 1965, upon arraignment, the petitioners discovered, to borrow their language, "for the first time and to their great dismay," that the respondent Fiscal had filed an information for "Robbery with Kidnapping" instead of "Robbery in Band." They therefore moved, in open court, to quash the said information. After giving both parties the opportunity to expound in writing their respective positions, the respondent CFI issued the order here in dispute, dated March 27, 1965, denying the petitioners' motion.

Fundamentally, the petitioners' theory is that the respondent Fiscal altered the substance of the crime of which they were accused before the municipal court by charging them with the "far more serious and complex offense of robbery with kidnapping," without conducting any preliminary investigation with respect thereto, in violation of section 1687 of the Revised Administrative Code, as amended by Republic Acts 732 and 1799.[1]

Upon the other hand, the respondent Fiscal maintains that the preliminary investigation conducted by the municipal court included the charge of kidnapping and that, therefore, no further preliminary investigation on this point was necessary. However, the said respondent Fiscal, while previously vacillating on this aspect of the case, now admits that "the kidnapping was merely incidental to the principal criminal purpose which was robbery," and "is absorbed by the robbery of which it formed a part."

We agree with the respondent Fiscal that at the preliminary investigation by the municipal court the petitioners were adequately informed that one of the offended parties was hogtied inside his car in Sapangdalaga and thereafter carried to Ozamis City whereat he was released. We do not, however, accord merit to his argument

before the lower court that the transporting of the victim in this case is, by itself, sufficient to establish the "complex crime of robbery with kidnapping." Indeed, taking the recitals of the parties before us as our frame of reference, it would appear that the alleged temporary detention of the offended Chinese merchant was used merely as a ploy to give the offenders sufficient time to reach a planned destination and thereby prevent an early alarm to the police authorities. The respondent Fiscal himself, who is in a better position at this stage of the proceedings to appreciate the legal implications of all the evidence available to him, in effect concedes this point of view.

A preliminary investigation, it must be borne in mind, is a practical device created by statute and by mandate of our Rules of Court, principally for the purpose of preventing hasty, malicious and ill-advised prosecutions.

The position taken by the Fiscal that because section 13 of Rule 110 of the Rules of Court authorizes him to amend the information in substance without leave of court at any time before the defendant pleads, he may therefore change the nature of the offense charged in the amended complaint, which was the subject of a formal preliminary investigation by the municipal court, by raising the category of the crime to a higher one, based on the evidence in his possession, loses sight of the fact that section 13 of Rule 110 was not intended to give a prosecuting official an undue advantage over the accused in the sense that he may withhold evidence at the preliminary investigation conducted by the municipal court only to uncover and reveal it later for the purpose of raising the category of the offense to be charged by him in the information.

The Rules of Court on the matter of preliminary investigation, construed in their integrated entirety, direct that, in the circumstances here obtaining, the Fiscal, if he believes that he should raise the category of the offense, must conduct a preliminary investigation anew as to the entire charge. Fundamental principles of fair play dictate this course of action. The Fiscal is not allowed by the Rules of Court to wait in ambush; the role of a Fiscal is not mainly to prosecute, but essentially to do justice to every man and to assist the courts in dispensing that justice.

Parenthetically, it will be noted that the information filed by the respondent Fiscal recites that the malefactors "hogtied the passengers at gun-point, after which" they committed the robbery, and then fled to Ozamis City, taking with them the offended party Lim Bing San. Likewise noteworthy is the fact that while the information charges that the four accused simulated "public authority as Constabulary soldiers, with uniform, patches and guns," from which it would appear that the crime of robbery was committed by a band, nothing in the entirety of the evidence adduced at the formal preliminary investigation conducted by the justice of the peace of Sapangdalaga supports the inference that all the four accused were armed; upon the contrary, the said evidence unmis-takably indicates that only two of the four perpetrators were armed.

On the basis of the foregoing, it is apparent that unless the respondent Fiscal has new evidence to the contrary, the crime allegedly committed is merely that of robbery.

If the respondent Fiscal has new evidence which, added to the proof which, was already in his hands when the motion to quash was filed with the respondent court, would justify his charging the petitioners with the crime of "robbery with kidnapping" (assuming that such complex crime does exist within the pale of our penal law), he may file what he deems to be the proper information, always with the injunction that the accused be given ample opportunity at a full-blown preliminary investigation to demonstrate that what the Fiscal regards as "kidnapping" in the legal sense was merely an incident of, and is therefore absorbed in, the crime of robbery.

ACCORDINGLY, the disputed order is modified in the sense that the respondent Fiscal shall grant the petitioners a new preliminary investigation; the respondent Court is hereby directed to hold the case below in abeyance until after the outcome of the said preliminary investigation. Costs de officio.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
 Teehankee, J., concurs in a separate opinion.
 Concepcion, C.J., on official leave.

[1] "SEC. 1687. Authority of fiscal, assistant fiscal and special counsel to conduct investigation in criminal matter. - A provincial fiscal, an assistant provincial fiscal and a special counsel appointed under section 1686 of this Code shall have authority to conduct investigation into the matter or any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same. If the offense charged falls within the original jurisdiction of the Court of First Instance, the defend-ant shall not be entitled as a matter of right to prelimi-nary investigation in any case where the provincial fis-cal himself, or an assistant provincial fiscal, or a spe-cial counsel, after due investigation of the facts made in the presence of the accused if the latter so requested, shall have presented an information against him in pro-per form and certified under oath by the said provincial fiscal or assistant provincial fiscal or special counsel that he conducted a proper preliminary investigation. To this end, he may, with due notice to the accused, summon reputed witnesses and require them to appear before him and testify and be cross-examined under oath by the accused upon the latter's request. The at-tendance or evidence of absent or recalcitrant witnesses who may be summoned or whose testimony may be re-quired by the provincial fiscal, or assistant provincial fiscal, or special counsel under the authority herein con-ferred shall be enforced by proper process upon applica-tion to be made by the provincial fiscal, or assistant provincial fiscal, or special counsel to any Judge of First Instance of the Judicial District. But no witness summoned to testify under this section shall be compelled to give testimony to incriminate himself."

R.A. 5180, approved on September 8, 1967, now provides a "uniform system of preliminary investigation" by provincial and city fiscals and their assistants, and by state attorneys and their assistants.

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SEPARATE OPINION

TEEHANKEE, J.:

I concur with the main opinion of Justice Castro insofar as it holds that since the petitioners-accused were charged by res-pondent fiscal in the information filed by him with respondent court with the more serious crime of kidnapping under Article 267, para-graph 2 of the Revised Penal Code (committed with simulation of public authority and punishable by reclusion perpetua to death) complexed with and in addition to the crime of robbery in band for which they were originally charged in and investigated by the municipal court, respondent fiscal "must conduct a preliminary investigation anew as to the entire charge." [1]

However, following the established rule that failure to hold preliminary investigation cannot be made the basis of a motion to quash, and that should such a motion be filed, the court should not dismiss the case but conduct its own preliminary investigation or require the fiscal to grant petitioners the right to a new preliminary investigation, since lack of preliminary investigation does not affect the court's jurisdiction to try the case, although prohibition would lie to prevent trial until the accused shall have been granted the right of a preliminary investigation, if seasonably invoked as in this case - I do not believe that the petitioners' motion to quash, correctly denied by

respondent court, should be ordered sustained in the present original action. Rather, respondent court's omission in not having ordered such preliminary investigation to be conducted should be herein remedied and petitioners' right thereto therefore granted herein.

Further proceedings in the case below should await the results of such preliminary investigation to be conducted by respondent fiscal. I respectfully submit that it is premature at this stage and on the mere basis of the record of the summary preliminary investigation conducted by the municipal court in accordance with Rule 112, section 10 (wherein petitioner-accused Bandiala presented one sole witness and his co-petitioner Andaya waived the second stage of preliminary investigation) and of the recitals of the parties herein, to anticipate the weight and value that should be given to the evidence - which properly pertains in the first instance to the fiscal at the investigation stage and to the trial court at the trial of the case.

For instance, it appears to me that respondent fiscal's sub-mittal that "the kidnapping was merely incidental to the principal criminal purpose which was robbery" and "is absorbed by the robbery of which it formed a part"[2] is based on an erroneous equation and compounding of criminal acts with the criminal's purpose, and should not serve as warrant for an advance opinion of the court at this pre-trial stage that the evidence in the fiscal's possession is "not sufficient to establish the complex crime of robbery with kidnapping".[3] Based on the recitals of the parties and on the text of the information which are used as the frame of reference in the main opinion, it could not be correctly stated that the more serious crime of kidnapping was absorbed by the robbery, which concededly was the first criminal purpose of the accused; the more appropriate conclusion would be that two separate offenses of robbery and kidnapping are charged in the information, whatever may have been the accused's criminal purpose in kidnapping, after the robbery, one of the car's passengers, whether it was to facilitate their escape and prevent an early alarm (in furtherance of the same purpose of robbery) or to hold the passenger as a hostage (in furtherance, yet, of another purpose).

[1] At page 6, main opinion.

[2] At page 4, main opinion.

[3] At page 5, main opinion.

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