

FELIX DE CASTRO, JR., ET AL., PETITIONERS AND APPELLEES, VS. EMITERIO M. CASTAÑEDA AND RAMON G. LICERALDE, IN HIS CAPACITY AS PROVINCIAL FISCAL AND ASSISTANT PROVINCIAL FISCAL, ...

G.R. No. 15139. April 28, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment of the Court of First Instance of Pangasinan, Branch VII, ordering the appellants (Provincial Fiscal and Assistant Provincial Fiscal of Pangasinan) to include Catalino Malanum and Laureano Pasag as defendants in the information filed by the assistant provincial fiscal, then special counsel, in criminal case No. A-148, entitled "People of the Philippines vs. Félix de Castro, Jr., Quirino Ambrosio and Apolonio Carambas," for violation of section 11 in connection with section 76, Act No. 4003, as amended (civil No. A-147).

On 22 October 1958 the appellees (Félix de Castro, Jr., Quirino Ambrosio and Apolonio Carambas) filed a petition for mandamus in the Court of First Instance of Pangasinan, Branch VII, averring that on 12 June 1958 the appellant assistant provincial fiscal, then special counsel, subscribed and filed an information charging them with violation of section 11 in connection with section 76, Act No. 4003, as amended, for fishing with the use of poison (crim. case No. A-148, Annex A, Exhibits A & 1), based upon the affidavits subscribed and sworn to by Catalino Malanum and Laureano Pasag (Annexes B. and C; Exhibits B and C; Exhibits 2 and 3); that on 16 July 1958 the appellees filed a motion in Court praying that the appellants be ordered to conduct a reinvestigation of the case and thereafter to include in the information all persons who appear to, be. responsible therefor; that acting upon the said motion, on the same day, 16 July 1958; the Court directed the" appellant assistant provincial fiscal to conduct a reinvestigation of the case; that the said appellant filed a motion for reconsideration of the foregoing order but the Court denied it, holding that a reinvestigation was necessary because from the affidavits accompanying the information and attached to the record of the case, it was apparent that many persons had incurred criminal liability arising from the incident complained of; that at the reinvestigation conducted by the appellants the appellees asked them to include Catalino Malanum and Laureano Pasag as additional defendants; that in the latter's affidavits (Annexes B and C; Exhibits B and C; Exhibits 2 and 3) it appears that they had actively and directly taken part in the commission of the , offense with which the appellees had been charged; that the appellants had refused to grant the appellees' request and by that refusal had "unlawfully neglected and/or refused the performance of an act which the law specifically enjoins as a duty resulting from their office;" and that they "have no other plain, speedy and adequate remedy in the ordinary course of law," and praying that a writ of mandamus be issued directing the appellants to include Catalino Malanum and Laureano Pasag as defendants in crim. case No. A-148, and to pay the costs. They further prayed for other just and equitable relief (civil No. A-147).

On 7 November 1958 the appellants filed an answer to the petition for mandamus, admitting the material

averments of the petition except paragraphs 3, 8 and 9 and setting up the following affirmative and special defenses: that Laureano Pasag and Catalino Malanum did not actively and directly participate in the commission of the offense, the truth being that the former did nothing but witnessed what happened and gathered fishes that would be used as evidence in the future, and the latter merely acted upon orders of Félix de Castro, Jr., one of the defendants therein and one of the appellees herein; that the petition has no factual basis because the information filed was based not only upon the affidavits of Catalino Malanum and Laureano Pasag but also of other persons who had been investigated during the preliminary investigation conducted by the appellants, and has no legal basis because before the information was filed the appellants had conducted a preliminary investigation pursuant to the provisions of section 1687 of the Revised Administrative Code, as amended by Republic Acts Nos. 732 and 1799, and had found that only the herein appellees had committed the crime charged; that the determination of who are the persons to be charged with the commission of an offense, upon the evidence presented during the preliminary investigation, falls within the exclusive prerogative of the prosecuting officer; that after carefully weighing the evidence the appellants believed that there was no sufficient evidence to hold Catalino Malanum and Laureano Pasag or any other person responsible for the commission of the crime charged, except the appellees; and that in view of the foregoing the appellees had no cause of action. The appellants prayed for the dismissal of the petition with costs against the appellees.

On 10 November 1958 the Court entered an order setting the case for hearing on 12 November 1958 at 2:00 o'clock in the afternoon. On 12 November 1958 the appellees filed a reply to the appellants' answer disputing the veracity of their allegations and validity of their defenses.

At the hearing held on the same day, 12 November 1958, the appellant assistant provincial fiscal, in his own behalf and in behalf of his co-appellant, and the appellees by counsel, appeared. After the oral arguments, the appellants prayed that they be given ten days from date within which to file a memorandum and the Court granted them the period prayed for, provided that there would be no extensions for that purpose. On 22 November 1958 the appellants filed their memorandum.

On 30 January 1959 the Court, relying upon the doctrine laid down in *Guiao vs. Figueroa*, 94 Phil., 1018; 60 Off. Gaz. 4828, rendered judgment holding that the power of the prosecuting officer to determine the persons probably guilty of the commission of an offense and; to include them in the information to be filed in court cannot extend to the point of encroaching upon the prerogative of the court; that persons who appear responsible for the commission of a crime should be included in the information; that if it is necessary to utilize any of the defendants as a witness for the prosecution, the provisions of the law for his discharge from the information should be followed; and that it is prima facie shown by the affidavits of Catalino Malanum and Laureano Pasag that they are responsible for the commission of the same offense with which the appellees had been charged (Annexes B and C; Exhibits B and C; Exhibits 2 and 3); granting the writ prayed for; and ordering the appellants to include Catalino Malanum and Laureano Pasag as defendants in the information filed by the appellant provincial fiscal in crim. case No. A-148.

From the foregoing judgment, the appellants have interposed this appeal.

In *Guiao vs. Figueroa*, supra, this Court held:

The question now before this Court is whether a fiscal may be compelled by mandamus to include in an information persons who appear to be responsible for the crime charged therein, but whom the fiscal believes to be indispensable witnesses for the State. The provision of section 1 of Rule 106 of the Rules of Court expressly states that criminal actions shall be brought "against all persons who appear to be responsible therefor." The original provisions contained in General Orders No. 58 provided that all prosecutions shall be "against the persons charged with the offenses." The change in the law was introduced in Act No. 2709, * * *.

The pertinent provision of section 1 of Rule 106 is taken from section 1, while section 9 of Rule 115 from section 2 (of Act No. 2709).

A perusal of Act 2709 discloses the legislative intent to require that all persons who appear to be responsible for an offense should be included in the information. The use of the word "shall" and of the phrase "except in the cases determined" shows that section 1 is mandatory, not directory merely. The mandatory nature of the section is demanded by a sound public policy, which would deprive prosecuting officers of the use of their discretion, in order that they may not shield or favor friends, proteges, or favorites. The law makes it a legal duty for them to file the charges against whomsoever the evidence may show to be responsible for an offense. This does not mean, however, that prosecuting officers have no discretion at all; their discretion lies in determining whether the evidence submitted is sufficient to justify a reasonable belief that a person has committed an offense. What the rule demands is that all persons who appear responsible shall be charged in the information, which implies that those against whom no sufficient evidence of guilt exists are not required to be included.

It is for the prosecuting officer to determine whether the evidence at hand is sufficient to engender a reasonable belief that a person committed an offense. This power and prerogative of the prosecuting officer is not, however, altogether absolute. It is subject to judicial review in proper cases, as where from the evidence submitted and gathered by the prosecuting officer a person appearing responsible for the commission of an offense is not included in the information. This question, therefore, for determination in this appeal is whether there is sufficient evidence against Catalino Malanum and Laureano Pasag to warrant their inclusion in the information filed in crim. case No. A-148 and whether the appellants gravely abused their discretion in not including them in the information.

Catalino Malanum swore that at about 2:00 o'clock in the afternoon of 17 April 1958, while he was taking a nap, Apolonio Carambas and Félix de Castro, Jr. came to his house; that the former woke him up and invited him to go fishing; that he accepted the invitation and went with them to Bolo River, about 300 meters away from his house; that upon reaching the river de Castro asked him to borrow a pail from one of the nearby houses; that after securing a pail, de Castro told him to fill it with water from the river; that after doing so, de Castro told him to pour into the pail of water the liquid contents of two bottles that he took from a buri bag held by Carambas; that upon order of de Castro he poured the solution in the pail into the river; that this process was repeated until the contents of the two bottles of liquid had been exhausted; that after about 10 to 15 minutes the fishes in the river were disturbed and later on died; that the dead fishes were picked up by the people in the vicinity numbering about 100; that de Castro and his men also picked up the fishes and the former took the big fishes and gave to the deponent and others the small ones as their share; that about five petroleum cans of dead fishes were gathered by them; that until about a week after the incident the fishes in the river continued to die; that when the deponent saw the fishes dying after throwing the solution into the river, he suspected the liquid mixed with water to be poison; that he did not inquire from de Castro whether or not the liquid was poison because he was excited in picking up the fishes; and that, a few days after he was investigated by fishery agents about the incident, de Castro sent for him and requested him to change the affidavit he had subscribed and swore to before them and assured him that he would take care of the agents, but he told de Castro that "if he (de Castro) could destroy his affidavit that was already in the hands of the agents, I would abide by his wish." (Annex B, Exhibits B & 2.)

Laureano Pasag stated under oath that at about 2:00 o'clock in the afternoon of 17 April 1958 Quirico Domenden and Apolinario Domenden came to his house and invited him to join them in going to Bolo River because de Castro would "poison the river so that I can help them gather the fishes," that he went with them; that when they arrived there, he saw de Castro hand two bottles of liquid whitish in color to Catalino Malanum and told him to drop a little of their contents into the pail of water, that after doing so, he poured the solution into the river and the

same procedure was repeated until the contents of the two bottles were exhausted; that after the solution was poured into the river the fishes in the river were disturbed and later on died; that de Castro and his companions gathered the big fishes and brought them to his motorboat while the rest of the persons in the neighborhood picked up the small ones; that believing that the fishpond owned by Sergio Eeinoso, of which he was the overseer, would be adversely affected, he (Pasag) also gathered some fishes to show to his landlord; that the next day he saw that all the fishes and 20,000 bangus fry in the fishpond of his landlord had died; that 'the fishes continued to die for one week until I noticed no more fish left alive; that he reported the matter to his landlord who ordered him to make a list of persons who saw the incident and to look for the empty bottles containing the liquid; that after a few days he furnished his landlord with the list and brought to him the two bottles found on the bank of the river; and that he did not remonstrate to de Castro about what he (de Castro) did because the latter assured him that the fishes in his landlord's pond would not be affected by his act (Annex C; Exhibits C & 3).

Catalino Malanum took direct part in the commission of the violation of section 2 in connection with section 76, Act No. 4003, as amended. Whether he knew before hand that the liquid he was told to pour, as he did, into the pail of water was poison must be determined taking into account all the circumstances that attended the act of transgression. He suspected the liquid mixed with water that caused the death of the fishes in the river was poison. Yet he took his share in the large number of fishes that were poisoned. In his sworn statement Laureano Pasag admitted he was invited by Quirico and Apolinario surnamed Domenden to go to Bolo River where de Castro would "poison the river so that I can help them gather the fishes." Knowingly that the fishes were poisoned he took his share in the large number of poisoned fishes gathered on the bank of the river. His purpose in taking his share may well be doubted. Going over the information filed against the appellees, Catalino Malanum and Laureano Pasag appear as the first two witnesses listed therein, the other three named witnesses being a fishery agent, the owner of the fishpond referred to by Laureano Pasag in his statement sworn to before one of the appellants and a deputy fish warden. From this it may be inferred that the first two being eyewitnesses of the violation were necessary. This may have been the reason why they were not charged with the violation by the appellants. But then to avail of their testimony because no evidence is available to prove the violation charged, the appellants should follow the provisions of the Rules on exclusion of defendants from the information in criminal cases. Although Quirino Ambrosio, mentioned twice by Catalino Malanum in his affidavit and referred to but not named by Laureano Pasag in his sworn statement, is the least guilty, because he was in charge of running the motorboat and helped only load the fishes thereon and was under orders of the appellee de Castro, yet he was included in the information.

There being no reason why the judgment appealed from should be disturbed, the same is affirmed, without pronouncement as to costs.

Bengzon, C.J., Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes and Dizon, JJ., concur.

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