

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF. VISITACION M. MERIS, OFFENDED PARTY AND APPELLANT, VS. ASCENCION P. OLARTE, DEFENDANT AND APPELLEE.

G.R. No. 13027. June 30, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Defendant Ascencion P. Olarte is charged with libel. It is alleged in the information that "on or about the 24th day of February, 1954 and subsequently thereafter", said defendant had wilfully, unlawfully and feloniously written certain letters which were libelous, contemptuous and derogatory to Miss Visitacion M. Meris, with evident and malicious purpose of insulting, dishonoring, humiliating and bringing into contempt the good name and reputation" of said complainant.

It appears that on January 7, 1956, Miss Meris lodged the corresponding charge of libel with the provincial fiscal of Pangasinan, who assigned it to an assistant provincial fiscal; that upon the latter's advice, on February 22, 1956, she filed with the Justice of the Peace Court of Pozorrubio, Pangasinan, a complaint for libel against Ascencion P. Olarte; that the defendant waived her right to a preliminary investigation, whereupon the justice of the peace court forwarded the case to the Court of First Instance of Pangasinan, in which the corresponding information was filed on July 3, 1956; that the defendant "seasonably moved to quash the information upon the ground of prescription of the offense; and that, after due hearing, the court of first instance granted said motion and dismissed the case, with costs de oficio. Hence, this appeal by complainant Miss Meris, with the conformity of the special counsel of the office of the provincial fiscal of Pangasinan, who represented the prosecution in said court.

Subsequently, defendant filed a motion to dismiss the appeal upon the ground that the brief filed by appellant was prepared, and the steps leading to its presentation were taken, by the private prosecutors, not by the Solicitor General, and that, as a consequence, said brief and steps were allegedly null and void. Upon the filing of the Solicitor General's opposition to said motion, this Court resolved to act upon the same "when the case is considered on the merits". Thereafter, the Solicitor General adopted said brief for the appellant as its own. It appearing from the foregoing that the office of said provincial fiscal and the Solicitor General had thus acquiesced in and supported the action taken by the complainant, the motion to dismiss the appeal is hereby denied.

It is conceded that, as provided in Article 90 of the Revised Penal Code, "the crime of libel * * * shall prescribe in two (2) years", which, pursuant to Article 91 of the same Code, "shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and shall be interrupted by the filing of the complaint or information * * * ." In an affidavit, attached to the complaint filed with the justice of the peace court, Miss Meris stated that one defamatory letter was received by her on February 27, 1954 and that there were other libelous letters, seemingly written after the first. According to another affidavit, likewise, attached to said complaint, the subsequent letters were received on or about March 1 and 13, April 26 and May 9, 1954. The issue in the lower court, as well as in this appeal, is whether the statute of limitations was suspended by the filing of the

complaint with the justice of the peace court on February 22, 1956, as claimed by appellant, or continued to run until July 3, 1956, when the information was filed with the court of first instance, as contended by the defendant. His Honor, the trial judge adopted the latter alternative, and, accordingly, held that the prescriptive period had expired before the filing of said information.

In support of this view, it is argued that, construing said Article 91 of the Revised Penal Code, it was held, in *People vs. Tayco* (73 Phil., 500, 510):

"* * * it is clear that the complaint or information referred to in article 91 is that which is filed in the proper court and not the denuncia or accusation lodged by the offended-party in the City Fiscal's Office. It is needless to add that such accusation in the City Fiscal's Office cannot end there in the acquittal or conviction of the accused";

that the "proper court", for the purpose of suspending the running of the statute of limitations in libel cases, is the court of first instance not the justice of the peace court, because Article 360 of the Revised Penal Code originally provided:

"Persons responsible.—Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

"The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamation contained therein to the same extent as if he were the author thereof.

"The criminal action and the civil action for damages in cases of written defamation, as provided in this chapter, may be filed simultaneously or separately with the court of first instance of the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed.

"No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de officio shall be brought except at the instance of and upon complaint expressly filed by the offended Party."

and that, on June 15, 1955, it was amended by Republic Act No. 1289, to read:

"Persons responsible.—The person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

"The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamation contained therein to the same extent as if he were the author thereof.

"The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense: Provided, however, That where the libel is published, circulated, displayed, or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the court of first instance thereof: Provided, further, That the civil action shall be filed in the same court where the criminal action is filed and vice versa: Provided, furthermore, That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts: And provided, finally, That this amendment shall not apply to cases of written defamation, the civil and/or criminal actions to which, have been filed in court at the time of the effectivity of this law.

"No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de officio shall be brought except at the instance of and upon complaint expressly filed by the offended party."

Defendant and the lower court deduced from this amendment, particularly from the substitution of the verb "shall" in lieu of the term "may", appearing in the third paragraph of the original provision, that it is the filing of the information with the Court of First Instance that interrupts the running of the prescriptive period, not the presentation of the complaint in the justice of the peace court, or the receipt in the Court of First Instance of the record forwarded by said inferior court, because the proceedings in the justice of the peace court merely seek to ascertain the existence of probable cause, and the prosecution still has to file an information with the Court of First Instance, before the latter can proceed with the determination of the merits of the case. It has, also, been urged, in support of defendant's pretense, that the Revised Penal Code, as originally enacted, as well as amended, would have merely provided that the criminal and civil actions for written defamation may or should be filed with the "proper court", instead of naming, particularly the "court of first instance", had the framers of the law not intended to divest justice of the peace courts of the authority to conduct preliminary investigations in criminal actions for libel. However, the majority of the members of this Court find the theory of the defense untenable.

Prior to the approval of said Code, on December 8, 1930, the crime of libel was governed by Act No. 277 of the Philippine Commission, which prescribed therefor, in section 2 therefor, "a fine of not exceeding two thousand dollars or imprisonment for not exceeding one year, or both." Courts of first instance had original jurisdiction to hear and decide criminal cases for libel, despite the silence of said Act No. 277 thereon, inasmuch as section 56(6) of Act No. 136 of the Philippine Commission vested upon said courts original jurisdiction over "all criminal cases in which a penalty of more than six months' imprisonment or a fine exceeding one hundred dollars may be imposed."

Pursuant to Act No. 277, civil actions for libel were, however, within the original jurisdiction of courts of first instance, regardless of the amount involved, despite the provisions of Act No. 136 (section 56 [3], under which said courts had no original jurisdiction over civil cases, except when "the demand exclusive of interest, or the value of the property in controversy, amounts to one hundred dollars or more". Section 11 of said Act No. 277 provided:

"In addition to the criminal action hereby prescribed, a right of civil action is also hereby given to any person libeled as hereinbefore set forth against the person libeling him for damages sustained by such libel, and the person so libeled shall be entitled to recover in such civil action not only the actual pecuniary damages sustained by him but also damages for injury to his feelings and reputation, and in addition such punitive damages as the court may think win be a just punishment to the libeler and an example to others. Suit may be brought in any Court of First Instance having jurisdiction of the parties. The presumptions, rules of evidence, and special defenses herein provided for criminal prosecutions shall be equally applicable in civil actions under this section." (*Italics ours.*)

Thus criminal actions, as well as civil actions, for libel were originally cognizable by courts of first instance under said Act No. 277. The jurisdiction of such courts over both kinds of action was maintained by the Revised Penal Code. Although the same repealed Act No. 277, sections 2 and 11 of the latter were, in effect, incorporated into the third paragraph of Article 360 of said Code, as originally enacted, with a qualification only as to venue, namely: "the criminal action and civil action" for damages in cases of written defamation * * * may be filed simultaneously or separately with the Court of First Instance of the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed."

Said Article 360 specified the court in which both actions could be filed, instead of referring merely to the "proper court", because the latter expression would have had the effect of amending the existing law on the authority to hear and decide civil actions for libel, the same being, pursuant to Act No. 277, within the original jurisdiction of courts of first instance, regardless of the amount involved, whereas, under the general laws then in force, said courts had no such jurisdiction over civil actions when the demand, exclusive of interest, amounted to less than

\$100.00 As regards the criminal action for libel, the specific mention of the Court of First Instance in Article 360 was unnecessary, because the penalty prescribed for libel in Article 355 of said Code, was prison correccional in its minimum and medium periods or a fine ranging from P200 to P6,000, or both, and, hence, the offense was within the original jurisdiction of the court aforementioned. The same had to be specified, however, in said Article 360, inasmuch as both actions were dealt with therein—unlike Act No. 277, section 2 of which regulated the criminal action, whereas section 11 governed civil actions—so that there was no means of saying that the civil action was triable before courts of first instance, without applying the statement to the criminal action.

At any rate, it is apparent, from a perusal of the three (3) provisions aforementioned, that the framers of Article 360 of the Revised Penal Code intended to introduce no substantial change in the existing law, except as regards venue, and that, in all other respects, they meant to preserve and continue the status quo under sections 2 and 11 of Act No. 277. Such was, also, the purpose of Congress in passing House Bill No. 2695, which eventually became Republic Act No. 1289. The explanatory note to said bill is too clear to admit of any doubt about it. It reads:

"Article 360 of the Revised Penal Code which permits the offended party to file as many civil and criminal complaints for libel in as many places as the writing complained of has been circulated, has been abused so as to harass and indirectly muzzle newspapers, their editors and reporters. The spectre of having to defend themselves at great expense in time and money in many courts far away from their place of publication, has often caused many a newspaper to adopt a less courageous and militant attitude and to temporize too long before exposing fraud, corruptions and other venalities in all nooks and corners of our country.

"It is for the purpose of remedying this anomalous procedural situation which undoubtedly lessens the effectiveness of our free press to ferret out the evil and the wrong in our nation that this accompanying measure is presented. If passed, it would limit the venue of both civil and criminal complaints for libel to the province or municipality where any of the accused or any of the offended party resides." (Italics ours.)

Inasmuch as the framers of Article 360 of the Revised Penal Code, and those of Republic Act No. 1298, did not intend to modify the conditions obtaining under Act No. 277 of the Philippine Commission, insofar as jurisdiction to hear and determine criminal and civil actions for libel are concerned, the issue in the case at bar narrows, therefore, to whether or not justice of the peace courts had authority to conduct preliminary investigations of violations of our original libel law allegedly committed within their respective municipalities.

In this connection, it should be noted that, barely two (2) months prior to the passage of Act No. 277, or on August 10, 1901, the Philippine Commission had approved Act No. 194, section 1 of which vested in "every justice of the peace in the Philippine Islands" the "authority to make preliminary investigation of any crime alleged to have been committed within his municipality, jurisdiction to hear and determine which is by law * * * vested in the judges of Courts of First Instance." It will be recalled, also, that Act No. 277 did not particularize the class of court that would hear and determine criminal actions for libel. The identity of the court was to be inferred merely from the penalty prescribed for said offense in Act No. 277, considered in relation to Act No. 136. The result was that, in view of the nature of said penalty and the provisions of section 56 of Act No. 136, criminal cases for libel were—and still are—within the original jurisdiction of courts of first instance. Now, then, can we justly hold that by fixing for said offense a penalty falling under the original jurisdiction of courts of first instance, the framers of section 2 of Act No. 277 had evinced the intent, either to establish an exception to the provisions of Act No. 194, authorizing every justice of the peace "to make preliminary investigation of any crime alleged to have been committed within his municipality, jurisdiction to hear and determine which is by law * * * vested in the judges of Courts of First Instance," or to divest justices of the peace of such authority, as regards the crime of libel?

It is obvious to us that such inference is unwarranted. To begin with, there is absolutely nothing in Act No. 277 to indicate the aforementioned intent. Secondly, repeals or amendments by implication are neither presumed nor favored. On the contrary, every statute should be harmonized with other laws, in the absence of a clear inconsistency between them. Thirdly, the jurisdiction of courts of first instance to hear and determine criminal actions within the original jurisdiction thereof is far from inconsistent with the authority of justices of the peace to make preliminary investigations in such actions. What is more, this authority has been vested to relieve courts of first instance of the duty to hear cases which are devoid of probable cause, thereby paving the way for the effective exercise of the, original jurisdiction of said courts and the expeditious disposal by title same of criminal cases which, are prima facie meritorious.

Why, it has been asked, has Republic Act No. 1289 amended the third paragraph of Article 360—pursuant to which the criminal action and the civil action for libel "may be filed * * * with the court of first instance"—to provide that such actions "shall" be filed with the aforementioned court? Does the substitution of "shall" in lieu of "may" not show that the criminal action cannot be instituted in any other court, that a complaint for libel filed with a justice of the peace court is not the action contemplated in said Article 360, as amended by Republic Act No. 1289, and that, accordingly, the filing of said complaint did not suspend the running of the statute of limitations, despite the provision of Article 91 of the Revised Penal Code to the contrary?

The foregoing questions overlook the fact that, under Article 360 of the Revised Penal Code, prior to its amendment, and even under Act No. 277, which did not name the court that could hear and determine criminal actions for libel, the same fell under the original jurisdiction of courts of first instance. The possession of such jurisdiction by these courts is due, therefore, neither to said change from "may" to "shall", nor to the specific mention of said courts in Article 360. The nature of the penalty imposable sufficed to confer said jurisdiction upon courts of first instance, to the exclusion of all other courts.

Moreover, said questions fail to take into account the difference between jurisdiction to hear and decide a criminal case, on the one hand, and the authority to make in such case a preliminary investigation, on the other. Worse still, the questions propounded assume that the grant to courts of first instance of original jurisdiction to determine criminal cases for libel, is, not only a denial, to justices of the peace, of the authority to conduct preliminary investigation in such cases, but, also, a withdrawal of said authority, vested upon justices of the peace by Act No. 194, insofar as the aforementioned cases are concerned, which is the very point in dispute. Thus, the aforementioned questions beg the issue, instead of demonstrating the validity of defendant's pretense.

Apart from the foregoing, the theory of defendant herein is belied by the history of the legal precepts under consideration. Act No. 277 contained no provision regulating the venue in criminal cases for libel. Under the pertinent jurisprudence, the same could be brought "in any jurisdiction where the libelous article was published or circulated, irrespective of where such article was written or printed." (33 Am. Jurs. 301.) As regards the suit for damages, it had to be filed, according to section 11 of Act No. 277, with "any Court of First Instance having jurisdiction of file parties", that is to say, in the province in which either of them resided (Section 377, Act No. 190). Said provision governing civil action for written defamation was amended by Article 360 of the Revised Penal Code, pursuant to which both actions, civil and criminal, "may be filed" with "the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed."

In the course of time, the new policy appeared to be unwise, as regards newspapers of general circulation. Indeed, under said Article 360, as originally enacted, an offended party residing, let us say, in the province of Cagayan, could—for the purpose of causing undue harassment—commence, in the province of Batanes, a civil action against the publisher of a newspaper edited in Manila. At the same time, said offended party could institute a criminal

action in the Court of first Instance, in Sulu. To avoid these evils, Article 360 was amended by Republic Act No. 1289. Pursuant thereto, both actions must be filed with the same court of first instance, and this must be that of "the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense", unless "the libel is published, circulated, displayed or exhibited in the province or city wherein neither the offender nor the offended resides", in which case "the civil and criminal action may be brought in the court of first instance thereof". That these were the only objectives of Congress in passing House Bill No. 2695, which later became Republic Act No. 1289, is manifest, not only from the above quoted explanatory note to said bill, but, also, from the Congressional Record pertinent thereto. Thus, Congressman Pedro Lopez, who sponsored the bill in the House of Representatives, stated on the floor thereof:

"* * * As a fitting, not merely lip service, contribution that the House could give to strengthen the arm of the Fourth Estate of our country, it has been suggested that we take up for consideration on the floor tonight this bill * * * which will help keep our press unshackled in fulfilling their mission as the eyes, ears, nose, voice and conscience of our people.

"This amendment consists in deleting the third paragraph of Article 360 of the Revised Penal Code which, under the present law, would permit any offended party to file as many libel charges in the court of first instance of any province where the libelous article is supposed to have been circulated, exhibited or displayed, irrespective of whether it is not the place where the article was composed, published or printed. This provision, gentlemen of the House, has in the past been abused in order to harass and muzzle the free press. It has been abused to stick an extend that an offended party files it not only in the province where he lives but also files it in Cagayan up to north, down to Davao in the south. Under the proposed amendment, it is intended that this extreme measure against the press be lightened so that the offended party, while given all due protection under the law in order to cleanse his name and vindicate himself before our courts, may file the charges only in the court of first instance where he resides or in the court of first instance where the accused resides." (House of Representatives' Congressional Record, Third Congress, Second Session [February 21, 1955], Vol. II, No. 21, p. 598; Italics ours.)

This view was reiterated by his counterpart in the Senate, Senator Lorenzo Sumulong, who used the following, language:

"Mr. President, this is a bill amending the present statutory provision on venue of libel cases. At present a civil or criminal action for libel had to be presented in the place where the alleged libel was published irrespective of where it was composed, printed or issued. This provision in our existing law has oftentimes subjected to harassment or hardship reporters or publishers of newspapers who are accused of libel because under the law when an alleged libel in the newspaper which circulates throughout the Philippines is filed, the action whether criminal or civil may be presented in any place where the libel was published and it can well happen that the libel suit whether criminal or civil may be filed in a province or district far away from the residence of the accused. It may also happen under our present law that the alleged offended party may divide his complaint by filing a criminal action in once province where the libel was published and then filing a civil action in another province very far away from the province where the criminal case was filed and this will largely work hardship and tremendous expenses as well as difficulties to the accused. And it is for this reason that this bill was originally filed in the Lower House where it has been passed and it is now being submitted to the Senate for favorable action * * *.

* * * * *

"* * * if this bill is approved with the amendment recommended by your Committee the effect will be that in cases of libel, the place of trial has to be either the residence of the offended party or the residence of the accused, and if the criminal action is brought in one province, the civil action has necessarily to be presented in the same court and in the same province. And if there are two salas, it is the intention of this bill, as amended,

that the judge who took cognizance of the criminal case should also be the one to take cognizance of the civil case. Moreover, in case a libel suit is filed in one court, then the court where that case was first filed will acquire jurisdiction to the exclusion of other courts." (Senate Congressional Record, Third Congress, Second Session [May 3, 1955], Vol. II, No. 66, pp. 921-922; *Italics ours.*)

Indeed, the deliberations in Congress were replete with statements of members thereof, indicating, in the most indubitable manner, that, in approving said House Bill No. 2695, they were concerned with no other matter than the "place" where the civil and criminal actions for written defamation may or should be filed (House of Representatives' Congressional Record [Feb. 21 and 22, 1955], Third Congress, Second Session, Vol. II, Nos. 21 & 22, pp. 598-602, 618-624; Senate Congressional Record [May 3, 1955], Vol. II, No. 66, pp. 921-924, and 926). Their attention was so focused on this subject that a member of the Lower House had occasion to remark: "We are now talking about venue, not jurisdiction" (House of Representatives' Congressional Record, *supra*, p. 601). What is more, a member of the Upper House sought to amend the Bill, with a view to providing for the case when the amount involved in the civil action was less than that which is within the original jurisdiction of courts of first instance. He, however, made the following significant observation, upon being informed by Senator Sumulong that, under Article 360 of the Revised Penal Code, courts of first instance have original jurisdiction over all civil actions for libel, regardless of the amount of the demand: "If that is the present law, then I withdraw my amendment." (Senate Congressional Record, *supra*, p. 922.) In short, Congress did not intend to disturb the status quo as regards jurisdiction over criminal and civil actions for libel. This being the case, we can not see how Republic Act No. 1289 could be construed as depriving justices of the peace of their authority, under Act No. 134, as well as under the Revised Judiciary Act of 1948 (Republic Act No. 296, sec. 87, as amended by Republic Act No. 2613), to conduct preliminary investigations for any offense alleged to have been committed within their respective municipalities, without regard to the limits of the imposable punishment.

Again, most of our legislators have consistently been Members of the Bar, and, as such, were and are familiar with pertinent jurisprudence and the practice prevailing in this jurisdiction. In *U.S. vs. Lazada* (9 Phil., 509, 511), this Court said:

* * * It appears, however, that the complaining witness reported the incident to the justice of the peace on the day of its occurrence, and that the preliminary proceedings upon which the information filed in the Court of First Instance was based were had within sixty days after the commission of the offense; it can not be said, therefore, that the time of the prescriptive period has extinguished the penal liability of the accused because the prescriptive period was interrupted by the institution of criminal proceedings, and suspended during the continuance thereof. (Penal Code, Art. 131.) (*Italics ours.*)

This doctrine was even broadened in *People vs. Parao* (52 Phil., 712, 715), in which it was declared that the "steps taken by the municipal president"—pursuant to his authority, under Section 7 of Act No. 2041, to conduct preliminary investigations in the absence of the justice of the peace and the auxiliary justice of the peace—"directed towards the investigation of the crime and the apprehension of the criminals, partakes of the nature of a judicial proceeding" which interrupts the running of the statute of limitations. In *People vs. Joson* (46 Phil., 380, 385), this Court held that "the filing of the complaint * * * had the effect of interrupting, the running of the prescriptive period", so that an information was not necessary therefor. If our lawmakers intended to change the laws, the jurisprudence and the established practice concerning preliminary investigations in criminal actions for libel and the interruption of the period of prescription for said offense, they would have enacted a provision analogous to that of section 187 of Republic Act No. 180 (Revised Election Code), reading:

"Jurisdiction of the Court of First Instance.—The Court of First Instance shall have exclusive original jurisdiction to make preliminary investigations, issue warrants of arrest and try and decide any criminal action or proceeding for violation of this Code. From its decision an appeal shall lie as in other criminal cases."

(Italics ours.)

Apart from the fact that Republic Act No. 1289 contains no such provision, the comments made in Congress during the discussion of said law leave no room for doubt that its framers did not have the aforesaid intent.

Needless to say, the Tayco case, cited by the defendant, is not in point. The offended party therein merely lodged an "accusation" with the Office of the City Fiscal of Manila, without a complaint, in the sense in which this term is used in the Rules of Court (Rule 106, section 2), and said accusation was not filed with a court of justice. In the case at bar, there was a formal complaint, and the same was filed with a justice of the peace court.

The case of *People vs. Felisa Te, et al.*, 107 Phil., 355; 60 Off. Gaz. (25) 3590, involved a libelous article which was published on August 12, 1954. A complaint for libel was filed with the Justice of the Peace Court of Balayan, Batangas, on March 4, 1955, and the corresponding information was filed with the Court of First Instance of Batangas on July 8, 1955; but, prior thereto, or on May 18, 1955, another information for the same offense had been filed with the Court of First Instance of Manila, where the writer of the article, as well as the offended party, resided. The Court of First Instance of Batangas dismissed the case, on motion of the accused, for lack of venue, pursuant to Republic Act No. 1289, none of the parties being a resident of Batangas. Inasmuch as the proceedings began in the Justice of the Peace Court of Balayan, Batangas, on March 4, 1955, the issue hinged on the applicability of Republic Act No. 1289, approved on June 15, 1955, which inserted, at the end of the third paragraph of Article 360 of the Revised Penal Code, as amended, a proviso to the effect that such amendment "shall not apply to cases of written defamation, the civil and/or criminal actions to which have been filed in court at the time of the effectivity" thereof. This question was resolved in the affirmative, upon the ground that the phrase "have been filed in court", contained in said proviso, referred to the filing of the civil and criminal actions with the court of first instance, mentioned in the opening sentence of said paragraph, as amended.

The doctrine laid down in that case has no bearing on the question whether the filing of a complaint with a justice of the peace court interrupts the running of the period of prescription in cases of written defamation. The same was neither decided nor in issue in the *Te* case, which does not constitute, therefore, a precedent insofar as the aforesaid question is concerned. It is argued that the proceedings in the justice of the peace court in said case were, in effect, regarded therein as an absolute nullity, and that, accordingly, said court had no authority whatsoever to entertain the aforementioned complaint. Neither such authority, nor the validity of said proceedings, was, however, assailed in the *Te* case, or sought to be determined therein. Moreover, the aforementioned argument is refuted by the very language of our decision in said case, in which we declared that "the justice of the peace merely conducted, as it was his duty, the preliminary investigation whose purpose was to determine whether or not there was reasonable grounds for proceeding formally against the accused." Obviously, it could not have been the duty of the justice of the peace to conduct said investigation if—as contended by the defendant herein—said officer, not only had no authority, but, was also, not allowed by Republic Act No. 1289, to undertake said investigation. Hence, the *Te* case, in fact, acknowledges the power of justices of the peace to conduct preliminary investigation in libel cases.

The statement in said decision to the effect that "the filing of the complaint * * * for purposes of preliminary investigation by the justice of the peace can not be said to be the commencement of the criminal action", must be read in relation to the institution of the action as contemplated in the aforementioned proviso, which was the object of our interpretation, and had reference, not to the prescription of offenses or to the interruption thereof, or even to jurisdiction or to venue, but to the retrospective operation of Republic Act No. 1289. Then, again, under the American law, upon which our system of criminal procedure is based, the preliminary investigation is not strictly a "judicial" proceeding, but, more of a quasi-judicial one, oftentimes conducted before a grand jury, which is neither a court nor part of the judiciary. From the legal viewpoint, therefore, said investigation does not mark

the commencement of a criminal "action", in the sense that an "action means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong," as defined in Rule 2, section 1, of the Rules of Court. Although the Philippine laws have vested the power to conduct preliminary investigations in justices of the peace, which are part of our judicial system, as well as upon city and provincial fiscals, which belong to the executive department, still such investigations are not part of the action proper, as this term is used in said Rule, it being merely a step preliminary to the proceedings for the redress of a wrong, and, hence, neither the government nor the offended party may secure such redress in the course of said investigation. As a consequence, the same does not place the accused in jeopardy of punishment, thus retaining the essence of its American counterpart.

In view of the foregoing, it is our considered opinion that the filing of the complaint with the justice of the peace court of Pozorrubio, Pangasinan, interrupted the running of the statute of limitations, as regards the crime of libel with which defendant herein is charged, and that said crime has not been extinguished, therefore, by prescription, for which reason the order appealed from is reversed, and the records of this case are hereby remanded to the lower court for further proceedings, conformably to law. It is so ordered.

Bengzon, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., and Barrera, JJ., concur.
Endencia, J., took no part.

DISSENTING

PARAS, C. J.:

The question of whether or not the criminal action has prescribed depends upon the interpretation of the provisions of law involved.

It will be remembered that the original jurisdiction in civil cases of the Justice of the Peace Court and that of the Court of First Instance are defined in Sec. 88 and Sec. 44 of the Judiciary Act of 1948, as amended by Republic Act No. 2613, respectively. Their respective original jurisdiction to try criminal cases is provided for in Sec. 87 and Sec. 44, of the same Act. Their respective venue is determined in Rule 4, Sec. 2, and Rule 5, of the Rules of Court.

From the beginning, the crime of libel has merited special consideration. So much so that Act No. 277 (libel Law), Sec. 14, provided:

"All criminal actions under the provisions of this Act shall be begun and prosecuted under the sole direction and control of the ordinary prosecuting officers, anything in the existing law to the contrary notwithstanding."
(Emphasis added.)

It will be observed that as a general rule, the law, in defining crimes, does not mention or make reference to the court where the case should be filed.

In the case of libel, however, aside from the definition, the law expressly indicates the court wherein the criminal and civil actions are to be filed. Article 360, par. 3, of the Revised Penal Code provides:

"The criminal action and the civil action for damages in cases of written defamations, as provided in this chapter, may be filed simultaneously or separately with the Court of First Instance of the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or

composed. (Emphasis added.)

After the amendment of the said article by Republic Act No. 1289, the third paragraph reads:

"The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the Court of First Instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense; Provided, however, That where the libel is published, circulated, displayed, or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the court of first instance thereof: Provided, further, That the civil action shall be filed in the same court where the criminal action is filed and vice versa. Provided, furthermore, That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts; And provided, finally, That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions to which, have been filed in court at the time of the effectivity of this law."

The crime of libel is transitory and in accordance with the old laws, the criminal action could be filed in any place where there had been publication. If the Justice of the Peace Courts had jurisdiction, at least for the purposes of preliminary investigation and issuance of warrant of arrest, the action could be filed in ANY of the several Justice of the Peace Courts of any province. This could no doubt lead to undue harassment of the defendant and when it is likewise considered that under the old laws many of the Justices of the Peace were not lawyers, the conclusion is inevitable that the framers of the Revised Penal Code did not want the intervention of said Justice of the Peace. Thus the Revised Penal Code expressly provides, in the case of libel, (and contrary to its other provisions) that the complaint must be filed, not in any Justice of the Peace Court, BUT in the Court of First Instance.

The majority believes that the reference to the Court of First Instance in Article 360 of the Revised Penal Code is unnecessary. If that were so, I see no reason for them to express the conviction and admit that a civil suit for the recovery of damages involving a small sum of money, like for instance P50.00, is within the exclusive jurisdiction of the Court of First Instance.

Now, would the filing of the criminal complaint for libel in the Justice of the Peace Court be considered the commencement of a case so as to interrupt the period of prescription? Ordinarily, it would be so considered. But where as in the case of libel the statute clearly and specifically provides that said complaint must be filed in the Court of First Instance, then only said court has the exclusive original jurisdiction over the case and the filing of such a complaint in said court only can be considered as the commencement of the action that can interrupt the period of prescription. We clearly so held in the case of *People vs. Feliza Te* (107 Phil., 355).

In this case of *Feliza Te*, a complaint for libel was filed by one of the offended parties in the Justice of the Peace Court of Balayan, Batangas, on March 4, 1955. In the same month it was forwarded to the Court of First Instance of Batangas (Balayan Branch) after a preliminary investigation. However, the fiscal filed the information only on July 8, 1955. In the meantime, one of the offended parties filed a complaint for the same libel with the City Fiscal of Manila who filed the corresponding information with the Court of First Instance of Manila on May 18, 1955.

Upon a motion to dismiss, the Court of First Instance of Batangas dismissed the information, founded upon a prior case having been filed in the Court of First Instance of Manila and the provision of Republic Act No. 1289, that the court where the criminal action of libel is first filed shall have exclusive jurisdiction over the case.

Former Justice De Joya, counsel of the aggrieved party in the case, stressed in his brief the importance of the decision on the controversy for the guidance of lawyers. His main contention was that the filing of the complaint with the Justice of the Peace Court which had the power to conduct the preliminary investigation, a few months ahead of the approval of Republic Act No. 1289 took the case out of the operation of said Act, and concluded that

the trial court erred in dismissing the action filed in the Court of First Instance of Batangas.[1] In resolving the case, this Court said:

"* * * The phrase 'have been filed in court' as employed in the proviso, contemplates of the filing of the criminal and/or civil action with the court of competent jurisdiction, that is to say, court which has the power to try and decide it. Certainly the justice of the peace court of Balayan where the complaint was filed was not the proper court, as it could not have tried and decided the case, it being cognizable and triable only by the court of first instance. In fact, the justice of the peace merely conducted, as it was his duty, the preliminary investigation whose purpose was to determine whether or not there were reasonable grounds for proceeding formally against the accused (People vs. Peji Bautista, 67 Phil., 518; U.S. vs. Yu Tuico, 34 Phil., 209; People vs. Medted 68 Phil., 485.) The filing of the complaint in this case for purposes of preliminary investigation by the justice of the peace cannot be said to be the commencement of the criminal action, as the said complaint could as well be lodged with the provincial fiscal himself who, under Republic Act 732, could also conduct such preliminary investigation preparatory to the filing of the formal charge or information before the competent court. The information in this case having been filed on July 8, 1955, or after Republic Act 1289, had become operative, the present case necessarily comes under its provisions and must be governed thereby."

As has been intimated, nowadays the municipal mayor and the provincial fiscal are also authorized to conduct preliminary investigations (Sec. 3, Rule 108, Rules of Court, and Republic Act 732, respectively). Will it be seriously contended that the filing of the complaint for libel with either one would interrupt the period of prescription?

If the circumstances of dates and places in the case of Felisa Te, supra, were present in the instant case, and the question of prescription has been raised, under the majority view, we would have the peculiar situation that the filing of the complaint in the Justice of the Peace Court of Balayan interrupted the period of prescription, but the case had to be tried in the Court of First Instance of Manila.

It is interesting to note that in the whole Revised Penal Code and other statutes prescribing penal provisions, there is no mention of the court wherein a case should be filed, inasmuch as there is a general law on the matter, with the notable exceptions of those relating to the violation of the provisions of (1) the Election Code, (2) the Copyright Law, (3) the Land Registration Act and (4) the crime of libel.

The crime of libel being transitory as stated above, amendments have been made regarding venue. The reason for the amendment is, as stated by the authors thereof, to avoid harassment specially to newspapermen and to foster the freedom of the press. These objectives must have prompted the exception in the law confining to the Court of First Instance original exclusive jurisdiction over said cases for the legislature must have believed that there was no sufficient guaranty in the fairness of proceedings when the preliminary investigation was not to be conducted by the Judge of the Court of First Instance. It is true that in the debates, the sponsors of the bill numbered later as Republic Act No. 1289 declared that the amendment on Article 360 referred to venue. But it should be observed that the matter of jurisdiction provided for in the original provisions of Article 360 has been reiterated in the aforesaid Republic Act with the only difference that more emphasis has been given to it by the substitution of the word "may" with "shall".

Gutierrez David, J., concurs.

[1] Former Justice De Joya advanced his views, thus:

"To show that the new law does not necessarily refer to cases already filed in the Court of First Instance, and that it refers to cases not only in said court, but also to cases pending preliminary investigation in the justice of the peace courts, attention is respectfully invited to the following provisions of the Revised Penal Code and the

Rules of Court:

" '(The term provided for the prescription of the criminal action and the extinguishment of the penal liability by the lapse of a fixed period after the commission of the offense, is interrupted by the commencement of the proceedings and suspended during the continuance thereof (U.S. vs. Lazada, 9 Phil., 509; Cabunag vs. Jocson, 35 Phil., 220).

"Whether they were justice of the peace court cases or Court of First Instance cases, they were considered court actions, and while pending, they interrupted the operation of the corresponding prescriptive period."

"Rule 106, Section 1, expressly provides:

"'Section 1. Commencement of criminal action.—All criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefor.'

"The above legal provision does not mention the court where the complaint or information may be filed, whether in the justice of the peace court or in the Court of First Instance.

"On the other hand, Rule 108, Sections 1 and 4 provide as follows:

" 'SEC. 1. Preliminary investigation—Preliminary investigation is a previous inquiry or examination made before the arrest of the defendant by the judge or officer authorized to conduct the same with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the defendant is probably guilty thereof, so as to issue a warrant of arrest and to hold him for trial.'

* * * * *

" 'Sec. 4. Investigation by the judge of the Court of First Instance.—Upon complaint or information filed directly with the Court of First Instance, the judge thereof shall conduct a preliminary investigation in the manner provided in the following sections, and should he find a reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest and try the case on the merit.'

"It is a legal aphorism that when the law does not make any distinction, we have no right to make any distinction.

"There was absolutely nothing to prohibit or prevent the offended party to file his complaint in the Court of First Instance of Batangas, which could have also conducted the preliminary investigation in this case; and in the eyes of the law there would be no difference whatsoever as to the validity or legality of said proceedings." (Brief for the plaintiff-appellant, pp. 70-72.)

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