

LT. COL. RODRIGO S. DE GUZMAN AND PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. MUNICIPAL CIRCUIT JUDGE MARCELINO M. ESCALONA, FLORENTINO RODRIGO, AND MARIANO DAYDAY, RESPONDENTS.

G.R. No. 51773. May 16, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this original Petition for Certiorari, which was given due course in our Resolution of February 6, 1980, the sole question to be resolved is whether or not respondent Municipal Circuit Court Judge, in Criminal Case No. 2450-D, had jurisdiction to try the offense charged and render judgment although the criminal Complaint which was filed before him was only for preliminary investigation.

The Complaint charged the accused Florentino Rodrigo and Mariano Dayday with "Illegal Possession of Explosive locally known as 'dinamita' (P.D. No. 1058)" before the Third Municipal Circuit Court at Daanbantayan, Medellin, Cebu (Crim. Case No. 2450-D), and reads as follows:

"That on the 20[th] day of July, 1979 at around 9:00 o'clock in the morning, more or less, at Sitio Suba, Bgy Maya, Municipality of Daanbantayan, Province of Cebu, Philippines, and within the Preliminary Jurisdiction of this Honorable Court, the above-named accused while in the seawaters of the above-mentioned place, confederating and mutually helping with one another, without authority of the law and without proper permit from authorities, did then and there willfully, unlawfully, and feloniously possess, keep an explosive, locally known as 'DINAMITA' in their banca purposely for use of illegal fish-ing in which case, three (3) bottles of explosives, two (2) paddles, two (2) fishnets locally known as "SIBOT" and one (1) banca were recovered from their possession and control, which acts of the above-named accused is a gross violation of PD No. 1058.

"All contrary to law." [1] (Emphasis ours)

The Complaint was precipitated by the fact, as disclosed by the Sworn Statements of CIC Carlos Dosdos and Sgt. Jose Andales[2] that when they conducted a seaborne patrol along Daanbantayan, Cebu, in the morning of July 20, 1979, they spotted the accused Florentino Rodrigo and Mariano Dayday aboard a banca. As they approached the banca, Rodrigo attempted to light a bottle of dynamite but which they succeeded in stopping. Both accused were arrested and three bottles of dynamite and two fishnets were confiscated from them.

Instead of conducting a preliminary investigation, respondent Judge *motu proprio* treated the Complaint as one for Violation of Act 3023[3] and, therefore, within its jurisdiction, since the offense charged did not warrant prosecution under Presidential Decree No. 9 relating to crimes against national security. He then proceeded to arraign the accused both of whom pleaded guilty, and rendered judgment on August 6, 1979, quoted in full hereunder:

"DECISION

"This case was originally filed in violation of Section 2 of PD No. 9, but is prosecuted under Act 3023 upon suggestion of the Court, for under the facts and circumstances of this case the interests of justice require that this offense be prosecuted under Act 3023 inasmuch as the possession is not in connection with subversion or insurrection and that the quantity and quality of the homemade explosive do not come to the level of destructive-ness contemplated under PD No. 9.

"Upon arraignment, both accused entered a plea of guilty. In view thereof, the Court hereby renders a decision finding and declaring above two accused GUILTY beyond reasonable doubt of the offense of Illegal Possession of Explosive at the time and place stated in the complaint, in violation of Act 3023, and they are thereby sentenced to suffer a penalty consisting of imprisonment for four (4) months and fine of P1,000.00 each, in accordance with the penal provisions of said Act, and to pay the costs.

"Apprehended explosives contained in two (2) beer bottles are confiscated and ordered turned over to the 342nd PC Company, Bogu, Cebu, for proper disposal.

"SO ORDERED."[4]

Both the accused have served their sentence.

Contesting the course of action taken and the judgment rendered by respondent Judge, herein petitioner Lt. Col. Rodrigo S. De Guzman, PC Provincial Commander/Integrated National Police Superintendent at Camp Sotero Cabahug, Cebu City, instituted these Certiorari proceedings alleging mainly that the offense charged was one for possession of explosives intended for illegal fishing under Presidential Decree No. 704, as amended by Presidential Decree No. 1058, and not for violation of Act 3023 which had long been repealed by several laws and decrees; that the penalty provided for by current legislation is one which falls within the exclusive original jurisdiction of the Court of First Instance; and that respondent Judge's Decision has no legal basis.

For his part, respondent Judge submits that only possession of explosives in connection with subversion is covered by Presidential Decree No. 9, thus, the old law on illegal possession of explosives, Act 3023, has not been completely repealed; that having found that the possession by the two accused of two bottles of home-made explosives was solely for fishing purposes and had no connection with subversion, the illegal act should fall not under Presidential Decree No. 9 but under Act 3023; that having arrived at said conclusion there was nothing irregular in his assuming original jurisdiction and not merely conducting the second stage of the preliminary investigation, for under Section 87(c) of the Judiciary Act the Municipal Court has jurisdiction over illegal possession of explosives. Respondent Judge further justifies his course of action as being in the interest of the speedy and inexpensive administration of justice.

The accused, Florentino Rodrigo and Mariano Dayday, whom we ordered impleaded as party respondents, filed their Comment on the Petition, stating that they freely and voluntarily entered a plea of guilty with the able assistance of counsel; that before handing down the Decision, respondent Judge made them understand the nature and gravity of their crime; that even the state prosecutors showed their conformity and appreciation for the wisdom and practicality of the judgment of respondent Judge; and that they appreciated the sentence imposed on them because they did not contemplate to commit so grave an offense, the two bottles of confiscated explosives being adulterated and not of genuine quality, and considering that they are illiterates and ignorant of the destructive use of these explosives.

Significantly, the Solicitor General representing the People of the Philippines and whom we likewise ordered impleaded as party petitioner, has joined petitioner De Guzman in assailing the validity of the action taken by respondent Judge in the criminal case before him.

We find this Petition, indeed, impressed with merit and that respondent Judge exceeded his jurisdiction when he

rendered the questioned Decision of August 6, 1979.

The complaint filed against the two accused specifically alleged that they wilfully and unlawfully possessed in their banca explosives locally known as "dinamita" purposely intended for use in illegal fish-ing in violation of Presidential Decree No. 1058.

Presidential Decree No. 1058 is an amendatory decree, which increased the penalties for certain forms of illegal fishing and for other acts made punishable under Presidential Decree No. 704 or the "Fisheries Decree of 1975". The pertinent portion of Section 33 of Presidential Decree No. 704, as amended by Presidential Decree No. 1058 reads:

[illegible]

Section 38, subsection a(1) of Presidential Decree No. 704, as amended by Presidential Decree No. 1058, correspondingly provides:

"(1) By the penalty of imprisonment ranging from twelve (12) years to twenty-five (25) years in the case of mere possession of explosives intended for illegal fishing; x x x x x x x x x x x x x x x x x x ."

(Italics ours).

As correctly pointed out by the Solicitor General in the Comment he filed for petitioner People of the Philippines, respondent Judge's reference to Presidential Decree No. 9 is misplaced for, indeed, there is no mention at all of, nor any reference to, Presi-dential Decree No. 9 in the Complaint.

Jurisdiction over cases involving illegal possession of explosives intended for illegal fishing and certain other acts prohibited under Presidential Decree No. 704, which was vested by Section 5 of Presidential Decree No. 1058 upon Military Tribunals created under Presidential Decree No. 39, as amended,[5] is now within the exclusive original jurisdiction of Courts of First Instance by virtue of Letter of Instructions No. 772 dated November 27, 1978, issued by the President of the Philippines,[6] and the Rules and Regulations implementing LOI No. 772 promulgated in the Joint Cir-cular, dated April 1, 1979, issued by the Minister of National Defense[7], in relation to the Judiciary Act of 1948 as amended, in view of the penalty involved.

Since the purpose of preliminary investigation proper is to determine whether or not the accused should be released or held for trial before the competent Court[8] the only jurisdiction of a Muni-cipal Judge at the preliminary investigation proper, where the offense charged does not fall within the jurisdiction of the Municipal Court, is either to elevate the case to the proper Court with his find-ings on preliminary investigation or, in the absence of probable cause to believe an accused guilty, to dismiss the case. He cannot decide the case on the merits and if he does, he acts without jurisdiction.[9] The duty of a Municipal Judge conducting the preliminary investigation when the offense charged does not fall within his Court's jurisdiction is only to determine whether or not the evidence presented support prima facie the allegations of fact contained in the com-plaint, but he has no legal authority to determine the character of the crime and his declaration upon that point can only be regarded as an expression of opinion in no wise binding on the trial Court.[10]

Therefore, it was erroneous for respondent Judge at the preliminary investigation of the criminal complaint filed before him for the specific offense of illegal possession of explosives intended for illegal fishing under Presidential Decree No. 704, as amended by Presidential Decree No. 1058, to have rendered judgment and to have

convicted the accused for illegal possession of explosives under Act No. 3023 considering that his Court had no jurisdiction over the offense charged in the Complaint, and, hence, was bereft of authority to determine the character of the crime committed. His only jurisdiction was to elevate or dismiss the case. He could not decide the case on the merits.

Considering that the Municipal Circuit Court lacked competent jurisdiction over the subject matter of the criminal complaint against the accused respondents, we agree with the Solicitor General that no jeopardy may be deemed to have attached by virtue of the erroneous and void judgment of conviction rendered by respondent Judge as to bar a subsequent indictment and trial of the case in the proper Court with jurisdiction over the offense.[11]

WHEREFORE, we hereby set aside the Decision of August 6, 1979 rendered by respondent Judge Marcelino M. Escalona of the Municipal Circuit Court of Medellin, Cebu, and remand this case to him for preliminary investigation in accordance with law and the Rules.

Without costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] p. 4, Rollo.

[2] pp. 6-9, Rollo.

[3] An Act to amend Act Numbered Twenty-two hundred and fifty-five, entitled "An Act prohibiting the manufacture, possession and sale of dynamite and other explosives without a special permit, providing a penalty therefor, and for other purposes."

[4] p. 5, Rollo.

[5] Presidential Decree No. 1058

"Sec. 5. Jurisdiction. - The Military Tribunals created under Presidential Decree No. 39, as amended, shall exercise exclusive jurisdiction to try cases involving illegal fishing by the use of explosives, illegal possession of explosives intended for illegal fishing, and trawl fishing as prohibited under Sections 33, 35 and 38 of Presidential Decree No. 704, as hereby amended."

[6] Letter of Instructions No. 772

"1. All criminal cases to be filed by the Judge Advocate General or by any personnel of the Ministry of National Defense and/or the military establishment shall be referred in the first instance to the Civil Courts and no longer to the Military Commission."

[7] Joint Circular, April 1, 1979, Rules and Regulations

"2. Cases to be filed with and tried by the Civil Courts/Detention and Release of Accused - Criminal cases under the jurisdiction of the military tribunals pursuant to General Order No. 59, dated June 24, 1977, as amended by General Order No. 63, dated August 8, 1978, which have not yet been referred by the Judge Advocate General to the military tribunals as of the effectivity of Letter of Instructions No. 772, shall be referred by him to the proper civil authorities. x x x x x x x x x x."

[8] Biron vs. Cea, 73 Phil 673 (1942), citing Hashim vs. Boncan, 71 Phil 216 (1941); People vs. Sabio Sr., 86 SCRA 568 (1978) citing Ngo Hoc vs. Aquino, 72 Phil 90 (1941), U.S. vs. Banzuela, 31 Phil 564 (1915), and

Biron vs. Cea, *supra*).

[9] See *Ngo Hoc Chef vs. Aquino*, 72 Phil 90 (1941), cited in Martin, *Rules of Court in the Philippines*, Third Edition, Vol. 4, pp. 207-208.

[10] *People vs. Gorospe*, 53 Phil 960 (1928).

[11] *U.S. vs. Jayme*, 24 Phil 90 (1913); *People vs. Bautista*, 67 Phil 518 (1939); *People vs. Araquel*, 106 Phil. 677 (1959).

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