

**FORTUNATO N. SUAREZ, PETITIONER, VS. SERVILLANO PLATON,
JUDGE OF COURT OF FIRST INSTANCE OF TAYABAS, THE
PROVINCIAL FISCAL OF TAYABAS, VIVENCIO ORAIS AND DAMIAN
JIMENEZ, RESPOND...**

G.R. No. 46371. February 07, 1940

Ponente: LAUREL, J.

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LAUREL, J.:

This is an original petition for the peremptory writ of mandamus filed by Fortunato N. Suarez with this court, to compel the respondent judge to reinstate criminal case No. 6426 of the Court of First Instance of Tayabas so that the case may proceed to trial in the ordinary course.

It appears that on May 9, 1935, Lieutenant Vivencio Orais, of the Philippine Constabulary, one of the respondents in this case, filed a complaint under oath with the justice of the peace of Calauag, Province of Tayabas, charging the petitioner herein, Fortunato N. Suarez, and one Tomas Ruedas, with sedition under Article 142 of the Revised Penal Code. The complaint, upon preliminary examination, was docketed and given due course. While the said case was pending preliminary investigation, Lieutenant Orais, in obedience to an order of the Provincial Commander of Tayabas, moved for the temporary dismissal of the case. This motion was granted by the justice of the peace of Calauag on May 20, 1935, and the case thus dismissed.

At the instance of the petitioner herein, Fortunato N. Suarez, the deputy provincial fiscal of Tayabas, Perfecto R. Palacio, in turn charged Lieutenant Vivencio Orais and Damian Jimenez in the justice of the peace court of Calauag with the crime of arbitrary detention committed, according to the information under date of July 8, 1935, as follows:

"That on or about the 9th day of May, 1935, in the municipality of Calauag, Province of Tayabas, P. I., and within the jurisdiction of this Court, the accused Vivencio Orais being then a public officer to wit: a second lieutenant of the Philippine Constabulary duly appointed and qualified as such and detailed in the Province of Tayabas, without warrant of arrest and without any legal ground whatsoever, moved by personal grudge and ill-feeling which he entertained against Attorney Fortunato Suarez, did, then and there willfully, unlawfully and feloniously arrest and detain said Attorney Fortunato Suarez in the train while the latter was going to Calauag, and with the purpose of concealing the illegality of said arrest and detention of said Fortunato Suarez said accused Vivencio Orais conniving with the other accused, Damian Jimenez, justice of the peace of said municipality, prepared and subscribed under oath before said justice of the peace a complaint falsely charging said Fortunato Suarez with the commission of the crime of sedition; that the said justice of the peace Damian Jimenez, conniving with the other accused Vivencio Orais with the same purpose of concealing the illegality of the arrest and detention of said Fortunato Suarez, without legal grounds whatsoever willfully and unlawfully issued an order declaring that there were merits in the complaint thereby sanctioning the illegal and unjust arrest and detention of Fortunato Suarez who was kept in the municipal jail of Calauag for eight hours."

The justice of the peace of Calauag, being one of the accused, the preliminary examination was conducted by the

justice of the peace of Lopez, Tayabas, who thereafter bound the defendants over to the Court of First Instance, where the case was docketed as criminal case No. 6426. While the case was pending in the latter court, on petition of the accused, the provincial fiscal of Tayabas, Ramon Valdez y Nieto, reinvestigated the case. After such reinvestigation, he filed on April 23, 1936, a motion for the dismissal of the case. Fortunato N. Suarez, the petitioner herein, on May 5, 1936, asked the court to appoint Attorney Godofredo Reyes as acting provincial fiscal to handle the prosecution, alleging, among other things, that the provincial fiscal had no courage to prosecute the accused. On May 11, 1936, Attorney Godofredo Reyes entered his appearance as private prosecutor, and vigorously objected to the motion of dismissal filed by the provincial fiscal. The Bar Association of Tayabas, through its president, Emiliano A. Gala, entered its appearance as amicus curiae and likewise objected to the dismissal of the case. On August 14, 1936, the then presiding judge of Branch I of the Court of First Instance of Tayabas, Hon. Ed. Gutierrez David, after hearing, denied the motion, ruling that there was prima facie case against the accused. The court, upon petition of the provincial fiscal, designated Deputy Provincial Fiscal Perfecto R. Palacio to handle the prosecution. But Fiscal Palacio, being apparently of the same opinion as the provincial fiscal, declined to proceed, and moved that a practising attorney or a competent attorney in the Bureau of Justice be designated in his stead. Accordingly, the provincial fiscal of Sorsogon, Jacinto Yamson, at the request of the judge a quo was assigned by the Department of Justice to handle the prosecution of the case. Fiscal Yamson after going over the case likewise entered a nolleprosequi. So, on September 23, 1936, he moved for reconsideration of the court's order of August 14, 1936, denying the motion for dismissal presented by the provincial fiscal. Attorney Godofredo Reyes again vigorously objected to this motion on the ground that there was sufficient proof to warrant the prosecution of the accused. The case was in this state when Judge Emilio Pena was appointed to take the place of Judge Gutierrez David. Later, Judge Servillano Platon, one of the respondents herein, was appointed to preside over Sala I of the said court to which the said criminal case No. 6426 corresponded, and the case was thus transferred to that sala for action. Judge Platon, after consideration of all the facts and proofs submitted in the case, reconsidered the court's order of August 14, 1936, and dismissed the case, holding that the evidence was insufficient to convict the accused of the crime charged. From this order, the petitioner herein appealed to this Court and the case was here docketed as G. R. No. 45431. On June 30, by a closely divided court, the appeal was dismissed.

The petitioner has now filed with this Court the present petition, in which, as stated in the opening paragraph of this decision, we are asked to issue the peremptory writ of mandamus to compel the respondent judge to reinstate the criminal case which had been ordered dismissed by the said judge. The petitioner gives the following grounds for the issuance of said writ:

"Que el mencionado Juez Hon. Servillano Platon incurrio en un abuso manifesto de discrecion al sobreseer la mencionada causa contra los otros dos recurridos Vivencio Orais y Damian Jimenez, despues de que el Juzgado de Paz de Lopez habia declarado que existen meritos para proseguirse contra los mismos y despues de que un Juez de Primera Instancia de la misma categoria que el Juez Platon habia. rehusado sobreseer la causa por creer que existian meritos para proceder contra los acusados.

"Que el mencionado Juez Hon. Servillano Platon incurrio en un abuso grave de discrecion por cuanto que las pruebas existentes en la causa, en las cuales se fundo el fiscal provincial al presentar la querella en el Juzgado de Paz, demuestran de un modo claro y concluyente el delito cometido y la responsabilidad de los acusados. [Las expresadas pruebas constan a paginas 65 al 106 del adjunto alegato anexo ('A').]

"Que el Hon. Servillano Platon incurrio en un grave abuso de discrecion al juzgar dichas pruebas con un criterio de un Tribunal 'sentenciador*' cuando que su unica mision era considerarlas bajo el criterio de un tribunal meramente 'investigador'. (E. U. vs. Barredo, 32 Jur. Fil., 462, 482.)"

Should the writ of mandamus prayed for be issued? We observe that after the filing of the information by the

provincial fiscal of Tayabas for arbitrary detention against Lieutenant Orais and the justice of the peace of Lopez, the same fiscal moved for the dismissal of the case, because 'despues de una reinvestigacion de los hechos que dieron margen a la presente causa, y examinada la misma con la debida atencion que su importancia requiere asi como las circunstancias del caso, ha llegado a la conclusion de que no hay base justificativa para la prosecucion de esta causa.' The grounds for this action of the provincial fiscal are stated in his said motion for dismissal of April 23, 1936:

"En sintesis, los hechos son: que el dfa 9 de mayo de 1935, en ocasion en que el abogado Fortunato N. Suarez y el teniente Vivencio Orais de la constabularia, se encontraron en el tren que iba a Calauag, aquel para defender a los sakdalistas acusados en este municipio, y este para atender a sus deberes oficiales en relacion con el orden publico algo anormal, por causa de los mismos sakdalistas en dicho municipio de Calauag, ambos tuvieron un cambio de palabras con motivo del mismo asunto que les llevaba alii, y por haber el abogado Suarez proferido en tono acalorado, de que los sakdalistas estaban perseguidos en Calauag por las autoridades municipales y la constabularia, y que era un abuso de las autoridades dicha persecucion, trayendo al propio tiempo a colacion lo ocurrido en los municipios de Cabuyao y Sta. Rosa de la Provincia de Laguna, que se levantaron contra el gobierno por los abusos y matanzas de sakdalistas en dichos pueblos, y que lo mismo podia tener lugar en esta Provincia de Tayabas, y que el podia incitar a los sakdalistas, teniendo en cuenta que con anterioridad el teniente Orais habia recibido informed de que los sakdalistas en Calauag habfan sido entrevistados por Tomas Ruedas, uno de los acusados en el municipio de Sariaya por el delito de conspiracion para cometer sedicidn, y que el abogado Suarez ayudaria a los sakdalistas incitandoles a la sedicidn, fue el motivo por el cual el arrestd al abogado Suarez, conduciendole al municipio como asf lo hizo con respecto a Tomas Ruedas, quien salio al encuentro de Suarez cuando llegd a la estacion del tren en Calauag, diciendo a este que ya tenia arreglado a los sakdalistas en Calauag. Que despues de haberles arrestado, presento una denuncia contra estos por el delito de sedicion, en el juzgado de paz de Calauag, aunque por instrucciones de sus superiores, dicho Teniente Vivencio Orais pidid el sobreseimiento provisional de su denuncia.

"Aunque el abogado Suarez niega que el haya proferido palabras sediciosas, ni que haya incitado a los sakdalistas a actos de violencia contra el gobierno constituido o contra las autoridades y oficiales, sin embargo, de las declaraciones de los testigos tanto de la acusacion como de la defensa en lo que son consistentes, se desprende claramente que el abogado Suarez ha hecho manifestaciones que pueden considerarse como sediciosas y subversivas, maxime teniendo en consideracion el estado caotico porque atravesaba el municipio de Calauag con motivo de la campana ordenada por el gobierno contra los sakdalistas, a raiz de los disturbios y desordenes publicos que tuvieron lugar en los municipios de Cabuyao y Sta. Rosa.

"La presente causa se ha iniciado a denuncia del abogado Sr. Godoredo Reyes contra el teniente Vivencio Orais de la constabularia y el juez de paz Damian L. Jimenez, por el delito de detencion arbitraria.

"El delito de detencion arbitraria esta previsto y castigado en el articulo 124 del Codigo Penal Revisado, que dice asi:

"El funcionario o empleado publico que detuviere a una persona sin motivo legal alguno sera castigado; etc. *

* * *

"Sin perder de vista que la base angular de todos los procesos criminales son los delitos, y que a la acusacion corresponde determinar exactamente si se ha cometido o TiO el delito, el que suscribe, ha analizado este extremo, relacionando los hechos que determinaron la alegada detencion arbitraria de que fue objeto el abogado Fortunato N. Suarez, con las circunstancias y los antecedentes de la situacion porque atravesaba entonces la Provincia de Tayabas al igual que la Provincia de Laguna, acondicionandolos con las palabras proferidas por el abogado Suarez que si en su concepto no son sediciosas y subversivas, por lo menos eran abusivas para con las autoridades del gobierno, especialmente con las de la Provincia de Tayabas a las cuales se referian. Asi entendido el aspecto legal de la cuestion, y haciendo aplicacion de lo que nos dice la misma ley en lo en que consiste la detencion arbitraria, que para que exista este delito, la detencion tenia que haber sido

sin motivo legal alguno, creemos que habia algun motivo legal para la detencion del abogado Sr. Suarez y su companero Tomas Ruedas, y estaba justificada por haber ellos mismos dado lugar a ello. (E. U. vs. Vallejo y otro, 11 Jur. FiL, 202; E. U. vs. Santos, 36 Jur. FiL, 909.)"

We have not overlooked the fact that this motion for dismissal was denied by Judge Gutierrez David on August 14, 1936. It appears, however, that subsequently Fiscal Yamson who, as stated above was assigned by the Department of Justice to conduct the prosecution of the case, moved for reconsideration of the court's order of August 14, 1936, denying the motion for dismissal. Judge Servillano Platon granted the motion for reconsideration and dismissed the case. In this motion for reconsideration not only does Fiscal Yamson reiterate the arguments advanced by Fiscal Valdez y Nieto in the latter's motion for dismissal, but adds:

"(a) En lo que respecta al acusado Teniente Orais, no existe prueba alguna en los autos de esta causa que dicho acusado haya arrestado al abogado Suarez y Tomas Ruedas, solamente por el mero gusto de arrestarles. Tampoco existe pruebas de que el teniente Orais haya sido inducido por xnotivos de venganza o resentimiento alguno contra dicho abogado Suarez y Tomas Ruedas al arrestarles en el dia de autos. Aunque es verdad que el Teniente Orais ha sido acusado ante el Juzgado de Paz de Sariaya por *abusos de autoridad', sin embargo, no consta en los autos de dicha causa que el abogado Suarez y Tomas Ruedas hayan intervenido como abogado ni parte ofendida o testigos en la misma, por tanto, no vemos razon alguna para que el Teniente Orais tenga motivos dc vengarse de estos por dicha causa. (Vease pag. 1, Anexo O.) A falta de prueba sobre estos hechos, en nuestra humilde opinion, existe a favor del Teniente Orais la presuncion de haber cumplido con su deber al arrestar al abogado Fortunate N. Suarez y Tomas Ruedas, teniendo en cuenta las circunstancias extraordinarias reinantes entonces en Calauag a raiz de los disturbios y desordenes publicos que tuvieron lugar en los municipios de Cabuyao y Sta. Rosa de la Provincia de Laguna, dias antes de ocurrir el suceso de autos. Se debe tener en cuenta, ademas, el hecho de que despues de haber arrestado al abogado Fortunate N. Suarez y Tomas Ruedas, el aqui acusado Teniente Vivencio Orais presento denuncia inmediatamente ante su coacusado Damian Jimenez, juez tic paz de Calauag, por infraccion del articulo 142 delCodigo Penal Revisado."

We cannot overemphasize the necessity of close scrutiny and investigation of prosecuting officers of all cases handled by them, but whilst this Court is averse to any form of vacillation by such officers in the prosecution of public offenses, it is unquestionable that they may, in appropriate cases, in order to do justice and avoid injustice, reinvestigate cases in which they have already filed the corresponding informations. In the language of Mr. Justice Sutherland of the Supreme Court of the United States, the prosecuting officer "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." (69 United States Law Review, June, 1935, No. 6, p. 309.)

Considering all the circumstances, we cannot say that Judge Servillano Platon, in granting the motion for the dismissal of the case for arbitrary detention against Lieutenant Orais and the justice of the peace of Lopez, abused his discretion so flagrantly as to justify, in the interest of justice, a departure from the well-settled rule that an inferior tribunal in the performance of a judicial act within the scope of its jurisdiction and discretion cannot be controlled by mandamus. This is especially true in a matter involving the examination of evidence and the decision of questions of law and fact, since such a duty is not ministerial. (High, Extraordinary Legal Remedies, sec. 156, pp. 173-175). Upon the other hand, it should be observed that in the case of Lieutenant Orais, in the face of the circumstances surrounding the arrest as set forth in the two motions for dismissal by the provincial fiscal of Tayabas, which facts and circumstances must have been investigated and duly weighed and considered by the

respondent judge of the Court of First Instance of Tayabas, the arrest effected by Lieutenant Orais cannot be said to have been entirely unjustified. If, "under trying circumstances and in a zealous effort to obey the orders of his superior officer and to enforce the law, a peace officer makes a mere mistake in good faith, he should be exculpated. Otherwise, the courts will put a premium on crime and will terrorize peace officers through a fear of themselves violating the law.

See generally Voorhees on Arrest; 5 Corpus Juris, pp. 399, 416; 2 R. C. L., 450. (United States vs. Santos, 36 Phil., 853,855.)"

The petition is hereby dismissed, without pronouncement regarding costs. So ordered.

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

DISSENTING:

MORAN, J.,

The majority decision takes for granted that which precisely is in issue in this case.

In the morning of May 9, 1935, the accused, Lieutenant Vivencio Orais, and Attorney Fortunato Suarez were both in the train on their way to Calauag, Tayabas. In the conversation which ensued between them, Attorney Suarez made certain remarks about the abuses of authority committed by the officers of the Government who conducted the raid against the Sakdalistas at Sariaya. Upon inquiry of Lieutenant Orais as to what party Attorney Suarez belonged, the latter replied that he belonged to the people's party, and, pressed upon to state whether or not he was a Sakdalista, Attorney Suarez replied "may be". On the strength of these facts, Lieutenant Orais arrested Attorney Suarez for the alleged offense of uttering seditious words, and conducted him to the municipal building of Calauag and there lodged him in jail. He filed in the justice of the peace court of the same municipality an information against Attorney Suarez for uttering seditious words, in violation of article 142 of the Revised Penal Code. On the day following, Lieutenant Orais, acting under the instruction of his superior, moved for the dismissal of the case. Thereafter, the deputy provincial fiscal of Tayabas, at the instance of Fortunato Suarez, filed an information against Lieutenant Orais and Damian Jimenez, the latter as justice of the peace of Calauag, Tayabas, for the crime of arbitrary detention, the information reading as follows:

"That on or about the 9th day of May, 1935, in the municipality of Calauag, Province of Tayabas, P. I., and within the jurisdiction of this Court, the accused Vivencio Orais being then a public officer to wit: a second lieutenant of the Philippine Constabulary duly appointed and qualified as such and detailed in the province of Tayabas, without warrant of arrest and without any legal ground whatsoever, moved by personal grudge and ill-feeling which he entertained against Attorney Fortunato Suarez, did, then and there willfully, unlawfully and feloniously arrest and detain said Attorney Fortunato Suarez in the train while the latter was going to Calauag; and with the purpose of concealing the illegality of said arrest and detention of said Fortunato Suarez said accused Vivencio Orais conniving with the other accused Damian Jimenez, justice of the peace of said municipality, prepared and subscribed under oath before said justice of the peace a complaint falsely charging said Fortunato Suarez with the commission of the crime of sedition; that the said justice of the peace Damian Jimenez, conniving with the other accused Vivencio Orais with the same purpose of concealing the illegality of the arrest and detention of said Fortunato Suarez, without legal grounds whatsoever willfully and unlawfully issued an order declaring that there were merits in the complaint thereby sanctioning the illegal and unjust arrest and detention of Fortunato Suarez who was kept in the municipal jail of Calauag for eight hours"

The justice of the peace of Lopez, Tayabas, conducted the preliminary investigation and, thereafter, remanded the case to the Court of First Instance. On April 23, 1936, the provincial fiscal moved for the dismissal of the case

upon the alleged ground that, after a supposed reinvestigation, the new facts established therein disclose no sufficient evidence to sustain the information. The motion was overruled by Judge Gutierrez David, then presiding the second branch of the Court of First Instance of Tayabas. Jacinto Tamzon, appointed as special fiscal to take charge of the case, moved for the reconsideration of the order of Judge Gutierrez David. To this motion, Attorney Suarez, through counsel, interposed an opposition. Judge Servillano Platon, then presiding the first branch of the Court of First Instance of Tayabas, acceded to the motion and dismissed the information. From this order, Attorney Suarez appealed, but the appeal was dismissed by this Court on the ground that mandamus was the proper remedy. Accordingly, the present action is filed in this Court.

The sole question here involved is whether or not, according to the evidence in the hands of the prosecution, there is sufficient ground to proceed with the criminal case for arbitrary detention against Lieutenant Vivencio Orais and Justice of the Peace Damian Jimenez. A close examination of such evidence, which is attached to the record, will disclose that the arrest of Fortunato Suarez by Lieutenant Orais in the morning of May 9, 1935, was prompted obviously, not by official duty, but by personal resentment against certain statements made by the former. I have taken pains to scrutinize carefully the testimonies of all the witnesses who testified in the preliminary investigation, and they show nothing seditious in the utterances of Attorney Suarez on the occasion in question. My conclusion, then, is that the detention of Attorney Suarez by Lieutenant Orais was arbitrary, and that the charge made against Lieutenant Orais for arbitrary detention is well founded on facts.

The fiscal, in moving for the dismissal of the case before the Court of First Instance of Tayabas, mentioned a reinvestigation conducted by him of the case, in which he supposedly found new evidence warranting its dismissal. Counsel for Attorney Fortunato Suarez, however, insisted on the production of such new evidence before the court, but the prosecution could not respond to such demand. This is an indication that the supposed additional evidence never existed.

But the majority, instead of deciding the issue as to whether or not the evidence in the hands of the prosecution was sufficient to proceed with the charge for arbitrary detention, takes for granted that such evidence was not sufficient, relying upon the assumption that the "circumstances surrounding the arrest as set forth in the two motions for dismissal by the provincial fiscal of Tayabas * * * must have been investigated and duly weighed and considered by the respondent judge of the Court of First Instance of Tayabas. In other words, the majority assumes that which is the subject of the petitioner's challenge, which is tantamount to a refusal to consider his complaint after he has been told that he may come to this court by mandamus proceedings.

Although a broad discretion must be conceded to prosecuting attorneys and trial courts in the determination of sufficient grounds for dismissing or continuing a criminal prosecution, yet when, as in this case, the basis for the action of both officers—fiscal and judge—is produced in this court, and we are called upon to determine whether, on the basis of such evidence, the two officers have abused their discretion in the manner they have acted, it is our duty, I believe, to examine the evidence and determine the question at issue. And, in the present case, it is my opinion that the evidence we have in the record sufficiently shows that the prosecution for arbitrary detention against Lieutenant Orais must take its course, and that its dismissal without trial by the Court of First Instance is without basis on facts and constitutes an abuse of discretion.

I agree, however, that there is no reason for including in the charge for arbitrary detention the justice of the peace of Calauag, Damian Jimenez. The evidence shows no connection between him and Lieutenant Orais in the arbitrary arrest of Attorney Fortunato Suarez.

My vote, therefore, is that the petition for mandamus must be granted with respect to the prosecution against Lieutenant Vivencio Orais, but denied with respect to the prosecution against Damian Jimenez.

IMPERIAL. J.:

I concur in the preceding dissenting opinion of Justice Moran.

Petition dismissed.

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