

JUAN BAUTISTA, PETITIONER, VS. CITY FISCAL OF DAGUPAN AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 59830. July 31, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioner Juan Bautista and one Nenita Marquez filed with the Office of the City Fiscal of Dagupan a complaint against Conchita Estrada, Avelina Baniqued and Federico Bautista, for estafa thru falsification of public document. After conducting the preliminary investigation, Assistant Fiscal Dominador M. Manaois dismissed the complaint for lack of prima facie evidence to support the indictment.

Petitioner Juan Bautista did not move for the reconsideration of the fiscal's resolution; neither did he appeal therefrom to the Ministry of Justice. Instead, Mr. Bautista filed a new complaint with the City Court of Dagupan against the same respondents, charging them with the same offense - estafa thru falsification of public document (docketed as Criminal Case No. 11074).

After conducting the preliminary examination, the City Court found that an offense has been committed and the respondents therein - Conchita Estrada, Avelina Baniqued and Federico Bautista, are probably guilty thereof. Accordingly, a warrant for their arrest was issued and an order directing respondent city fiscal to file the corresponding information.

Respondent city fiscal, through Assistant Fiscal Manaois, filed a manifestation with the city court that he will reinvestigate the case in view of his prior resolution finding no prima facie evidence against the respondent therein. Subpoenas were issued by the city fiscal's office to the complainants and to their witness, Emilio Fernandez, but the subpoenas were ignored by them. Where-upon, for failure of complainants and their witness to submit themselves for reinvestigation, respondent city fiscal filed with the city court a motion to dismiss the case. Opposition was filed by herein petitioner to the motion. The city court denied respondent city fiscal's motion to dismiss.

Thereafter, the city court again forwarded the records of the case to respondent city fiscal for the filing of the information. In turn, respondent city fiscal filed a manifestation informing the city court of his inability to prosecute the case because of his sincere and honest belief that he has no prima facie case to warrant the prosecution of the accused. A petition for mandamus was filed in the then Court of First Instance of Pangasinan (docketed as Civil Case No. D-5219) which rendered a decision, the dispositive portion of which reads:

"WHEREFORE, in the light of the foregoing consideration, this Court hereby GRANTS the petition and hereby ORDERS the city fiscal to file the corresponding information for falsification of public documents against herein accused." (p. 33, rollo)

From the above decision of the lower court, appeal was interposed to the then Court of Appeals which reversed the decision and dismissed the petition for mandamus.

Hence, this petition for review by certiorari, praying that the decision of the appellate court be reversed and another one entered directing the City Fiscal of Dagupan to file the corresponding information and to prosecute the case.

Section 4, Rule 110 of the Revised Rules of Court, specifically provides that "all criminal action either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal." In *Alberto vs. de la Cruz*, 98 SCRA 406, the Court held that a fiscal 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 support the allegation thereof. Although this power and prerogative of the fiscal, to determine whether or not the evidence at hand is sufficient to form a reasonable belief that a person committed an offense, is not absolute and subject to judicial review, it would be embarrassing for the prosecuting attorney to be compelled to prosecute a case when he is in no position to do so, because in his opinion, he does not have the necessary evidence to secure a conviction, or he is not convinced of the merits of the case. The better procedure would be to appeal the Fiscal's decision to the Ministry of Justice and/or ask for a special prosecutor."

There is no question that the prosecuting fiscal has the right to conduct his own investigation. As early as 1938, it has been the ruling that after a criminal case has been forwarded by the inferior court to the trial court which has jurisdiction to try it on the merits, and before the fiscal has filed the necessary information, the latter not only has the power but also the duty to investigate the facts upon which the complaint filed in inferior court was based, to examine the evidence submitted and such other evidence as the parties may deem proper to submit on their own free will or on demand of the fiscal for the purpose of determining whether there is at least prima facie evidence establishing the guilt of the accused and overcoming the presumption of innocence in his favor. If after he has done all these and considering all the circumstances of the case, the fiscal believes that the evidence is not sufficient to establish prima facie the guilt of the accused, he should submit to the court before which the case is pending the corresponding motion for dismissal. (*People vs. Ovilla*, 65 Phil. 722). Further, in *Provincial Fiscal of Bataan vs. Judge Ambrocio, T. Dollete*, 103 Phil. 914, the court very clearly said that "because of the right of a prosecuting attorney to conduct his own investigation of a criminal case elevated to him from the justice of the peace, naturally, there is corresponding duty or obligation of the prosecuting witness, especially the offended parties, to submit to said investigation. Consequently, said offended parties and their legal counsel, the private prosecutor, are not justified in refusing to submit to the same and to give their testimonies x x x. It is rather embarrassing for a prosecuting attorney to be compelled to prosecute a case when he is in no position to do so, because in his opinion he does not have the necessary evidence to secure conviction or he is not convinced of the merits of the case. If the prosecuting attorney fails or refuses to file said information within a reasonable time, then either the offended parties or the court could invoke Section 1679 of the Revised Administrative Code so that the Department of Justice could designate one to act as Provincial Fiscal and file the corresponding complaint or information." Finally, in *Salcedo vs. Suarez*, 80 SCRA 237, We held that "[u]pon receipt of the record in the court of first instance from the municipal court, it is well settled as reaffirmed in *Talusan vs. Ofiana* that the Provincial fiscal (or his assistant) has the power 'to conduct his own investigation or reinvestigation of a case already elevated to the Court of First Instance by a Municipal Judge or justice of the peace who conducted a preliminary investigation thereon, in order to determine his own course of action as prosecuting officer', and thereafter he may either move to dismiss the case or file the corresponding information."

Indeed, how can the prosecuting fiscal secure the conviction of an accused on evidence beyond reasonable doubt when he himself is not convinced that he has a prima facie case against him!

But then, let's say that the fiscal simply refuses to institute a case against a respondent even if the evidence is sufficient to warrant the filing of an information. As Stated above, the remedy is appeal to the Ministry of Justice

(then Department of Justice) and, if there is evidence, administrative complaint against the prosecuting officer for ignorance of the law, neglect of duty, partiality and/or bribery.

In the light of the foregoing considerations, We find no cogent reason to set aside the decision of respondent Court of Appeals, dated November 5, 1981.

ACCORDINGLY, the petition is hereby DISMISSED, without pronouncement as to costs.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Teehankee, J., reserve his vote.

Aquino, J., see concurrence.

CONCURRING OPINION

AQUINO, J.:

This case is about the deed of sale of land dated August 9, 1977 signed by Marcela Bautista in favor of Conchita Estrada for the price of P14,000. It was alleged that Marcela at the time of the execution of the sale was already weak. She was suffering from consumption. She died 45 days later or on September 23, 1977.

According to Emilio Fernandez (who testified in the city court at the preliminary examination), during the execution of the sale on August 9, 1977, Conchita Estrada, the spouses Federico Bautista and Juliana Bautista, and Avelina Baniqued were in Marcela's house in Dagupan City. Conchita, Federico and Juliana were trying to persuade Marcela to sign the deed of sale. When Marcela did not sign, Juliana signed Marcela's name.

Juan Bautista (his relationship to Marcela is not shown) filed with the city fiscal's Office of Dagupan City a complaint for estafa through falsification of public document against Conchita, Juliana, Federico and Avelina. He claimed that the land sold was previously donated by Marcela to him and his wife, Nenita Marquez.

After hearing, Fiscal (Special Counsel) Dominador Manaois issued a resolution dated July 23, 1979, dismissing the complaint. He compared Marcela's signature in the deed of sale with the genuine signature in the deed of donation. He did not find any great difference. He concluded that there was no falsification. Emilio Fernandez did not testify at that hearing.

Complainant Juan Bautista did not appeal that ruling to the Ministry of Justice. About a month later, or on August 20, 1979, he filed the same complaint in the city court of Dagupan.

After a preliminary examination, wherein Fernandez testified, the city court found probable cause for falsification. It issued a warrant of arrest against the four accused. They posted bail. The city court forwarded the record to the city fiscal for the filing of the corresponding information.

Fiscal Manaois reinvestigated the case. He disagreed with the city court. He did not believe the testimony of Fernandez. Fiscal Manaois filed on April 10, 1980 in the city court a motion to dismiss the case. Bautista opposed the motion. The city court denied it.

The city court re-forwarded the record of the case to the city fiscal. On August 18, 1980, the city fiscal and Fiscal Manaois filed a manifestation apprising the city court that they could not file the information.

In view of this impasse, Bautista filed in the Court of First Instance on September 9, 1980 a petition for mandamus to compel the city fiscal to file the information for falsification of public document. After hearing, the trial court granted the writ in its decision of November 21, 1980.

The city fiscal appealed to the Court of Appeals which in its decision of November 5, 1981 reversed the decision of the trial court and dismissed the petition for mandamus. Bautista appealed to this Court.

I concur because the rule is that it is discretionary on the part of the fiscal to proceed with a criminal case and direct the prosecution thereof and, there being no grave abuse of discretion on his part in dismissing the complaint, mandamus does not lie (*Gonzalez vs. Court of First Instance of Bulacan*, 63 Phil. 846).

However, after the completion of the preliminary examination and nonpresentation of evidence by the accused, it was the duty of the city court to elevate the record to the Court of First Instance which has jurisdiction to try the case (Sec. 12, Rule 112, Rules of Court).

Then, as has been the practice, the Court of First Instance would refer the case to the city fiscal. That would have obviated the filing of a mandamus action against the city fiscal.

The city fiscal, upon review of the record, and finding that the city court erred in finding that there was probable cause, may file a motion in the Court of First Instance (not the city court) to dismiss the case (*People vs. Ovilla*, 65 Phil. 722).

If the city court did not find any prima facie cause, it should still elevate the record to the Court of First Instance. In such a case, the fiscal, to whom the case is referred, may review the record and conduct another preliminary investigation (*People vs. Pervez*, 110 Phil. 214; *People vs. Mapa and Abalo*, 115 Phil. 77).

The fiscal, as the one in control of the prosecution of the case, must have the ultimate power to decide which as between conflicting testimonies should be believed (*People vs. Liggayu*, 97 Phil. 865, 871).

In the instant case, it may be argued that Fiscal Manaois acted with grave abuse of discretion in not giving credence to the testimony of Fernandez and that the city fiscal should have assigned the case to another investigating fiscal, instead of to Fiscal Manaois who had already previously dismissed the case.

Since Juan Bautista did not seasonably appeal to the Minister of Justice, his remedy is a civil action as indicated in article 35 of the Civil Code.

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