

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE JUDGE HERNANDO PINEDA OF THE COURT OF FIRST INSTANCE OF LANA DEL NORTE; AND TOMAS NARBASA, TAMBAC ALINDO, AND RUFINO BO...

G.R. No. 26222. July 21, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Respondents Tomas Narbasa, Tambac Alindo and Rufino Borres stand indicted before the Court of First Instance of Lanao del Norte, as principals, in five (5) separate cases, four for murder and one for frustrated murder, viz:

Criminal Case 1246 - murder of Neceforo Mendoza;

Criminal Case 1247 - murder of Epifania Mendoza;

Criminal Case 1248 - frustrated murder of Valeriana Bontilao de Mendoza;

Criminal Case 1249 - murder of Teofilo Mendoza; and

Criminal Case 1250 - murder of Marcelo Mendoza.

The five informations were planted upon facts gathered by the prosecuting attorney from his investigation. Of course, the truth of these facts is yet to be tested in the crucible of a full-dress trial on the merits.

The indictments are bottomed upon the following alleged pivotal facts:

On the night of July 29, 1965, the occupants of the home of the spouses Teofilo Mendoza and Valeriana Bontilao de Mendoza in Puga-an, City of Iligan, were asleep. It was then that guns (rifle, caliber 22) and paliuntod (home-made gun) were fired in rapid succession from outside the house. Teofilo Mendoza fell dead. Thereafter, defendants below destroyed the door of the house, entered therein, and let loose several shots killing Neceforo Mendoza, Epifania Mendoza and Marcelo Mendoza - all minor children of the couple - and wounding Valeriana Bontilao de Mendoza.

Two of the three defendants in the five criminal cases here-tofore listed - Tomas Narbasa and Tambac Alindo - moved for a consolidation thereof "into one (1) criminal case." Their plea is that "said cases arose out of the same incident and motivated by one impulse."

Giving the nod to defendants' claim, respondent Judge, in an order dated May 13, 1966, directed the City Fiscal to unify all the five criminal cases, and to file one single information in Case 1246. He also ordered that the other four cases, Nos. 1247, 1248, 1249 and 1250 "be dropped from the docket."

The City Fiscal balked at the foregoing order, sought reconsideration thereof, upon the ground that "more than one gun was used, more than one shot was fired and more than one victim was killed." The defense opposed.

On May 31, 1966, respondent Judge denied the motion to reconsider. He took the position that the acts complained of "stemmed out of a series of continuing acts on the part of the accused, not by different and separate sets of shots, moved by one impulse and should therefore be treated as one crime tho the series of shots killed more than one victim"; and that only one information for multiple murder should be filed, to "obviate the necessity of trying five cases instead of one."

Primarily to annul respondent Judge's orders of May 13, 1966 and May 31, 1966, as having been issued without or in excess of jurisdiction and/or with grave abuse of discretion, the People came to this Court on certiorari with a prayer for a writ of preliminary injunction, and for other reliefs.

This Court, on July 1, 1966, issued the cease-and-desist order prayed for.

The question here presented, simply is this: Should there be one information, either for the complex crime of murder and frustrated murder or for the complex crime of robbery with multiple homicide and frustrated homicide? Or, should the five indictments remain as they are?

1. The case before us calls into question the applicability of Article 48 of the Revised Penal Code, as amended, which reads:

"Art. 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

Read as it should be, Article 48 provides for two classes of crimes where a single penalty is to be imposed: first, where a single act constitutes two or more grave or less grave felonies (*delito compuesto*); and, second, when an offense is a necessary means for committing the other (*delito complejo*).[1]

Best exemplified by the first of the two cases is where one shot from a gun results in the death of two or more persons. Jurisprudence teaches that, in this factual setting, the complex crime defined in the first part of Article 48 finds application.[2] A similar rule obtains where one stabbed another and the weapon pierced the latter's body through and through and wounded another. The first died instantaneously; the second, seven days later. This Court convicted the assailant of double murder.[3] So where a person plants a bomb in an airplane and the bomb explodes, with the result that a number of persons are killed, that single act again produces a complex crime.[4]

A different rule governs where separate and distinct acts result in a number killed. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes.[5] Thus, where the six defendants, with others (armed with pistols, carbines and also a submachine gun and Garand rifles), fired volleys into a house killing eleven and wounding several others, each of the said accused is "guilty of as many crimes of murder as there were deaths (eleven)."[6] Again, eleven persons were indicted for quadruple murder - with the use of bolos, a pistol, a barbed arrow and a piece of bamboo - of a man, his common-law wife, and their two children in cold blood. The accused were found guilty by the trial court of such offense. This Court, in reversing this ruling below, held that "[t]he four victims were not killed by a single act but by various acts committed on different occasions and by different parties"; that such acts "may not be regarded as constituting one single crime"; and that "[t]hey should be held as separate and distinct crimes." [7] And a third. At the commencement exercises of an elementary school, "a shot suddenly rang out" followed by a "series of shots" - from a pistol. Two persons lay dead and a third seriously wounded but who later on also died. This Court there ruled that there were "three distinct and separate murders" committed by appellant Juan Mones.[8] And finally, in *People vs. Gatbunton*, L-2435, May 10, 1950, the spouses Mariano Sebastian and Maxima Capule - who were asleep - were killed by one burst of machinegun fire; and then, by a second burst of machinegun fire, two of the couple's children - also asleep - were killed. The accused, Tomas Gatbunton, was found guilty by the trial court of

quadruple murder. On appeal, this Court declared that "appellant must be declared guilty of four murders." [9]

The present case is to be differentiated from *People vs. Lawas*, L-7618-20, June 30, 1955. There, on a single occasion, about fifty Maranaos were killed by a group of home guards. It was held that there was only one complex crime. In that case, however, there was no conspiracy to perpetrate the killing. In the case at bar, defendants performed several acts. And the informations charge conspiracy amongst them. Needless to state, the act of one is the act of all. [10] Not material here, therefore, is the finding in *Lawas* that "it is impossible to ascertain the individual deaths caused by each and everyone" of the accused. It is to be borne in mind, at this point, that to apply the first half of Article 48, heretofore quoted, there must be singularity of criminal act; singularity of criminal impulse is not written into the law. [11]

The respondent Judge reasons out in his order of May 31, 1966 that consolidation of the five cases into one would have the salutary effect of obviating the necessity of trying five cases instead of one. To save time, indeed, is laudable. Nonetheless, the statute confers upon the trial judge the power to try these cases jointly, such that the fear entertained by respondent Judge could easily be remedied. [12]

Upon the facts and the law, we hold that the City Fiscal of Iligan City correctly presented the five separate informations - four for murder and one for frustrated murder.

2. We have not overlooked the suggestion in the record that, because of an affidavit of one of the witnesses, possibility exists that the real intent of the culprits was to commit robbery, and that the acts constituting murders and frustrated murder complained of were committed in pursuance thereof. If true, this would bring the case within the coverage of the second portion of Article 48, which treats as a complex crime a case where an offense is a necessary means for committing the other.

A rule of presumption long familiar, however, is that official duty has been regularly performed. [13] If the Fiscal has not seen fit to give weight to said affidavit wherein it is alleged that certain personal properties (transistor radio and money) were taken away by the culprits after the shooting, we are not to jettison the prosecutor's opinion thereon. The Fiscal could have had reasons for his act. For one thing, there is the grave problem of proving the elements of that offense - robbery. For another, the act could have been but a blind to cover up the real intent to kill. Appropriately to be noted here is that all the informations charged evident premeditation. With ponderables and imponderables, we are reluctant to hazard a guess as to the reasons for the Fiscal's action. We are not now to say that, on this point, the Fiscal has abused his discretion. A prosecuting attorney, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion. This is not to discount the possibility of the commission of abuses on the part of the prosecutor. But we must have to recognize that a prosecuting attorney should not be unduly compelled to work against his conviction. In case of doubt, we should give him the benefit thereof. A contrary rule may result in our courts being unnecessarily swamped with unmeritorious cases. Worse still, a criminal suspect's right to due process - the sporting idea of fair play - may be transgressed. So it is, that in *People vs. Sope*, 75 Phil. 810, 815, this Court made the pronouncement that "[i]t is very logical that the prosecuting attorney, being the one charged with the prosecution of offenses, should determine the information to be filed and cannot be controlled by the offended party." [14]

3. The impact of respondent Judge's orders is that his judgment is to be substituted for that of the prosecutor's on the matter of what crime is to be filed in court. The question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information he lodges in court must have to be supported by facts brought about by an inquiry made by him. It stands to reason then to say that in a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the

defendant, those of the Fiscal's should normally prevail. In this regard, he cannot ordinarily be subject to dictation. We are not to be understood as saying that criminal prosecution may not be blocked in exceptional cases. A relief in equity "may be availed of to stop a purported enforcement of a criminal law where it is necessary (a) for the orderly administration of justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection to constitutional rights; and (e) in proper cases, because the statute relied upon is unconstitutional or was 'held invalid'." [15] Nothing in the record would as much as intimate that the present case fits into any of the situations just recited.

And at this distance and in the absence of any compelling fact or circumstance, we are loathe to tag the City Fiscal of Iligan City with abuse of discretion in filing separate cases for murder and frustrated murder, instead of a single case for the complex crime of robbery with homicide and frustrated homicide under the provisions of Article 294 (1) of the Revised Penal Code or, for that matter, for multiple murder and frustrated murder. We state that, here, the Fiscal's discretion should not be controlled.

Upon the record as it stands, the writ of certiorari prayed for is hereby granted; the orders of respondent Judge of May 13, 1966 and May 31, 1966 are hereby set aside and declared null and void, and, in consequence, the writ of preliminary injunction heretofore issued is made permanent insofar as it stops enforcement of the said orders; and the respondent Judge, or whoever takes his place, is hereby directed to reinstate Criminal Cases 1246, 1247, 1248, 1249 and 1250 as they were commenced, and to take steps towards the final determination thereof.

Costs against respondents Tomas Narbasa, Tambac Alindo and Rufino Borres.

SO ORDERED.

Reyes, JBL, Makalintal, Bengzon, JP, Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on leave, did not take part.

[1] Tomo I, Cuello Calon, Derecho Penal, 1960 ed., p. 635.

[2] In *People vs. Pama* (C.A.), 44 O.G. No. 9, pp. 3339, 3345--3346, where four bullets were fired causing four mortal wounds to a person, but one of which also struck a child resulting in the latter's death, the Court of Appeals held that, by the one single shot, a single information should have been filed to cover both deaths, and a single penalty should be imposed.

In *People vs. Buyco*, 80 Phil. 58, 67-69, where the accused fired several bullets in succession from a sub-machine gun with a single pull of the trigger, killing one person with treachery and another only incidentally, this Court, citing *II Viada*, 5th ed., p. 629, categorized the facts as constituting one single act - a complex crime of murder and homicide. Cf. *People vs. Gatbunton*, *infra*.

In *People vs. Deveza* (C.A.), 44 O.G. No. 5, pp. 1501, 1507-1511, one shot from a pistol caused the death of a person and serious physical injuries to another; the court considered the factual situation as a complex crime of homicide and serious physical injuries.

[3] *People vs. Balotol*, 84 Phil. 289, 290-291.

[4] *People vs. Largo*, 99 Phil. 1061-1062. In *pari materia*, see: *People vs. Fulgencio*, L-5370, November 10, 1952; *People vs. Guillen*, 85 Phil. 307, 318-319. See also: *Angeles vs. Jose*, 96 Phil. 151, 152.

[5] *People vs. Pardo*, 79 Phil. 568, 577-578; *People vs. Buyco*, *supra*, at p. 69; *People vs. Ordonio*, 82 Phil. 324,

334; *People vs. Chan*, 90 Phil. 1, 5; *People vs. Basarain*, L-6690, May 24, 1955; *People vs. Moro*, L-6771, May 28, 1957; *People vs. Remollino*, L-14008, September 30, 1960. See also: *People vs. Torres*, L-4642, May 29, 1953.

[6] *People vs. Macaso*, 85 Phil. 819, 828.

[7] *People vs. Daligdig*, 89 Phil. 598, 615.

[8] *People vs. Mones*, 86 Phil. 331, 333, 339.

[9] To the same effect: *People vs. Desierto*, (C.A.) 45 O.G. No. 10, pp. 4542, 4549-4550.

[10] *People vs. Masin*, 64 Phil. 757, 767, citing cases; *People vs. Timbang*, 74 Phil. 295, 299; *People vs. Santos*, 84 Phil. 97, 104; *People vs. Domenden*, L-17822, October 30, 1962; *People vs. Ambran*, L-15581, April 29, 1963.

[11] See I Padilla, *Criminal Law*, 1964 ed., p. 548, at footnote.

[12] Section 15, Rule 119, Rules of Court, reads:

"SEC. 15. Consolidation of trials of related offenses. - Charges for offenses founded on the same facts, or which form or are a part of a series of offenses of the same or similar character may, in the discretion of the court, be tried jointly."

[13] Section 5 (m), Rule 131, Rules of Court.

[14] See: *Gonzales vs. Court of First Instance of Bulacan*, 63 Phil. 846, 855, citing cases; *Zulueta vs. Nicolas*, 102 Phil. 944, 946, citing *People vs. Liggayu*, 97 Phil. 865, and *People vs. Natoza*, 100 Phil. 533; *Bagatua vs. Revilla*, L-12247, August 26, 1958.

[15] *Hernandez vs. Albano*, L-19272, January 25, 1967, citing cases.

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