

OSCAR L. GOZOS, PRESIDING PROSECUTOR OF BATANGAS, EDNA DYOGI, ET AL., PETITIONERS, VS. HON. PATERNO C. TAC-AN, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 84, BATANGAS CITY; S...

G.R. No. 123191. December 17, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

These are two special civil actions for certiorari under Rule 65, §1 of the Rules of Court seeking to set aside orders, dated October 18, 1995, November 22, 1995, and January 3, 1996, issued by respondent Judge Paterno Tac-an of the Regional Trial Court, Batangas City. A summary of the gist of the orders follows:

1.) Order dated October 18, 1995 - Respondent judge directed the Office of the Provincial Prosecutor, Batangas City to amend the information filed on June 26, 1995 for the death of Gilbert Dyogi by the Office of the Deputy Ombudsman for the Military against private respondents SPO2 Jaime Blanco, SPO3 Pedro Castillo, SPO3 Ciriaco Sulit, SPO2 Aniano Atienza, and SPO1 Ildefonso Castillo, members of the Philippine National Police, San Jose, Batangas. The amendment would reduce the charge against private respondent SPO2 Jaime Blanco from murder to homicide and drop the rest of the private respondents from the information.

2.) Order dated November 22, 1995 - Acting on the motion for reconsideration filed on November 7, 1995 by the complainant Edna Dyogi, respondent judge directed the Office of the Provincial Prosecutor, Batangas City to amend the information by including private respondent Pedro Castillo as an accomplice in the crime. However, respondent judge denied the motion insofar as it sought to include the other private respondent as accused in the criminal case.

3.) Order dated January 3, 1996 - Respondent judge Tac-an denied the second motion for reconsideration filed by complainant Edna Dyogi, questioning the authority of respondent to require the Provincial Prosecutor to amend the information.

The petition in G.R. No. 123442 was filed by the Solicitor General on behalf of the People of the Philippines, while the petition in G.R. No. 123191 was filed by complainant Edna Dyogi. In a manifestation, dated February 7, 1996, complainant adopted the petition of the Solicitor General, for which reason the Court directed in its resolution, dated August 5, 1996, the consolidation of the two cases.

The facts are as follows:

It appears that on the night of February 9, 1995, the officials, teachers, and students of the Concepcion Aguila Memorial College in San Jose, Batangas organized a school party. While the party was going on, the principal, Felizardo Aguila, was informed that several men, who appeared to be drunk, were trying to force their way through the main gate. One of the men seemed armed with a handgun. After calling the police, Aguila went to the main gate, where he asked the men what their business was.[1]

At this point, private respondents Blanco and Atienza arrived at the school. They were shortly joined by private respondents Pedro Castillo, Sulit, and Ildefonso Castillo, who were all members of the Philippine National Police of San Jose, Batangas. They demanded from the man armed with a handgun, who later turned out to be the victim Gilbert Dyogi, that he surrender his gun and go with them to the station.[2] Gilbert Dyogi gave the handgun to the respondents, who then asked to see his license. He produced a sheet of paper from his wallet which he handed to private respondents. After allowing them to inspect the weapon and the alleged license, Gilbert Dyogi asked the private respondents to give them back to him. However, private respondent Blanco, who had the gun, refused to do so.[3]

What exactly followed is unclear. Before long the two were grappling for possession of the gun. Apparently, Blanco pulled out his sidearm and fired at Gilbert Dyogi twice.[4]

In connection with the fatal incident, Gerald Varez, Investigator in the Office of the Ombudsman for the Military, charged private respondents Blanco, Pedro Castillo, Sulit, Atienza, and Ildefonso Castillo with murder in an information filed with the Regional Trial Court of Batangas City. The information alleged:

That sometime on February 9, 1995 at Poblacion, San Jose, Batangas, and within the jurisdiction of this Honorable Court, accused SPO2 Jaime Blanco, SPO3 Pedro V. Castillo, SPO3 Ciriaco R. Sulit, SPO2 Aniano Atienza and SPO1 Ildefonso R. Castillo, all public officers, being then members of the Philippine National Police of San Jose, Batangas, conspiring and confederating, and taking advantage of their official positions, with treachery and taking advantage of their superior strength, with intent to kill, did then and there, wilfully, unlawfully and feloniously shoot with a firearm one Gilbert Dyogi, who was then weak and defenseless, thereby inflicting upon the latter, a fatal wound which caused his instantaneous death.[5]

Private respondents Blanco, Pedro Castillo, Sulit, Atienza, and Ildefonso Castillo filed a Motion to Hold Issuance of Warrant and Motion to Quash with Motion to Set Incidents for Hearing in which they prayed:

WHEREFORE, it is respectfully prayed that the Honorable Court first determine whether or not there is probable cause against all the accused before the issuance of a warrant of arrest, and the case be set for open hearing with notice to all the parties for that purpose and that in the meantime, the issuance of a warrant of arrest be held in abeyance, in the interest of justice, and thereafter the information be quashed and/or dismissed as against the accused against whom there is no probable cause.[6]

Petitioner Edna Dyogi opposed the motion. She maintained that there was probable cause for the filing of the case against private respondents Blanco, Pedro Castillo, Sulit, Atienza, and Ildefonso Castillo. Respondent Tac-an heard the parties on their motion after which, in an order dated October 8, 1995, he ruled as follows:

WHEREFORE, it is the opinion of this Court that there is probable cause to hold SPO2 Jaime V. Blanco to stand trial for homicide only. His co-accused SPO3 Pedro V. Castillo, SPO3 Ciriaco R. Sulit, SPO2 Aniano Atienza and Ildefonso R. Castillo are hereby discharged from the information for insufficiency of evidence.

...

Let a warrant of arrest be issued for the apprehension of SPO2 Jaime V. Blanco who is reportedly assigned at the Provincial Command Headquarters, PNP, Puerto Princesa, Palawan. The amount of P50,000.00 in cash and/or property is hereby fixed for his provisional liberty.

...

The Provincial Prosecutor or his authorized assistants are hereby directed to file an Amended Information for purposes of formality and convenience within five (5) days from receipt thereof.

...

... This duty of the judge necessarily includes the determination of the proper offense under which the accused is to undergo trial. To do otherwise would be tantamount to dereliction of duty. Any pronouncement to the contrary has been repealed by the 1987 Constitution and by the latest Supreme Court rulings on this matter.[7]

Petitioner Dyogi moved for a reconsideration, arguing that the crime committed was murder, and not homicide, and that there was probable cause to believe that private respondents Blanco, Pedro Castillo, Sulit, Atienza, and Ildefonso Castillo were guilty of the offense. In his order, dated November 22, 1995, respondent judge partially reconsidered his order by directing the inclusion of respondent Pedro Castillo in the information, not as principal but only as an accomplice. In all other respect, he affirmed his previous order. The dispositive portion of his order, dated November 22, 1996, reads:

WHEREFORE, PREMISES CONSIDERED, this Court resolves:

1. That the finding of probable cause for homicide only against accused Jaime V. Blanco for shooting to death Gilbert Dyogi on February 9, 1995 at around eleven in the evening is hereby maintained.
2. That there is probable cause to hold accused PEDRO V. CASTILLO liable as accomplice only by cooperating with a simultaneous act of intervention which act was not indispensable, but facilitated the killing of Dyogi by Blanco, by then holding Ben Flores and preventing him from approaching and dissuading Dyogi from insisting in retaining his firearm in his person or recovering the possession thereof from said Blanco or in preventing Flores from pacifying Blanco from shooting Dyogi. Such act is contrary to law.

Let a Warrant of Arrest be issued for his apprehension. Bail for his temporary liberty is fixed at P10,000.00. If an insurance company should serve as bondsman, the authority of the issuing person must be supported by a board resolution to that effect;

3 As regards the rest of the accused, namely: Ciriaco P. Sulit, Aniano Atienza, and Ildefonso R. Castillo, the finding that there is no probable cause is hereby maintained. However, the prosecution may, at its option, within a period of twenty (20) days from receipt of this Order, adduce additional evidence, if any, against them before this Court:

4 That the information shall be amended accordingly by the public prosecutor, as a matter of form and for convenience in the proceedings. The public prosecutor's office is hereby enjoined not only to show obedience to duty and fairness, but moral courage as well, to follow the path of legal rectitude, which hitherto was covered with mist but is now illuminated by the guidance of the Constitution unto this Court. The Court is now the final arbiter under the 1987 Constitution in determining probable cause before a Warrant of Arrest shall issue whereas before it was the prerogative of the public prosecutor to so determine and whose own ascertainment or exercise of discretion may not be interfered with by the Court, save in cases of grave abuse of discretion, and whose information filed may not be ordered to be amended by the Court. Any public officer must yield to the Constitution as he has the sworn duty to obey and defend it.[8]

On December 8, 1995, petitioner Edna Dyogi filed another motion for reconsideration, contending that the power to determine the nature of the offense to be charged was vested in the Provincial Prosecutor and not in the Regional Trial Court. However, petitioner's motion was denied by the court in its order, dated January 3, 1996, on the ground that it was actually a second motion for reconsideration which is not allowed to be filed. Hence, these petitions for certiorari filed by the Solicitor General and by the complainant in the criminal case, Edna Dyogi.

Petitioners raise the following issues:

Whether or not the Respondent Judge acted without or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction:

1. in conducting another preliminary investigation in a proceeding to determine probable cause for the issuance of warrants of arrest.
2. in ordering the amendment of the crime charged in the information from "murder" to "homicide" and the number and nature of the participation of the accused charged in the information filed by the Office of the Deputy Ombudsman for the Military.[9]

We find both petitions to be meritorious.

Rule 112, §1 of the Rules of Court defines a preliminary investigation as "an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial." Rule 112, §2 of the Rules of Court enumerates the officers authorized to conduct preliminary investigations, as follows:

The following may conduct a preliminary investigation:

- (a) Provincial or city fiscals and their assistants;
- (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;
- (c) National and Regional state prosecutors; and
- (d) Such other officers as may be authorized by law.

Their authority to conduct preliminary investigation shall include all crimes cognizable by the proper court in their respective territorial jurisdictions.

Thus, as provided in Rule 112, §2(d), other officers may be authorized by law to conduct preliminary investigations. Indeed, under R.A. No. 6770, otherwise known as the Ombudsman Act of 1989, investigators of the Office of the Ombudsman may conduct preliminary investigations of cases involving public officers. Thus, §15(1) of the said law provides:

The Office of the Ombudsman shall have the following powers, functions and duties:

- (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.

The investigators of the Office of the Ombudsman have concurrent jurisdiction with public prosecutors to conduct preliminary investigations in all cases involving public officers, whether falling under the jurisdiction of the Sandiganbayan or the regular courts. For this purpose, Administrative Order No. 8, dated November 8, 1990, of the Office of the Ombudsman provides:

For purposes of investigation and prosecution, Ombudsman cases involving criminal offenses may be subdivided into two classes, to wit: (1) those cognizable by the Sandiganbayan, and (2) those falling under the jurisdiction of the regular courts...

The power to investigate or conduct a preliminary investigation in any Ombudsman case may be exercised by an investigator or prosecutor of the Office of the Ombudsman, or by any Provincial or City Prosecutor or their assistants, either in their regular capacities or as deputized Ombudsman Prosecutors.

Thus, while the power of an investigator of the Office of the Ombudsman for the Military is undoubted, no similar

authority is vested in judges of Regional Trial Courts as they are not among those mentioned in Rule 112, §2 as authorized to conduct preliminary investigations. As this Court pointed out in *Castillo v. Villaluz*:^[10]

Judges of Regional Trial Courts (formerly Courts of First Instance) no longer have authority to conduct preliminary investigations. That authority, at one time reposed in them under Sections 13, 14 and 16, Rule 112 of the Rules of Court of 1964, was removed from them by the 1985 Rules on Criminal Procedure, effective on January 1, 1985, which deleted all provisions granting that power to said judges.

The 1988 Amendments to the 1985 Rules on Criminal Procedure, declared effective on October 1, 1988, did not restore that authority to Judges of Regional Trial Courts; said amendments did not in fact deal at all with the officers or courts having authority to conduct preliminary investigations.

As explained in *Salta v. Court of Appeals*,^[11] "the preliminary investigation proper is, therefore, not a judicial function. It is a part of the prosecution's job, a function of the executive."

It is evident that in this case, respondent judge conducted an inquiry, not only for the purpose of determining whether there was probable cause to order the arrest of private respondents Blanco, Pedro Castillo, Sulit, Atienza, and Ildefonso Castillo, but for the purpose of determining whether there was sufficient evidence to prosecute them as well. Indeed, in his questioned orders, respondent judge did not only determine the existence of probable cause for the issuance of warrants of arrest, but also what the charge should be and who should be charged. In so doing, respondent judge exceeded his authority.

To justify his orders, respondent judge invokes Art. III, §2 of the 1997 Constitution, which provides that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized." However, this provision applies to the issuance of arrest and search warrants, which should be distinguished from a preliminary investigation. As already stated, the determination of probable cause for the issuance of such orders is vested in the courts, but the conduct of preliminary investigations is entrusted to the executive branch, with the exception of inferior court judges. According to this Court in *People v. Inting*:^[12]

Judges and prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or release". The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper - whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expenses, rigors and embarrassment of trial - is the function of the prosecutor.

....

We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of the warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecution's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the judge.

Private respondents Pedro Castillo, Sulit, Atienza, and Ildefonso Castillo defend the assailed orders on the theory that, since in their "Motion to Hold Issuance of Warrant and Motion to Quash with Motion to Set Incidents for Hearing" they also sought to quash the original information filed by Ombudsman Investigator Varez of the Office of the Ombudsman for the military, respondent judge properly acted in hearing the motion to quash. However,

private respondents sought to quash the information on the theory that there was no probable cause against them. Lack of probable cause is not one of the grounds for a motion to quash under Rule 117, §3 of the Rules of Criminal Procedure. A motion to quash should be based on a defect in the information which is evident on its face. The guilt or innocence of the accused, their degree of participation, and the mitigating, aggravating, or alternative circumstances which should be appreciated are properly the subject of trial on the merits rather than a motion to quash. As held in *Cruz v. People*:^[13]

It must here be stressed that a preliminary investigation is merely inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the prosecutor to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof; and it does not place the persons against whom it is taken in jeopardy.

The established rule is that a preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

Hence, notwithstanding the contrary opinion of the judge regarding the designation of the offense committed, for as long as he finds probable cause for the offense charged, he should issue a warrant of arrest against the accused for the crime charged in the information.

WHEREFORE, the petition is hereby granted and the orders, dated October 18, 1995, November 22, 1995, and January 3, 1996, of respondent Judge Paterno Tac-an are ANNULLED and SET ASIDE.

SO ORDERED.

Bellosillo (Chairman), Puno, and Martinez, JJ., concur.

[1] Rollo, pp. 147-149.

[2] *Id.*, pp. 149-151.

[3] *Id.*, pp. 66-69.

[4] *Id.*, pp. 70-72.

[5] Rollo, p. 44.

[6] *Id.*, pp. 51-52.

[7] *Id.*, pp. 36-37.

[8] *Id.*, pp. 40-41.

[9] *Id.*, pp. 11-12.

[10] 171 SCRA 39, 42-43 (1989).

[11] 143 SCRA 228, 234-235 (1986).

[12] 187 SCRA 788, 792-794 (1990).

[13] 233 SCRA 439, 458.

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