

MARIANO MARCOS, FERDINAND MARCOS, PIO MARCOS AND QUIRINO LIZARDO, PETITIONERS, VS. ROMAN A. CRUZ, JUDGE OF FIRST INSTANCE OF ILOCOS NORTE, RESPONDENT.

G.R. No. 46584. May 13, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioners ask in their motion of reconsideration for the setting aside of the resolution of this court of March 13, 1939, denying the petition for certiorari and mandamus filed in this case, with costs, on the authority of the ruling laid down in *People vs. Solon* (47 Phil., 443); *Payao vs. Judge Lesaca* (35 Off. Gaz., p. 3), and *Mariano Marcos et al. vs. Judge Roman A. Cruz*, (G. R. No. 46490, promulgated on January 24, 1939). We have given to the motion the attention and consideration which the important question raised therein warrants, and, in truth, we have allowed the intervention as *amici curiae* of prominent lawyers and have given ample opportunity to all those who have appeared to file written memoranda, which have been carefully read and considered.

The facts pertinent to the resolution of the motion of reconsideration, a resolution which, in turn, requires a brief statement of the essential facts alleged in the original petition, may be stated as follows: in criminal case No. 7447 of the Court of First Instance of Ilocos Norte the petitioners were charged with having committed the grave crime of murder upon the person of one who in life was called Julio Nalundasan. The information which gave rise to the prosecution was signed by the Provincial Fiscal of Laguna, specially designated to represent the People in said case, and was presented and submitted directly to the respondent judge who presided over the Court of First Instance of Ilocos Norte. Upon receipt of the information and being apprized of its contents, the respondent judge examined under oath the two witnesses presented by the fiscal, named Calixto Aguinaldo and Valentin Rubio, and having convinced himself that the offense complained of had been committed and that the petitioners, as the accused, were probably responsible therefor, issued the warrant of arrest and the petitioners were arrested. The investigation thus conducted by the respondent judge was in accordance with the provisions of sections 13 and 14 of General Orders No. 58, as the first was last amended by Act No. 4178. When the petitioners were brought in court, they asked that they be placed on bail. The fiscal objected and this brought about prolonged incidents which culminated in the filing by the petitioners of a petition for certiorari before this court (G. R. No. 46490) which was decided in the sense that the petition to bail be set for trial at which the prosecution as well as the defense should adduce evidence so that the court may determine if the offense was bailable and if the petitioners were entitled to bail. In view of this result, the fiscal preferred to see the petitioners at liberty on bail to avoid discovery of all the evidence which the prosecution had in support of the information. The court thereupon fixed P15,000 as the bond which Ferdinand Marcos had to file and P20,000 for each of the others. The petitioners put up the bonds thus fixed and were accordingly released. Thereafter the petitioners insisted four times on a preliminary investigation under Acts Nos. 194, 1450 and 1627. After argument on this new incident, the court denied the petition on the ground that the preliminary investigation demanded by the petitioners had already been granted and conducted, being included in the preliminary investigation which had taken place in the manner above narrated under the

provisions of sections 13 and 14 of General Orders No. 58, and forthwith set the case for trial on the merits. When the petitioners appeared at the trial and were arraigned, they pleaded "not guilty", and applied for separate trials. The court granted the application and went forward with the trial of the case against the co-accused Quirino Lizardo. Before the prosecution commenced to adduce its evidence, the attorney for the petitioners formally stated that the latter did not waive their right to a preliminary investigation which they then demanded for the fifth time, and that the co-accused Lizardo went to trial not because he renounced his right to a preliminary investigation, but only in obedience to the court's order and to avoid being declared in contempt. The prosecution then adduced its evidence, consisting in the declarations of various witnesses, and thereafter stated that it closed the direct evidence for the prosecution. Instead of adducing theirs, the petitioners came to this court and filed a petition for certiorari and mandamus which was denied as stated in the beginning,

All the attorneys who have intervened in these proceedings, in justice to whose recognized reputation it should be stated that they have filed interesting briefs which have proved helpful to the court in the correct resolution of the questions raised, contend that the preliminary investigation granted to the petitioners is not that provided either by sections 13 and 14 of General Orders No. 58, as the first thereof has been lastly amended, or by Acts Nos. 194, 1450 and 1627, wherefore, the petitioners are still entitled to the preliminary investigation which they now insistently demanded.

Sections 13, as last amended by Act No. 4178, and 14 of General Orders No. 58, read as follows:

"Sec 13. When a complaint or information alleging the commission of a crime is laid before a magistrate, he must examine, on oath, the informant or prosecutor and the witnesses produced, and take their depositions in writing, causing them to be subscribed by the parties making them. If the magistrate be satisfied from the investigation that the crime complained of has been committed, and that there is reasonable ground to believe that the party charged has committed it, he must issue an order for his arrest. If the offense be bailable, and the defendant offer a sufficient security, he shall be admitted to bail; otherwise he shall be committed to prison. Upon issuing the order of arrest, the magistrate shall ascertain whether the accused is within or without his jurisdiction. In the latter case he shall make an order fixing the amount of the bail and authorizing any justice of the peace or judge of a Court of First Instance where the accused may be found or arrested to accept his bail. The magistrate who has admitted the accused to bail shall forthwith release him and inform the magistrate who issued the order of arrest of his action, forwarding the papers in the case.

"Sec 14. If the magistrate shall believe from the evidence submitted, either that the crime complained of was not committed, or that, if committed, the person charged did not commit it, he must set the person at liberty; but such release shall not prevent the filing of a new complaint or information and the arrest of the accused thereon at any time before the prosecution of the offense shall be barred by the statute. In case the promotor fiscal may appeal from the order of release, the judge shall subject the accused to such inspection and measures of vigilance as may be deemed prudent to prevent his escape."

The pertinent sections of Act No. 194, as amended by Acts Nos. 1450 and 1627, read as follows:

"Sec. 1. It shall be the duty of every justice of the peace, when written complaint under oath has been made to him that a crime has been committed within his municipality and there is reason to believe that any person has committed the same, which complaint the justice believes to be well founded, or when he has knowledge of facts tending to show the commission of a crime within his municipality by any person, to issue an order for the arrest of the accused and have him brought before the justice of the peace for such preliminary examination.

"Sec. 2. When the accused is brought before the justice of the peace, it shall be his duty to inform the accused of the charge and give him an opportunity to examine the complaint and the affidavits, if any, of all other witnesses in support thereof. The justice of the peace shall thereupon demand of the accused whether he pleads

guilty or not guilty to the charge. If he should plead guilty, then it shall be the duty of the justice of the peace to order that the accused be remanded to jail for safekeeping to await the action of the judge or court of first instance, or give bail in an amount to be fixed by the justice of the peace, with sufficient sureties, for his appearance before the judge or court of first instance, if the case be bailable. If the accused shall deny his guilt, then it shall be the duty of the justice of the peace to make preliminary investigation of the charge as speedily as may be consistent with right and justice, but in any event he must begin such investigation within three days of the time the accused was brought before him, unless the accused or complainant shall ask for delay in order that witnesses may be obtained, or for other good and sufficient reason, in which event a continuance for a reasonable time may be allowed. All witnesses, including the complainant, shall be examined under oath. The witnesses offered on behalf of the Government or complainant shall be first examined and then those offered on behalf of the accused, who shall be present at every stage of the proceedings. The investigation shall be public and the witnesses shall be examined in the presence of the accused, who shall have a right, either in person or by counsel, to cross-examine them if he so desires. The witnesses shall be examined separate and apart from each other if either party demands it. Upon conclusion of the evidence of the other witnesses, the accused may testify under oath if he so desires, in which case he may be cross-examined as any other witness. His evidence shall be reduced to writing and signed by him. If he refuses to sign the same, that fact shall be certified by the justice of the peace with the reason for such refusal given by the accused. But the accused shall not be compelled to testify against his wishes, and the justice of the peace shall so inform the accused before he begins his evidence. In the event the accused declines to testify as a witness, that fact shall not be considered as evidence against him. Upon the conclusion of the preliminary investigation, if the justice of the peace is of the opinion that there is reasonable cause to believe that an offense has been committed and that the accused is guilty thereof, he shall so declare and shall adjudge that the accused be remanded to jail for safekeeping to await the action of the judge or Court of First Instance, unless he give bail for his appearance if the case be bailable. On the other hand, if the justice of the peace be of the opinion that no crime has been committed, or that there is no reasonable ground to believe the accused guilty thereof, the justice of the peace shall order the discharge of the accused. Such discharge, however, shall not operate as a final acquittal of the accused but, he may be again arrested and prosecuted for the same offense."

And section 37 of Act No. 1627, which refers to preliminary investigations, reads:

"Sec. 37. Preliminary investigations.—Every justice of the peace, including the justice of the peace of the City of Manila, shall have jurisdiction to conduct preliminary investigations of all crimes and offenses alleged to have been committed within his municipality and cognizable by Courts of First Instance, but this shall not exclude the proper judge of the Court of First Instance or of a municipal court from exercising such jurisdiction. The justice of the peace of the provincial capital or of the municipality in which the provincial jail is located, when directed by an order from the judge of first instance, shall have jurisdiction to conduct such investigation at the expense of the municipality wherein the crime or offense was committed, though alleged to have been committed anywhere within the province, to issue orders of arrest, subpoenas, and other necessary process therein, which shall run throughout the province; to admit the accused to bail before commitment; to commit or discharge him and otherwise exercise such jurisdiction in accordance with the provisions of Act Numbered One hundred and ninety-four. The first sentence of section one of Act Numbered One hundred and ninety-four, and Act Numbered Five hundred and ninety, as amended by Act Numbered Eleven hundred and thirty-two, are hereby repealed."

In this jurisdiction the preliminary investigation in criminal cases is not a creation of the Constitution; its origin is statutory and it exists and the right thereto can be invoked when so established and granted by law. Of course in this jurisdiction, in view of the aforequoted laws which sanction the preliminary investigation and prescribe the procedure for its holding, the right thereto is undeniable and the omission thereof is a grave irregularity which nullifies the proceeding because it violates the due process of law provision guaranteed by section 1 (1), Article III, of the Constitution.

As enunciated in *United States vs. Mendoza* (4 Phil., 124); *United States vs. Grant & Kennedy* (18 Phil., 122); *United States vs. Marfori* (35 Phil, 666), and *People vs. Solon* (47 Phil, 443), the aim and purpose of the preliminary investigation, before the accused is brought to trial, are none other than to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions.

Before the enactment of Acts Nos. 194, 1450 and 1627, there was no preliminary investigation except that provided in sections 13 and 14 of General Orders No. 58. The preliminary investigation thus established was applicable and demandable both in justice of the peace courts and municipal courts and in courts of first instance, and justices of the peace, municipal judges and judges of first instance had jurisdiction to conduct the preliminary investigation. The preliminary investigation provided in General Orders No. 58 includes but one proceeding intended to ascertain before the issuance of the warrant of arrest and to determine if the evidence adduced morally convinces the judge that the crime or offense has been committed and that the accused is probably guilty thereof, in which event, he may imprison him or admit him to bail if the offense is bailable, and thereafter bring him to trial (*United States vs. Mendoza*, supra; *People vs. Solon*, supra). Due to the then low qualifications of the justices of the peace, serious irregularities were committed in preliminary investigations, resulting in the arrest of persons who later turned out to be innocent. To remedy this evil, the Legislature enacted Acts Nos. 194, 1450 and 1627 defining clearly and specifically what should be understood by preliminary investigation and establishing rules of procedure, including the evidence to be presented by the offended party and the manner of the examination under oath of the witnesses. According to these laws, the preliminary investigation provided therein consists of two proceedings: in the first, the complaint which should be under oath is carefully examined and if the justice of the peace is convinced by its allegations and by his own personal knowledge of the facts constituting the violation that the latter or the offense has been committed and that the accused is probably guilty thereof, said justice of the peace is then under, a duty to issue the warrant of arrest (section 1, paragraph 1, of Act No. 194); in the second, when the accused has already been brought before the justice of the peace upon the order of arrest which has been issued, he is informed of the complaint and if he pleads guilty he is admitted to bail, if the offense is bailable, or he is remanded to jail and placed at the disposal of the court of first instance of the province for the corresponding trial; if he pleads not guilty and he does not waive the preliminary investigation, the justice of the peace should hear under oath the complainant and the witnesses which he may present in the presence of the accused; thereafter the accused may testify under oath and may also adduce other evidence in rebuttal; after this inquiry, if the justice of the peace is of the opinion that the crime has been committed and that the accused is probably guilty thereof, he will remand the accused to jail if the latter has not been admitted to bail, and place him at the disposal of the court of first instance, forwarding the record thus formed with his opinion that, in his judgment, the crime has been committed and there are reasonable grounds to believe that the accused is the guilty party (section 2 of Act No. 194, as amended by Act No. 1450).

After the enactment of Acts Nos. 194, 1450 and 1627, the preliminary investigation to which they refer should be conducted by justices of the peace and municipal judges in the manner therein provided. When the preliminary investigation is made by the judge of first instance, he should do so under the provisions of sections 13 and 14 of General Orders No. 58, in which case this investigation amounts both to the summary examination before the arrest and to the preliminary investigation proper mentioned in the aforesaid Acts Nos. 194, 1450 and 1627 (*People vs. Solon*, supra). It is absurd to suppose, after sections 13 and 14 and General Orders No. 58 have been thus interpreted, that judges of first instance, when they conduct a preliminary investigation, should do so in accordance with the procedure marked out by Acts Nos. 194, 1450 and 1627, because if this were the spirit of the law, the Acts just mentioned would be superfluous and count for nothing. If it had been the Legislature's intention to subject judges of first instance to the procedures set out in Acts Nos. 194, 1450 and 1627 in conducting

preliminary investigations, it would have so stated and would have repealed sections 13 and 14 of General Orders No. 58. In *People vs. Solon*, supra, it was already held that when the judge of first instance conducts a preliminary investigation in a criminal case, this preliminary investigation is made under sections 13 and 14 of General Orders No. 58, and includes both the summary examination before the accused is arrested and the preliminary investigation which follows after the accused has been arrested. The doctrine thus enunciated has been reiterated with approval in *Payao vs. Judge Lesaca*, *Marcos et als. vs. Judge Roman Cruz*, and *People vs. Cabasada* (G. R. No. 36512), Nov. 28, 1932, the decision in the latter case, written by Mr. Justice Villa-Real, having been concurred in by Mr. Justice Street who was one of those who dissented in the *Solon* case.

It is argued that the preliminary investigation provided in sections 13 and 14 of General Orders No. 58 includes the same proceedings as the preliminary investigation provided in Acts Nos. 194, 1450 and 1627 and the argument is Advanced that section 14 refers to the procedure that follows after the accused has been arrested and that the phrase "evidence submitted" refers to the evidence to be presented in the preliminary examination following the said arrest. The interpretation is plainly incorrect; the evidence mentioned in section 14 refers to the same evidence of which section 13 speaks, to be presented upon the submission of the complaint or information so that the judge may determine if the arrest should be ordered and if there is reasonable ground to believe that the accused has committed the offense. Section 13, as we have already stated, has reference to the preliminary investigation which includes the summary examination before the accused is arrested and the preliminary investigation proper intended to place the judge in a position to determine if there is reasonable ground to believe that the accused has committed the offense. Section 14 only establishes the procedure to be followed when the evidence adduced does not show that a crime has been committed or that the accused has not committed it; in the first part it is provided that in such case the judge shall release the accused; in the second part it is provided that the release thus decreed is no bar to the filing of another complaint or information for the same offense against the same accused at any time before the offense has prescribed; and in the last part it is provided that the promoter fiscal may appeal from the order of release, in which event the judge shall take the steps necessary to prevent the escape of the accused.

It is inaccurate to state that in *Marcos et als. vs. Judge Cruz* (G. R. No. 46490), the doctrine enunciated in the *Solon* case was abandoned. The paragraph of the decision rendered in the case, quoted by the petitioners, neither contains the interpretation sought to be given nor express the idea insinuated. What was meant by the said paragraph, and it was there expressed with sufficient clearness, is that the preliminary investigation then made by the respondent judge under section 13 of General Orders No. 58 cannot be viewed as tantamount to the trial spoken of in section 66 of the same General Orders, simply because in the said investigation the accused, who were the petitioners, had neither been present nor had the opportunity to cross-examine the Government's witnesses.

The assertion is also incorrect that in *People vs. Red* (55 Phil., 706), this court reversed and abandoned the doctrine laid down in the *Solon* case. In the first of the said cases, the only legal question discussed and submitted was whether the waiver of a preliminary investigation implied likewise the waiver of the summary examination conducted before the arrest of the accused. It was answered in the negative and nothing more was said indicative that the doctrine laid down in the *Solon* case has been reversed or abandoned; all that was stated in the course of the reasoning was that the summary examination provided in section 13 of General Orders No. 58 is different from the preliminary investigation provided by Acts Nos. 194 and 1627.

We are persuaded once again that the right of an accused to the preliminary investigation in criminal cases, as we interpret it, is in no wise impaired; nor is the accused exposed to a greater danger of possible excesses on the part of judicial officers. If the Legislature has seen fit to place the said preliminary investigation in the hands of the

members of the city fiscal's office in the City of Manila and in other cities with special charters, we find no logical or persuasive reason to conclude that the right of an accused to a preliminary investigation is less safeguarded when the said preliminary investigation is conducted by a judge of first instance in the manner above stated. On the other hand, to alter the doctrine now would be to unsettle the laws and to give currency to the possible belief that there is discrimination and unequal protection before the law.

We, therefore, conclude that the petitioners, as the accused in criminal case No. 7447 of the Court of First Instance of Ilocos Norte, are not entitled to the preliminary investigation prayed for because the same was already granted to them when the respondent judge conducted the summary investigation in the said case under sections 13 and 14 of General Orders No. 58.

In view of the foregoing, the motion for reconsideration is denied and the resolution of March 13, 1939 is adhered to.

Avanceña, C. J., Diaz, Laurel, Concepcion, and Moran, JJ., concur.
Villa-Real, J., concurs in the result.

CONCURRING OPINION

VILLA-REAL, J.:

I concur in the result, but on the ground that the purpose of the preliminary investigation being to determine if there is reasonable ground to believe that the crime has been committed and that the accused is guilty thereof, so as to order his confinement, unless he puts up a bond for his release, while the case is being remanded to the competent court of first instance and the corresponding information is being prepared by the fiscal—as distinguished from the summary investigation whose only purpose is to ascertain that the offense complained of has been committed and that there is reasonable ground to order his arrest—if the judge of first instance before whom the information is filed conducts a summary investigation and issues the corresponding order for the arrest of the accused, and tries the latter as speedily as possible pursuant to the constitutional mandate, the preliminary investigation is unnecessary and the summary investigation is enough, as was sought to be done in the present case but which failed due to the various incidents raised by the accused which delayed the proceedings.

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