

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF?APPELLANT, VS.
JULIAN MONTON, ENRIQUE MONSALE, SALVADOR MONSALE,
SA-TURNINO MONSALE, JUAN LINO-ON, ALBANO PATAGNI, PABLO
NABONG AND ALFO...**

G.R. No. L-23906. June 22, 1968

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ANGELES, J.;

On May 15, 1957, a criminal complaint for libel was filed with the Justice of the Peace Court (now municipal court) of Miagao, Iloilo, against the above-named defendants-appellees, for having prepared, signed, and sent a communication to the then President of the Philippines, denouncing certain illegal and oppressive acts allegedly committed by Jose J. Monte-claro as City Fiscal of Iloilo, thereby placing him to public hatred, contempt, dishonor, discredit and ridi-cule,

The complaint was dismissed by the Justice of the Peace Court on the ground that there was no probable cause to believe that the crime of libel charged therein has been committed.

Subsequently, or on May 8, 1968, the provincial fiscal of Iloilo filed a new information before the Court of First Instance of Iloilo, charging the same accused with the same crime. A motion to quash was filed by counsel for the accused on two grounds: (a) that the information contained averments which, if true, would constitute a legal excuse or justification; and (b) that it was filed without due process of law for want of pre-liminary investigation. The motion was granted for the reason that "the said letter cannot be considered libelous because it is a private communication made by the defendants to the highest magistrate of the land in the performance of their legal, moral or social duties."

Failing to obtain a reconsideration of the said order of dismissal, the prosecution appealed to this Court (G.R. No. L-16772) presenting as issue the ques-tion of whether or not the privileged character of the alleged libelous communication constituted a legal basis for the dismissal of the information based thereon. Dis-posing of that first appeal, this Court set aside the dismissal order with the holding that "the prosecution is entitled to go to trial and present the necessary evidence to prove malice and the denial to it of the opportunity to do so, upon defendant's motion to quash, constitutes reversible error." With respect to the second ground of the motion to quash, that the informa-tion was filed by the Provincial Fiscal without preli-minary investigation, in remanding the case to the court below for further proceedings, this Court said that it was "without prejudice to such action as the lower court may take, after appropriate findings, on the additional ground relied upon by appellees on their motion to quash."

Accordingly, the trial court conducted a hearing on the subject of whether or not a preliminary investi-gation had been held, receiving evidence from both parties. The prosecution offered in evidence, the affida-vit of the offended party which, as admitted, was made the basis for the filing of the information, and a cer-tificate of Asst. Provincial Fiscal, Eugenio M. Gison, to the effect that he had conducted the preliminary in-vestigation in the case. The accused, on the other hand, presented evidence to show fact of dismissal of the original complaint by

the Justice of the Peace Court, after preliminary investigation, and that none of the accused had been summoned or notified by the office of the provincial fiscal to appear for preliminary investigation.

The trial court ruled, after consideration of such evidence, that there was no preliminary investigation held in the case because the affidavit of the offended party does not show that the latter was examined personally and asked "searching questions" by Fiscal Gison; and that the certificate of Asst. Fiscal Gison does not state that "a preliminary investigation has been conducted in this case under my direction having examined the witnesses under oath."

The State has appealed for a second time, contending that a preliminary investigation has been conducted in this case, and that said preliminary investigation, anyway, was unnecessary.

Of the two issues raised in this appeal, We first shall dwell upon the latter, that is, whether upon the dismissal of the charge by the Justice of the Peace on the ground of lack of cause of action, a preliminary investigation is still necessary for the prosecution of the case by the fiscal under a new information. Our jurisprudence on this point is settled that -

"When the complaint or information is dismissed after the preliminary investigation, and a new information is filed, the accused cannot be brought to trial unless another preliminary investigation is made of the crime charge in the new information. The right of the accused not to be brought to trial except when remanded therefor as a result of a preliminary examination before a committing magistrate, it has been held, is a substantial one. Its denial over the objections of the accused is prejudicial error in that it subjects the accused to the loss of life, liberty or property without due process of law." (Conde vs. Judge of Court of First Instance of Taya-bas, 45 Phil. 173, 176.)

To this effect is the ruling laid down in the latter case of *People vs. Perves*, 110 Phil. 214, 1960, where it was further explained:

"x x x that if the charge for the crime cognizable by the Court of First Instance is filed by a competent party or officer in the Justice of the Peace Court and the accused waives preliminary investigation therein, or the Justice of the Peace, after regular preliminary investigation finds that a prima facie case exists, and consequently, elevated the records to the Court of First Instance, the provincial fiscal is not called upon to conduct another preliminary investigation, and may forthwith file the information in the Court of First Instance. Republic Act 732 does not apply in such a case. But if the Justice of the Peace, after due investigation, dismissed the charge, then, the case stands as if no charge had been made, and the Provincial Fiscal may thereafter conduct his own investigation of the same charge under the aforesaid Republic Act 1799 (amending Republic Act 732) taking it in the presence of the accused if and when the latter so request."

We cannot yield to prosecution's suggestion to dispense with preliminary investigation in this case for the mere reason that unlike in other offenses, in libel, the declaration of witnesses need not be taken, for the document itself, if found defamatory, and the authors definitely identified, is sufficient for filing the information. There is nothing in the law that pronounces an exception to the requirement which is substantial insofar as the rights of the accused are concerned. It is a basic rule that when the law does not distinguish neither should the court distinguish.

Of course, there is no dispute as to the latitude of discretion that the fiscal may exercise in the determination of what constitutes sufficient evidence as will establish "probable cause" for filing information against a supposed offender. But the same is by no means absolute and does not in any manner grant the said investigating officer the license to dispense with preliminary investigation altogether. The record of preliminary investigation is significant in cases where it would serve as a basis for the judge to later on exercise his own discretion on whether or not to dismiss the case.

"Whether a criminal action should be instituted is a matter addressed to the sound discretion of the fiscal who must determine whether or not to file a complaint (or follow that pre-sented by the offended party) accord-ing to whether the evidence is in his opinion sufficient to establish the guilt of the accused beyond a reason-able doubt. (Gonzales vs. Court of First Instance of Bulacan, 63 Phil. 846) Of course, the disposition of a motion by a provincial fiscal address-ed to a Court of First Instance seek-ing permission to dismiss criminal proceedings rests in the court's dis-cretion. The judge may properly deny the motion where, judging from the record of the preliminary investiga-tion there appears to be sufficient evidence to sustain prosecution (Asst. Prov. Fiscal of Bataan vs. Dollete, 103 Phil., 914; 56 Off. Gaz. [11] 2371, cited in Jacinto, Revised Rules of Court, 1965 ed. p. 126).

Emphatically the right to the oft-repeated preli-minary investigation has been intended to protect the accused from hasty, malicious and oppressive prosecution (U. S. vs. Grant, 18 Phil. 122). This, of course, with-out any express provision of the law, cannot be denied, and the omission thereof is a grave irregularity which nullify the proceedings because it violates the right to due process guaranteed by section 1, Article III of our Constitution.

Coming now to the question as to the fact of hold-ing a preliminary investigation, the prosecution would want the court to rely on the mere certification under oath in the information that a preliminary investigation had actually been conducted.

The manner of conducting preliminary investiga-tion is defined or described in section 6, Rule 108 of the old Rules of Court, applicable to this case, which reads -

"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 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."

There is nothing in the evidence for the prosecu-tion that can reasonably support its claim that Asst. Pro-vincial Fiscal Gison had conducted the requisite preli-minary investigation. Exhibit "1" is the affidavit of the complainant, dated May 7, 1958, subscribed and sworn to before the Clerk of Court which was the basis for the filing of the information against the accused. This piece of evidence does not show on its face that the of-fended party was personally investigated by the said Fiscal as the Rules require. As a matter of fact, it was not before him that the statement was subscribed and sworn to.

Exhibit 2-A, the certification to the effect that Asst. Fiscal Gison had conducted a preliminary investi-gation in accordance with Republic Act 1799, is not supported by any other evidence. The court's order deny-ing reconsideration of the quashal of the information states that during the hearing of the incident, the court required the provincial fiscal to produce the records of preliminary investigation, but the fiscal could not pro-duce the same alleging that the records were lost in his office.

We believe that section 1687 of the Revised Admi-nistrative Code, as amended, giving the provincial fis-cal authority to file an information on the basis of a certification made by him to the effect that he had con-ducted a proper preliminary investigation presupposes the existence of good faith - that no such certification would be made without actual conduct of the same - so that where evidence adduced do not support such a claim, then, such a certification would not suffice to dispense with the preliminary investigation to which the defendant is entitled.

Whereas in this instance, the two stages of a preliminary investigation become indefinable and merged as is the effect of a preliminary investigation conduct-ed by a provincial fiscal, where the Court of First In-stance may,

upon filing of the information, issue the warrant of arrest and set the case for trial on the merits, without necessity of conducting the preliminary investigation proper, the need for vigilance in the protection of the rights of the accused becomes more pronounced. Considering the Official position of complainant, who himself is a government prosecutor, it would seem doubly imperative that the provincial fiscal handling the case prove good faith by presenting to the court the record required to be submitted. In failing to so present such an important record, or more convincing evidence that the provincial fiscal or his assistant had personally conducted an investigation, the prosecution has utterly failed to show its impartiality and objectiveness so essential to the dispensation of justice.

As there has been in this case no renunciation or waiver of the right to preliminary investigation, and as, on the contrary, the whole proceeding has been punctuated with the sustained clamor for the right so withheld, the court a quo committed no mistake in granting the accused's motion to quash.

WHEREFORE, the questioned order of dismissal is hereby affirmed. No costs at this instance.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez and Castro, JJ., concur.

Reyes, J., in the result.

Fernando, J., did not take part.

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