

**POTENCIANA DEQUITO AND CARLOS SALING BUHAY, PETITIONERS,
VS. HUGO O. ARELLANO, JUSTICE OF THE PEACE OF PADRE
BURGOS, QUEZON, AND OSMUNDO SANTIAGO, RESPONDENTS.**

G. R. No. L-1336. May 28, 1948

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari to review an order of the Justice of the Peace of Padre Burgos, Quezon. The petitioners, through the Chief of Police of that municipality, filed a complaint with the respondent Justice of the Peace for qualified trespass to a dwelling. After conducting a preliminary hearing, the Justice of the Peace issued an order of arrest. What happened after the defendant was arrested is stated in paragraph 6 of the present petition, which at the same time formulates the question submitted for decision. Paragraph 6 says:

"That immediately after the accused entered his plea of not guilty, the respondent Judge ordered the private prosecution to present its witnesses, but the said private prosecution, citing section 11, Rule 108 of the Rules of Court, declined to present its witnesses, and instead insisted that at that particular stage of the proceedings it was the duty of the respondent Judge to inform his co-respondent accused, Osmundo Santiago, of the substance of the testimony and evidence previously presented against the latter, and that the respondent accused thereafter might, if he so desired, testify, present witnesses, or evidence in his favor."

Sections 6 and 11 of Rule 108 of the Rules of Court are as follows:

"SEC. 6. Duty of judge or corresponding officer in preliminary investigation.-The justice of the peace or the officer who is to conduct the preliminary investigation must take under oath, either in the presence or absence of the defendant, the testimony of the complainant and the witnesses to be presented by him or by the fiscal, but only the testimony of the complainant shall be reduced to writing. He shall, however, make an abstract or brief statement of the substance of the testimony of the other witnesses.

"SEC. 11. Rights of defendant after arrest.-After the arrest of the defendant and his delivery to the court, he shall be informed of the complaint or information filed against him. He shall also be informed of the substance of the testimony and evidence presented against him, and, if he desires to testify or to present witnesses or evidence in his favor, he may be allowed to do so. The testimony of the witnesses need not be reduced to writing but that of the defendant shall be taken in writing and subscribed by him."

We are in agreement with the petitioners' contention in so far as the defendant's right is concerned. We believe with the petitioners that the defendant can not as a matter of right compel the complainant and his witnesses to repeat in his presence what they had said at the preliminary examination before the issuance of the order of arrest. The constitutional right of an accused to be confronted by the witnesses against him does not apply to preliminary hearings; nor will the absence of a preliminary examination be an infringement of his right to confront witnesses. (32 C.J.S., 456.)

But the right of accused is not correlative with the right of the examining judge or justice of the peace. If the

accused is not entitled as of right to have the complainant and/or his witnesses testify in his presence, it does not follow that the justice of the peace or judge is powerless to accord him that right. The power of the judge emanates from a principle of law more ample than the procedure outlined by Section 11 of Rule 108. There are an infinite number of things which a party may not in strict law do or cause to be done but which may be permitted by the court in the exercise of its discretion and in the interest of justice. Specially is this true in matters affecting the conduct of the trial and the calling, recalling and examination of witnesses.

Thus, while section 11 of Rule 108 defines the bounds of the defendant's right in the preliminary investigation, there is nothing in it or any other law restricting the authority, inherent in a court of justice, to pursue a course of action reasonably calculated to bring out the truth. The judge is not a ministerial officer reduced to Recording what takes place and what witnesses say in the examination. Above all, his is the great responsibility of safeguarding the accused from groundless or vindictive prosecution. If the justice of the peace is to ascertain, as he must, whether a crime has been committed and, if so, whether there is probable cause that the accused committed it, his authority cannot be confined as in a straight jacket to the stiffness of medieval and outmoded technicalities of practice.

Regardless of section 11 of Rule 108 the judge may examine or recall witnesses or call other witnesses with a view to satisfy his mind on the matters he has to determine. His power in this respect is unchanged. It was, and still is, not only his right, but often times his duty, to examine and reexamine a witness within reasonable limits when it appears necessary to do so in order to secure a full and clear understanding of the facts or to test to his satisfaction the credibility of the witness under examination. (U.S. vs. Lim Tiu, 31 Phil. 504.) By parity of reasoning and for the same purpose, the judge may allow a party or his counsel to call back a witness who has already testified, specially one whose previous testimony was given behind the defendant's back and whom the defendant has not had an opportunity to face and cross-examine. The defendant's attorney, if one has been retained, who has studied the case, is, all things being equal, in a better position than the judge to test the accuracy and truthfulness of a witness and the value of his testimony.

The position of the petitioners is out of tune with the enlightened and modern method of administering justice. Under petitioners' theory, a new justice of the peace who has inherited a case from a predecessor after the latter has taken the complainant's and the prosecution witnesses' evidence, would have to content himself with passing on the degree of probability of the accusation exclusively by affidavits or extracts of the evidence, as though the credibility of witnesses could be gauged by a reading of affidavits and extracts of statements.

It is true that the accused is given the opportunity to refute the charge by his or his witnesses' evidence. The objection to such reasoning is, it assumes that if the defendant is not guilty it takes no more than his evidence to convince the court of his innocence. Experience shows, however, that in many cases one has to hear both sides, and sometimes more than both sides, to reach an intelligent and correct conclusion. Not infrequently it takes more than the defendant's evidence to disabuse the mind of the judge. In some cases it is necessary to resort to cross-examination to lay bare the falsity of the complainant's evidence, and a successful cross-examination can rarely be achieved unless the cross-examiner has seen the witness testify and heard the details of his testimony in chief. And there is a stronger reason for the accused to show the falsity of the charge in a preliminary investigation than in the trial because the law exacts stronger evidence to convict than is required to commit the accused for trial. To bind the defendant for trial it is only necessary that his guilt appears probable, not beyond reasonable doubt. To the argument that the action of the justice of the peace binding the defendant to the Court of First Instance is not a final judgment, it should be said that to be held for trial, to be committed to answer to a criminal charge in a higher court, and to have put up a bond or be kept in jail during the pendency of the case, is not an ordeal to be scoffed at as a trifle.

The petition is denied with costs.

Hilado, Bengzon, Briones, and Padilla, JJ., concur.

Tuason, J., The Chief Justice authorized me to certify that he concurred in this decision.

CONCURRING AND DISSENTING

PERFECTO, J.:

In our opinion, section 11 of Rule 108 must be read, interpreted, and applied in a way that will not contravene the constitutional provision guaranteeing to all accused the right "to meet the witnesses face to face". (Section 1 (17), Article III.)

Consequently, at the preliminary hearing contemplated by said reglementary section, the defendant is entitled as a matter of fundamental right to hear the testimony of the witnesses for the prosecution and to cross-examine them.

Although in such preliminary hearing the accused cannot finally be convicted, he is liable to endure the ordeal eloquently depicted in the decision, and the constitutional guarantee protects defendants, not only from the jeopardy of being finally convicted and punished, but also from the physical, mental and moral sufferings that may unjustly be visited upon him in any one of the stages of the criminal process instituted against him. He must be afforded the opportunities to have the charges against him quashed, not only at the final hearing, but also at the preliminary investigation, if by confronting the witnesses for the prosecution he can convince the court that the charges are groundless. There is no justice in compelling him to undergo the trouble of a final hearing if at the preliminary hearing the case can be terminated in his favor. Otherwise, the preliminary investigation or hearing will be an empty gesture that should not have a place within the framework of dignified and solemn judicial proceedings.

In all other respects we concur in the decision.

DISSENTING

PARAS, J.:

Section 11 of Rule of Court No. 108 entitles the defendant, after his arrest and delivery to the court, to be informed of the complaint or information filed against him, to be informed of the substance of the testimony and evidence presented against him, and to testify or to present witnesses or evidence in his favor if he so desires. These rights make up what is called the preliminary investigation proper—different from the preliminary investigation defined in section 1 of the same Rule of Court No. 108,—and its purpose "is to afford the accused an opportunity to show by his own evidence that there is no reasonable ground to believe that he is guilty of the offense charged and that therefore there is no good reason for further holding him to await trial in the Court of First Instance." (Moran, Comments on the Rules of Court, 2d ed., Vol. II, pp. 568-569.) As admitted in the opinion of the majority, "the defendant can not as a matter of right compel the complainant and his witnesses to repeat in his presence what they had said at the preliminary examination before the issuance of the order of arrest," although there "are an infinite number of things which a party may not in strict law do or cause to be done but which may be permitted by the court in the exercise of its discretion and in the interest of justice." The majority is, however, mistaken in supposing that the respondent justice of the peace soundly used his discretion, under the facts of this case, in ordering the private prosecution to present its witnesses immediately after the

accused had entered his plea of not guilty.

It is noteworthy that the respondent justice of the peace issued an order of arrest after the preliminary investigation provided for in section 1 of Rule of Court No. 108. It logically follows, there being no showing to the contrary, that said respondent took under oath, either in the presence or absence of the defendant, the testimony of the complainant and his witnesses (Rule of Court No. 108, section 6), and that he was satisfied that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it (Id., section 7). The record does not reveal any supervening circumstance that led the respondent justice of the peace to change his mind as to the probability of the defendant's guilt, in which case his plain duty was, under section 11, merely to inform the defendant of the complaint or information, to inform him of the substance of the testimony and evidence presented against him during the preliminary investigation conducted prior to the arrest, and to allow him to testify or to present witnesses or evidence in his favor if he so desires.

If the respondent Justice of the peace was not the one who issued the order of arrest after the preliminary investigation prescribed in section 1, he would undoubtedly have the discretion of ordering the prosecution to present its witnesses with a view to enabling him to personally weigh and appraise its evidence. The reason is obvious and simple. If said respondent was not satisfied with the probability of defendant's guilt, after he had heard the witnesses for the prosecution, he should not have issued the order of arrest in the first place,—an action impliedly authorized by section 7 of Rule of Court No. 108, or he should have allowed the defendant to be present at the preliminary investigation conducted by him prior to the issuance of said order of arrest, a step expressly sanctioned by section 6, in which case said defendant should be allowed to cross-examine the witnesses for the prosecution. (Moran, Comments on the Rules of Court, 2d ed., Vol. II, pp. 565-566.)

The action of the respondent justice of the peace, now sustained by the majority, would lead to unnecessary delays resulting from long cross-examinations and encourage the defendant to outsmart the investigating officer and the prosecution by, merely waiving the right to present his evidence after he has known the nature of the proof for the Government, especially if defendant's probability of guilt remains unshaken, the very evils sought to be avoided by the innovation introduced by section 11 of Rule of Court No. 108.

I therefore vote for the granting of the petition for certiorari.

DISSENTING

FERIA, J.:

I dissent.

Preliminary investigation is not a constitutional right of a defendant or a part of the due process of law guaranteed by the Constitution, as this Court, as well as the Supreme Court of the United States in construing, the constitution of the States which served as a pattern for ours have declared. So it is up to the legislative power to determine whether or not to grant it to an accused, and, if granted, to provide for such procedure or manner and form of conducting the investigation, and only such, it may deem convenient.

The Philippine Legislature has not conferred the right to a preliminary investigation upon persons charged with offenses cognizable by the Court of First Instance of Manila. Formerly, in preliminary investigation accorded to defendants in provinces, the accused had the right to be confronted with and cross-examine the witnesses for the prosecution, in like manner as during the trial of a criminal case. But this Court, in the exercise of the power to promulgate rules of procedure granted by section 13 of Art. VIII of the Constitution, has eliminated the

defendants right of confrontation end cross-examination in preliminary investigation and given him only the right to be informed of the substance of the testimony of the witnesses and other evidence presented against him, in the investigation made by the proper judge or officer for the purpose of issuing a warrant of arrest of the defendant, and to testify as a witness and present evidence in his favor. (Section 11, Rule 108).

Such being the evident intention of the lawmaker and the clear provision of the law, a court or judge cannot modify the manner of conducting a preliminary investigation by adopting the old procedure already superseded by the new one. It is well settled that when the law prescribes a course of action for the courts to follow, the latter can not pursue any other course although they believe that the latter may be better calculated to attain the ends intended by the lawmaker. Courts must apply the law such as it is, and in case of doubt construe it in accordance with the intention of the legislative body, and not according to their own idea about what the law should be.

There is no analogy between the trial and the preliminary investigation of a case, and therefore the power granted by law to the courts to control the conduct of the trial, or the order of presentation of evidence, and the calling, recalling and examination of witnesses, can not be applied to preliminary investigation. The purpose of this proceeding is not to decide the guilt or innocence of the defendant for the purpose of convicting or acquitting him, but only to determine whether or not there is a probable ground to believe that he has committed an offense, in order to commit the defendant until the trial of the case against him. The constitutional right of an accused to be confronted with and cross examine the witnesses against him does not apply to preliminary investigation.

The law, in enumerating the duties and powers of a justice of the peace court and the rights of a defendant in preliminary investigation, excludes all others, because of the legal maxim "inclusionis est exclusio alterius". Courts can not exercise powers others than those expressly conferred or necessarily implied from those granted to it. Only when the law does not provide a rule or norm of conduct for courts to follow in deciding a question, and leaves it to the court or judge to decide it in one way or another, a judge is said to have discretion. And when law intends to give discretion to the court to act in one way or another, it always so expressly so provide, that is, that the Court may do so simply, or that it may act at its discretion. There is nothing in the law or section 11, Rule 108, or in the provisions of section 5, Rule 125 relating to inherent powers of courts that may be construed to give discretion to the court to recall the witnesses for the prosecution to testify again and be cross-examined by the defendant or his attorney in a preliminary investigation.

Besides, in the present case, after the defendant had been informed of the substance of the testimony of the witnesses and evidence presented against him, and before testifying or presenting evidence in his favor, the respondent judge granted the motion of the attorney for the defense to call the witnesses for the prosecution and require them to testify in the presence of and be cross-examined by the accused. To conclude that the respondent justice of the peace might grant such a petition would be to grant him power to follow a new procedure not contemplated by law, and not merely discretion to do so or not. Because judicial discretion is not whimsical. It is conferred whenever the facts and circumstances of the case can not be appraised beforehand by the legislative body in order to prescribe a law applicable thereto in consonance with the principles of justice. In such cases courts' or judges are authorized to consider the facts and circumstances of each particular case and act or decide the question involved in accordance with reason, justice or equity. At the state of the cases when the defendant's motion was granted, vis a vis the facts established during the investigation required by section 1, of Rule 108, and considered by the respondent justice of the peace in arriving at the conclusion that the accused is probably guilty of the offense charged and ordering his arrest, there were no new facts which might be taken into account by him in order to decide whether or not the interests of justice or equity warrant that the witnesses for the prosecution be called again and subjected to further examination and cross-examination. To adopt the conclusion of the majority would be to make it depend entirely upon the whim or caprice of a justice of the peace to grant such a request in

one case and refuse it in another similar or analogous case.

It may not be amiss to state that, modesty aside, the writer of this dissenting opinion, then a practising attorney, was the one who prepared the draft of the Rules of Court relating to Criminal procedure, and the provisions on preliminary investigation in the draft were the same as those of the old law, which gave the defendant the right to be confronted with and to cross-examine the witnesses for the prosecution. But the Supreme Court approved and adopted in toto the draft, except the part referring to preliminary investigation which it modified, by suppressing said right and enacting, in its stead, the provisions of section 11 of Rule 108 in its present form. I prefer the old to the new procedure. But I can not subscribe to the majority decision, which is a judicial legislation and makes the exercise of the right of a defendant to be confronted with and cross-examine the witnesses against him, to depend entirely upon the whim or caprice of a judge or officer conducting the preliminary investigation.

The respondent justice of the peace has therefore exceeded the powers or jurisdiction of the court he presides in granting the petition of the defendant, which is hereby set aside with costs against the respondent Osmundo Santiago. So ordered.

Feria, J., Mr. Justice Pablo authorizes me to certify that he concurred in this dissenting opinion.

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