

GREGORIO TALUSAN, PETITIONER, VS. HON. PEDRO D. OFIANA, AS PROVINCIAL FISCAL OF BULACAN, FISCAL AMADO VICENTE, AS ASSISTANT FISCAL OF BULACAN, VENTURA BARTOLOME, RENATO VALDECAN...*G.R. No. L-31028. June 29, 1972*

Ponente: REYES, J.B.L., J.

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The herein petition seeks a review of the decision of the Court of First Instance of Bulacan (Fifth Judicial District, Branch IV) dismissing Civil Case No. 68-B for Certiorari and Prohibition with Preliminary Injunction, entitled Gregorio Talusan vs. Fiscal Pedro Ofiana, et al., for lack of merit.

The facts which are pertinent to this petition follow:

On 27 January 1969, a criminal complaint for frustrated murder was filed by the herein petitioner (Talusan) against private respondents, namely, Ventura Bartolome, Renato Valdecantos, Alfredo Valdecantos, Valentin Valdecantos, and Pito Valdecantos with the Municipal Court of San Rafael, Bulacan, docketed therein as Criminal Case No. 1112. On the same date, a preliminary investigation (first stage) was conducted ex-parte by the municipal court which accepted the complaint and issued a warrant for the arrest of accused Ventura Bartolome and Alfredo Valdecantos and also fixing their bail for their provisional release in the amount of P10,000.00 each. Subsequently, the order was reconsidered by a new judge of the same municipal court, who issued a warrant of arrest for Renato Valdecantos and Pito Valdecantos as well, likewise fixing their bail at P10,000.00 each.

In a letter-complaint dated 3 March 1969, private respondents Valentin and Alfredo Valdecantos, as complainants, filed two charges each for attempted murder against petitioner (I.S. Nos. 3607 and 3607-A) with the Office of the Provincial Fiscal of Bulacan. The said charges arose out of the same incident of 19 January 1969 which is also the basis of the complaint for frustrated murder filed by the herein petitioner.

On 25 March 1969, the second stage of the preliminary investigation of Criminal Case No. 1112 was called for hearing, but private respondents waived the same; instead, they prayed that the case be remanded to the Court of First Instance of Bulacan (Baliwag), later docketed therein as Criminal Case No. 50-B.

In a petition dated 31 March 1969 filed with the Office of the Provincial Fiscal, private respondents asked for the reinvestigation of Criminal Case No. 50-B and its joint hearing with the preliminary investigation of I.S. Nos. 3607 and 3607-A. The said petition for reinvestigation and joint hearing was opposed by the herein petitioner. The petition, however, was granted, with respondent assistant fiscal Ofiana scheduling the joint hearing of the aforesaid cases on 9 June 1969. However, petitioner accused did not appear at the said hearing, despite notice, but instead filed the subject Petition for Certiorari and Prohibition with Preliminary Injunction (Civil Case No. 68-B, supra) questioning respondent Provincial Fiscal and/or his assistant's authority to proceed with the reinvestigation of Criminal Case No. 50-B jointly with the preliminary investigation of I.S. Nos. 3607 and 3607-A.

Civil Case No. 68-B having been dismissed for lack of merit, Talusan filed the herein petition, praying for a reversal of the said decision, among other things, alleging that the lower court erred in —

I. Holding that the respondent Provincial Fiscal and/or his assistant can properly and legally further reinvestigate Criminal Case No. 50-B vs. Ventura Bartolome, et al;

II. Not finding that the accused are estopped to make the countercharges, I.S. Nos. 3607 and 3607-A vs. Gregorio Talusan, in the Office of the Provincial Fiscal because (1) accused waived the regular preliminary investigation in the municipal court; (2) the countercharges are their very defenses which should have been made and/or filed in the municipal court; and (3) the municipal court had first acquired jurisdiction over the case and the parties; and

III. Holding that the respondent Provincial Fiscal and/or his assistant can properly and legally conduct a joint hearing of the reinvestigation in Crim. Case No. 50-B vs. Ventura Bartolome, et al. and the preliminary investigation of I.S. Nos. 3607 and 3607-A vs. Gregorio Talusan.

With respect to the first assigned error, this Court already held in the case of Assistant Fiscal, Bataan vs. Dollete, etc.[1] that –

"* * * When a Fiscal or prosecuting attorney receives a criminal case, elevated to the Court of First Instance by the Justice of the Peace Court which has conducted the corresponding preliminary investigation, and on the ground that there was probable cause, the said Fiscal has the right to conduct his own investigation to convince himself of the sufficiency of said evidences for the prosecution." (Italics supplied)

This Court went further to state in the Dollete case supra —

"* * * there is no question that a prosecuting attorney has the right to conduct his own investigation. Because of said right, naturally, there is the corresponding duty or obligation of the prosecution witness, specially the offended parties, to submit to said investigation. Consequently, said offended parties and their legal counsel, the private prosecutor, were not justified in refusing to submit to the same and to give their testimony. Because of their refusal, the petitioner was in part justified in filing his motion to dismiss on the ground that he was in no position, much less was he convinced, that he could go on with the prosecution of the case. We say that petitioner was in part justified, because he was not fully justified in asking for dismissal. Full justification comes only after his investigation shall have convinced him that the evidence available to him would not be sufficient to secure conviction." (Italics supplied)

In its previous ruling in *People vs. Ovilla*[2] this Court ruled that –

"* * * it may be clearly inferred that after a criminal case has been remanded by the justice of the peace to the Court of First Instance which has jurisdiction to try it on the merits and before the provincial fiscal has filed the necessary information the latter not only has the power but also the duty to investigate the facts upon which the complaint filed in the justice of the peace was based, examine the evidence submitted to the justice of the peace and such other evidences as the parties may deem proper to submit on their own free will or on demand of the fiscal, for the purpose of determining whether there is at least prima facie evidence establishing the guilt of the accused and overcoming the presumption of innocence in his favor. If after he has done all this and considering all the circumstances of the case, the fiscal believes that the evidence is not sufficient to establish prima facie the guilt of the accused, he should submit to the court before which the case is pending the corresponding motion for dismissal." (Italics supplied)

The same principle was enunciated in the earlier cases of *People vs. Ong Eng*[3] and *People vs. Barredo*.[4]

The power of the provincial fiscal (or his assistant) to conduct his own investigation or reinvestigation of a case already elevated to the Court of First Instance by a municipal judge or justice of the peace who conducted a preliminary investigation thereon, in order to determine his own course of action as prosecuting officer, is

particularly true in the present case, since countercharges for attempted murder have also been filed against herein petitioner (who earlier filed his own charge of frustrated murder against private respondents) based on the same incident. The fiscal certainly could not be expected to proceed without first satisfying himself who was the real aggressor, for the combatant parties could not be simultaneously both aggressors and victims in the same event.

This Court in *People vs. Ong Eng*, ante, held:

"* * * when the provincial fiscal, in view of the facts of the case, apprehends that it would be an absurdity on his part to conduct both prosecutions, said officer, being responsible for the prosecution of criminal cases (section 1681, Adm. Code, *U. S. vs. Reyes*, 20 Phil. 510; and *U. S. vs. Despabiladeras and Laxamana*, 32 Phil. 442), has a right to investigate the cases more thoroughly in order the better to conform his action and attitude therein to the real facts and to the dictates and requirements of justice and the public interest.

"And in granting said motion of the provincial fiscal the court did no more than recognize the great responsibility devolving on him and the rights it had in helping him in the better performance of his duties."

The cases[5] cited by petitioner will not hold true in the instant case because the prohibition in the said cases refers to "another preliminary investigation" contemplated under Rule 112 of the Revised Rules of Court, and not to a clarificatory investigation or reinvestigation of the evidence, prior to filing the information as in the case at bar.

Finally, section 4, Rule 110, of the Revised Rules of Court specifically provides that "All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal." Interpreting this provision, this Court held in the case of *People vs. Liggayu, et al.*[6], et al. that —

"* * * If the fiscal must have control of the prosecution of a criminal case, he must have the ultimate power to decide which as between two conflicting testimonies should be believed, otherwise said control would be subject to interference or dictation from the offended party." (Italics supplied)

In view hereof, the first error assigned can not be sustained.

As regards the second assignment of error, that private respondents should be held in estoppel to file countercharges against petitioner, it has been stated that "the doctrine of estoppel does not * * * apply as against the people in criminal prosecutions." [7] Attempted murder is a public offense, wherein it is the social and public interest that demand the punishment of the offender; hence, criminal actions for public offenses can not be waived or condoned, much less barred by the rules of estoppel.

Lastly, on the question of whether Criminal Case No. 50-B can be jointly reinvestigated together with the preliminary investigation of I. S. Nos. 3607 and 3607-A, We see no basic objection thereto. Republic Act No. 5180, effective 8 September 1967, prescribing a uniform system of investigation by provincial fiscals and their assistants, expressly grants to said officers the right to conduct a preliminary investigation of offenses cognizable by the Court of First Instance. The attempted murders charged in I. S. Nos. 3607 and 3607-A are also cognizable by the Bulacan CFI and arose out of the same incident which occurred in San Rafael, Bulacan. Since respondent fiscals can reinvestigate Criminal Case No. 50-B, there is no reason why the same can not be heard by the Fiscal jointly with the preliminary investigation of I. S. Nos. 3607 and 3607-A. The joint hearing will save the time of the fiscal, of the parties and of their witnesses.

FOR THE FOREGOING REASONS, the decision appealed from is affirmed. No special pronouncement as to costs.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Antonio, JJ., concur.

[1] L-12196, 28 May 1958, 103 Phil. 914.

[2] 65 Phil. 722.

[3] 53 Phil. 544.

[4] 32 Phil. 444.

[5] See *People vs. Tan*, L-17791, 30 April 1968, 7 SCRA 981; *People vs. Monton*, L-23906, 22 June 1968, 23 SCRA 1024; *Doce vs. Branch II*, Court of First Instance of Quezon, L-26437, 13 March 1968, 22 SCRA 1029; and *People vs. Perves*, L-15231, 29 November 1960, 110 Phil. 214.

[6] 97 Phil. 865, 871.

[7] Section 140(c), 31 C. J. S. 413.

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