

THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. LOURDES RAMILO, DEFENDANT AND APPELLEE.

G.R. No. L-7380. February 28, 1956

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

This is an appeal from the following order of the Court of First Instance of Capiz dismissing the present case:

"This is a petition for a reconsideration filed by the City Fiscal praying that tho ease be considered filed and given due course by this Court. , According to the said motion for reconsideration,' the City Fiscal alleged that the accused has been given opportunity to be heard during the investigation;

"On the other hand, the attorney for the accused alleged that they were not given opportunity to be heard either in the preliminary examination before the issuance of the warrant of arrest or in the preliminary investigation of the ease before it was remitted to this Court.

"In order to give opportunity to the accused who alleged that he had also a complaint for oral defamation against the offended party of this case so as to determine which case has to be continued by the City Fiscal, this Court ordered the case to be remitted to tho lower court so as to perform again the preliminary examination as well as the preliminary investigation, giving all the opportunities that the accused may like to interpose in these proceedings.

"On the other hand, the City Fiscal alleged that there was no need for him to conduct the preliminary examination because it is necessary, according to him, that the, accused has to prove that the case that he filed is worthless or the evidence is insufficient. The Court is of the opinion that the City Fiscal should investigate and examine these cases so as to determine whether the evidence is sufficient to justify the filing of the present case. The only way to determine this fact is to make a rigid and careful examination of the witnesses of both cases so as to give justice to those who seek justice. There is nothing to lose, or somebody-prejudiced by the reinvestigation and reexamination but, on the other hand, not to give opportunity to the accused who has also a complaint filed before the City Fiscal is far from fair. It must be understood that in many decisions of the Supreme Court in the performance of the preliminary examination before the issuance of a warrant, the accused may be present or waive his right to be represented and once the , warrant of arrest is issued, the accused is not allowed to cross-examine in the preliminary investigation of the witnesses for the government. If this is so, therefore, there is no opportunity for the accused to show to the court that all witnesses presented in the preliminary investigation are either invented and manufactured. The only remedy that ho has is to present his evidence in the preliminary investigation so as approve to the Court that he is innocent and in case found to be true, the case is dismissed.

"In view of the insistence of the City Fiscal in' his refusal to make further preliminary examination as well as to submit the case to preliminary investigation, the Court hereby order the dismissal of this" case, without cost."

It appears that on October 1, 1953, the City Attorney of Roxas City, upon previous investigation of the merits of the case at the instance of Rosita de Fernandez, filed with the Municipal Court of Roxas City an information for

Grave Oral Slander against the herein defendant-appellee Lourdes Ramilo. On the same date, the Municipal Judge issued the warrant for the arrest of the accused who immediately filed a bond in the amount of P1,000 for her provisional release.

On October 7, 1953, she was arraigned before the Municipal Court, pleaded not guilty and waived her right to preliminary investigation. Consequently, on the same date the Municipal Court forwarded the record of the case to the court of First Instance of Capiz. On October 8, 1953, the City Attorney filed with the latter Court an information worded in the same manner as that filed in the Municipal Court. On November 9, 1953, the case was called for the arraignment of the accused and on that day she appeared but instead of pleading guilty or not guilty to the charges against her, she, filed an urgent motion for reinvestigation of the case on the following grounds:

"That, while the complaining witness in the above-entitled case was allowed to be heard by herself and her witnesses and even assisted by counsel, the above-named accused was not given the merest opportunity to be present, heard and assisted by counsel at any time previous to the filing of this case by the prosecuting attorney of Roxas City;

"That the city prosecuting attorney ignored and disregarded facts and circumstances directly related to the above-entitled case which otherwise would have warranted the dismissal of the complaint filed by the complaining witness;

"That in obvious partiality towards the above-named accused, the prosecuting city attorney ignored and disregarded the complaint filed by the above-named accused presented by her against complainant" even previous to the complaint filed by the latter."

Acting upon this motion, the Court of First Instance of Capiz entered the following order:

"This is an urgent motion for reinvestigation alleging among other things that Attorney Francisco Fuentes, representing the accused, was not given opportunity to be present nor the accused was allowed to be assisted by any attorney during the investigation. In order to give every opportunity to the accused and for the sake of justice, this Court believes that the urgent motion is reasonable and, therefore, should be given due course,

"In view of the foregoing consideration, the Court orders that this Criminal Case No. 1692 for Grave Oral Defamation be returned to the municipal court of the City of Roxas so that the same may be indorsed to the City Fiscal for further investigation of the case with the request and advice that if the reinvestigation be carried out, the attorney for the accused should be allowed to be present and at the same time be heard, and to admit and receive any evidence that she may present if she so desires."

Accordingly, the case was sent back to the Municipal Court of the City of Roxas and indorsed by the latter to the City Attorney for further investigation. Complying with the order of the court, the City Attorney set the case for reinvestigation on November 18, 1953, but on that date the accused asked that the witnesses for the prosecution be first called for cross-examination and refused to submit to the reinvestigation unless she could cross-examine them. The City Attorney did not yield to this petition, closed the reinvestigation, and on November 19, 1953 returned the record of the case to the Court of First Instance and immediately thereafter filed a motion praying that the case be given due course on the ground that there is sufficient evidence to warrant the conviction of the accused. This motion was denied by the Court in its order of November 24, 1953, worded as follows:

"Upon petition of the City Attorney praying that this case be considered, the Court hereby denies the said petition inasmuch as the said case is concerned it was already finished in the Court of First Instance.

"Therefore, the Court hereby remits this case to the Justice of the Peace of the City of Roxas."

On December 5, 1953, the City Attorney petitioned the Court that the preceding Order be set aside and that the

ease be given due course, among other things, on the ground that:

"That when this case was called for arraignment of "the accused on November 9, 1953, this Honorable Court set aside the arraignment of the said accused and proceeded to hear the urgent motion for reinvestigation filed that same morning by counsel of the accused without serving copy of the same to the undersigned;

"That the undersigned objected to the granting of the petition for reinvestigation on the following grounds:

"1. That the accused has been granted the opportunity to be heard during the investigation;

"2. That under Section II, Rule 108 of the Rules of Court, prior to her arrest she has not the absolute right to participate in the investigation conducted by the undersigned;

"3. Under the same Rule after her arrest and delivery to the court the only right of the accused is to be informed of the substance of the testimony and evidence presented against her and if she desires to testify and to present witnesses or evidence in her favor; but accused in the above-entitled case waived her right to the preliminary investigation, as shown by the records of the case.

"That notwithstanding these objections of the undersigned, this Honorable Court granted the said motion for reinvestigation; "That pursuant to this order of this Honorable Court the undersigned scheduled for reinvestigation the above entitled case on November 18, 1953, in order to give opportunity for the accused to show those facts and circumstances mentioned in her motion for reinvestigation which would warrant the dismissal of this case and which were allegedly ignored by the undersigned;

"That counsel of accused refused to allow the accused and her witnesses to submit to the reinvestigation unless the undersigned produces before said counsel all the witnesses of the prosecution so that he can cross-examine them;

"That undersigned refused to accede to these demands without the accused and her counsel first showing that the case filed lacks merit;

"That, the merits of the case as filed not having been disturbed, the undersigned accordingly filed a motion before this Honorable Court on November 10, 1953, to consider the above entitled case filed and to give due course to the same;

"That this Honorable Court in its order of November 24, 1953, denied this petition of the undersigned alleging that tho. above entitled case, insofar as this Honorable Court is concerned is already finished;

"That the aforementioned order of this Honorable. Court is contrary to law and procedure; this Honorable Court having disposed of the above entitled case by means of the order for reinvestigation and not upon trial on the merits; and,

"Granting arguendo that the accused was deprived of her right to participate to the preliminary investigation, such deprivation will not warrant the dismissal of the case as decided by the Supreme Court in the case of Gabino Lozada vs. The Honorable Fernando Hernandez, respondent, G. R. No. L-6177 which held:

"It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether there is probable cause to believe the accused guilty thereof, (U. S. vs. Yu Tuico, 34 Phil. 209; People vs. Badilla, 48 Phil. 718). The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory."

On December 9, 1953, the Court of First Instance denied this motion and dismissed the case allegedly "in view of the insistence of the City Fiscal in his refusal to make further preliminary examination as well as to submit the case to preliminary investigation."

It is contended that the lower court erred "in not giving due course to the information filed by the City Attorney for grave oral defamation against the accused Lourdes Ramilo and in dismissing the case." We find this contention to be well taken. Firstly, because after the filing of the information by the City Attorney with the Municipal Court of the City of Itaas and after the issuance of the warrant of arrest, the accused filed a bond for her temporary release and when the case was set for preliminary investigation before that court, she, assisted by her counsel, having been informed of the nature of the charge against her, pleaded not guilty and explicitly waived her right to a preliminary investigation. Secondly, when the case was to be reinvestigated by the City Attorney pursuant to the order of the Court of First Instance, the accused, instead of submitting her evidence, demanded that the witnesses for the prosecution be recalled for cross, examination and refused to continue with the reinvestigation when her demand was denied by the City Attorney who had to forward the record of the case to the Court of First Instance for trial on the merits. It could readily be seen that the accused has been given all the opportunity to present her side of the case with the assistance of counsel not only in the preliminary investigation before the Municipal Court but also during the reinvestigation conducted by the City Attorney pursuant to the order of the Court of First Instance. She cannot therefore now claim that she was deprived of her right to preliminary investigation. If there has been no such preliminary investigation, it was because she explicitly waived her right thereto when she was arraigned for that purpose in the Municipal Court, and when the case was to be reinvestigated by the City Attorney, she made an illegal demand instead of submitting her evidence.

Section 11 of Rule 108 of the Rules of Court clearly provides:

"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:"

From the aforequoted provision of law, the rights of a defendant after his arrest are (1) to be informed of the complaint or information filed against him and of the substance of the testimony and evidence presented against him; and (2) to be allowed, if he so desires, to testify or to present witnesses or evidence in his favor. As of right, therefore, in a preliminary investigation, an accused is not entitled to cross-examine the witnesses presented against him. Hence, the demand of the herein accused during the reinvestigation conducted by the City Attorney that the witnesses for the prosecution be recalled so that she could cross-examine them was not based on any provision of law and therefore the City Attorney of Roxas City has correctly denied such demand. Wherefore, the aforequoted order appealed from is hereby revoked and the Court is ordered to proceed with the trial of the case on its merit.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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