

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. REMIGIO OLIVERIA, DEFENDANT AND APPELLEE.

G.R. No. 45715. April 20, 1939

Ponente: MORAN, J.

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MORAN, J.:

On February 18, 1937, the chief of police of the municipality of Samal, Bataan, filed with the justice of the peace court of the same municipality a complaint against Remigio Oliveria, now appellant, charging him with violation of section 60 of Commonwealth Act No. 1, for having failed and refused to register for military training, he being a Filipino citizen 20 years of age. After the corresponding preliminary investigation, the justice of the peace found probable cause against the accused and, consequently, certified the case to the Court of First Instance of Bataan where the provincial fiscal filed the following information:

"The undersigned fiscal accuses Remigio Oliveria of the violation of sections 53 and 76 of Commonwealth Act No. 1 as amended by section 3 of Commonwealth Act No. 70 committed as follows:

"That on or about the period comprised between April 1-7, 1936 both dates inclusive at the municipality of Samal, Bataan, the herein defendant being a Filipino citizen and resident in the municipality of Samal, Bataan, who has attained his 20th birthday during the year 1936, voluntarily, illegally and feloniously failed and refused to register himself for military service in spite of several requests made to him to do so by the police force of Samal, Bataan."

Defendant pleaded not guilty to the charge and, thereafter, demurred to the information on several grounds, among them, that the legal provision alleged in the justice of the peace court to have been violated by the accused had already been repealed, and that there has been no preliminary investigation of the charge alleged in the fiscal's information. The court below sustained the demurrer, stating:

"Con respecto al segundo fundamento, la denuncia presentada en el juzgado de paz de Abucay, Bataan, no constituye infraccion de la Ley de Defensa Nacional por los siguientes motivos: 1.º porque el articulo 60 de la Ley de Defensa Nacional ha sido derogado por el articulo 1 de la Ley No. 70 del Commonwealth, y 2.º porque segun el articulo 3 de dicha Ley No. 70 para que sea infraccion, el dejar de inscribirse para, el servicio militar es necesario que antes sea notificado el interesado para que se registre a dicho efecto.

"La denuncia que fue objeto de investigacion preliminar en el juzgado de paz no era valida porque no alega que el acusado fue" notificado de que debia registrarse para el servicio militar y que no lo hizo. Esta falta de alegacion vicia de nulidad dicha investigacion, y la querella que ahora se presenta subsanando dicha falta de alegacion carece de investigaciOn preliminar.

"Por esta falta de investigacion preliminar se estima el demurrer por falta de jurisdiccion y se sobresee esta causa con las costas de oficio, cancelandose la fianza del acusado para su libertad provisional. Se reserva al Fiscal el derecho de presentar querella en el juzgado de paz de Abucay, Bataan, para la investigacion preliminar."

From this order the present appeal was taken.

The order is erroneous on several counts: Firstly, the demurrer should not have been entertained without the accused having first withdrawn his plea of not guilty to the information (U. S. vs. Junio, 1 Phil., 51; U. S. vs. Schmeer, 7 Phil., 523) ; secondly, the absence of preliminary investigation is not a ground for demurrer, nor does it go to the jurisdiction of the court but merely to the regularity of the proceedings (sec. 21, Code of Criminal Procedure; Ex parte McLaughlin, 210 Mo., 657, 663; 109 S. W., 626); thirdly, the accused has waived his right to such preliminary investigation for not having claimed it before pleading to the charge (16 C. J., 318; Ex parte McLaughlin, supra); and, lastly, even if it has been claimed in time, the court should not have dismissed the case but should have proceeded to conduct the preliminary investigation or else should have remanded the case to the justice of the peace court for such preliminary investigation (U. S. vs. Banzuela and Banzuela, 31 Phil., 564).

It is true that section 60 of Commonwealth Act No. 1 has been repealed by section 1 of Commonwealth Act No. 70, and, in its place section 76-A is created by section 3 of the latter Act. But with respect to the offense charged, sections 60 and 76-A are exactly the same, and the only difference between them is that the latter provision, after reproducing the former provision, defines a new offense. Furthermore, it is a well settled rule that the real nature of the crime charged is determined not by the title of the complaint, nor by the specification of the provision of law alleged to have been violated, but by the facts alleged in the complaint or information (U. S. vs. Li-Dao, 2 Phil., 458; U. S. vs. Peralta and Peralta, 8 Phil., 200; U. S. vs. Supila, 13 Phil., 671; U. S. vs. Treyes, 14 Phil., 270; U. S. vs. Jeffrey, 15 Phil., 391; U. S. vs. Lim San, 17 Phil., 273; U. S. vs. Vega, 31 Phil., 450; U. S. vs. Cabe, 36 Phil., 728; U. S. vs. Ondaro, 39 Phil., 70; and U. S. vs. Burns, 41 Phil., 418).

The lower court held that notice to the accused is necessary before he may be criminally prosecuted for failure to register for military service; that such notice, while alleged in the fiscal's information, was not alleged in the complaint filed in the justice of the peace court; and that therefore the charge contained in the fiscal's information has not been subjected to a preliminary investigation by the justice of the peace court. This argument proceeds from a misconception of the law. Section 76-A of Commonwealth Act No. 1 as recreated by Commonwealth Act No. 70 provides as follows:

"Any person failing to register for military service herein provided, or who shall fail to report to the corresponding acceptance board or to a designated training station (after having been duly notified to do so) shall, upon conviction, be sentenced to serve not more than one year in prison or to pay a fine of not to exceed two thousand pesos, or both, at the discretion of the court. Conviction for this offense shall not exempt the person convicted from the military service herein required," The phrase "after having been duly, notified to do so" refers exclusively to the person "who shall fail to report to the corresponding acceptance board or to a designated training station." Such notice is not required of persons directed to "register for military service," for in section 54 of Commonwealth Act No. 1 the dates for registration, April 1 to 7, are specifically mentioned. It follows that as the accused has been accorded his right to a preliminary investigation on the offense charged against him in the justice of the peace court, he cannot be heard of having been deprived of it on exactly the same offense instituted against him in the Court of First Instance.

Order is reversed, and let the case be remanded to the lower court for trial on the merits.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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