

ATTY. MIGUEL P. PADERANGA, PETITIONER, VS. HON. FRANKLIN M. DRILON, HON. SILVESTRE H. BELLO III, ATTY. HENRICK F. GINGOYON, HELEN B. CANOY AND REBECCA B. TAN, RESPONDENTS.

G.R. No. 96080. April 19, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

In this special civil action for mandamus and prohibition with prayer for a writ of preliminary injunction/restraining order, petitioner seeks to enjoin herein public respondents from including the former as an accused in Criminal Case No. 86-39 for multiple murder, through a second amended information, and to restrain them from prosecuting him.

The records disclose that on October 16, 1986, an information for multiple murder was filed in the Regional Trial Court, Gingoog City, against Felipe Galarion, Manuel Sabit, Cesar Sabit, Julito Ampo, Eddie Torion, John Doe, Peter Doe and Richard Doe, for the deaths on May 1, 1984 of Renato Bucag, his wife Melchora Bucag, and their son Renato Bucag II. Venue was, however, transferred to Cagayan de Oro City per Administrative Matter No. 87-2-244.

Only Felipe Galarion was tried and found guilty as charged. The rest of the accused remained at large. Felipe Galarion, however, escaped from detention and has not been apprehended since then.

In an amended information filed on October 6, 1988, Felizardo Roxas, alias "Ely Roxas," "Fely Roxas" and "Lolong Roxas," was included as a co-accused. Roxas retained petitioner Paderanga as his counsel.

As counsel for Roxas, petitioner filed, among others, an Omnibus Motion to Dismiss, to Quash the Warrant of Arrest and to Nullify the Arraignment on October 14, 1988. The trial court, in an order dated January 9, 1989, denied this omnibus motion but directed the City Prosecutor "to conduct another preliminary investigation or reinvestigation in order to grant the accused all the opportunity to adduce whatever evidence he has in support of his defense."

In the course of the preliminary investigation, through a signed affidavit, Felizardo Roxas implicated herein petitioner in the commission of the crime charged.

The City Prosecutor of Cagayan de Oro City inhibited himself from further conducting the preliminary investigation against petitioner at the instance of the latter's counsel, per his resolution dated July 7, 1989. In his first indorsement to the Department of Justice, dated July 24, 1989, said city prosecutor requested the Department of Justice to designate a state prosecutor to continue the preliminary investigation against herein petitioner.

In a resolution dated September 6, 1989,[1] respondent State Prosecutor Henrick F. Gingoyn, who was designated to continue with the conduct of the preliminary investigation against petitioner, directed the amendment of the previously amended information to include and implead herein petitioner as one of the accused therein. Petitioner moved for reconsideration,[2] contending that the preliminary investigation was not

yet completed when said resolution was promulgated, and that he was deprived of his right to present a corresponding counter-affidavit and additional evidence crucial to the determination of his alleged "linkage" to the crime charged. The motion was, however, denied by respondent Gingoyon in his order dated January 29, 1990.[3]

From the aforesaid resolution and order, petitioner filed a Petition for Review[4] with the Department of Justice. Thereafter, he submitted a Supplemental Petition with Memorandum,[5] and then a Supplemental Memorandum with Additional Exculpatory/Exonerating Evidence Annexed,[6] attaching thereto an affidavit of Roxas dated June 20, 1990 and purporting to be a retraction of his affidavit of March 30, 1990 wherein he implicated herein petitioner.

On August 10, 1990, the Department of Justice, through respondent Undersecretary Silvestre H. Bello III, issued Resolution No. 648[7] dismissing the said petition for review. His motion for reconsideration having been likewise denied, petitioner then filed the instant petition for mandamus and prohibition.

Petitioner raises two basic issues, namely: (1) that the preliminary investigation as to him was not complete; and (2) that there exists no prima facie evidence or probable cause to justify his inclusion in the second amended information.

Preliminary investigation is generally inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof, and it does not place the person against whom it is taken in jeopardy.[8]

The institution of a criminal action depends upon the sound discretion of the fiscal. He has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court.[9] Hence, the general rule is that an injunction will not be granted to restrain a criminal prosecution.[10] The case of *Brocka, et al. vs. Enrile, et al.*[11] cites several exceptions to the rule, to wit:

- a. To afford adequate protection to the constitutional rights of the accused;
- b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- c. When there is a prejudicial question which is subjudice;
- d. When the acts of the officer are without or in excess of authority;
- e. Where the prosecution is under an invalid law, ordinance or regulation;
- f. When double jeopardy is clearly apparent;
- g. Where the court has no jurisdiction over the offense;
- h. Where it is a case of persecution rather than prosecution;
- i. Where the charges are manifestly false and motivated by the lust for vengeance; and
- j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.

A careful analysis of the circumstances obtaining in the present case, however, will readily show that the same does not fall under any of the aforesaid exceptions. Hence, the petition at bar must be dismissed.

1. Petitioner avers that he was deprived of a full preliminary investigation by reason of the fact that at the time the resolution of September 6, 1989 was issued, there were still several incidents pending resolution such as the

validity of the testimonies and affidavits of Felizardo Roxas and Rogelio Hanopol as bases for preliminary investigation, the polygraph test of Roxas which he failed, and the clarificatory questions which were supposed to be propounded by petitioner's counsel to Roxas and Hanopol. Petitioner likewise claims that he was deprived of the opportunity to file his counter-affidavit to the subpoena of April 25, 1989. These contentions are without merit.

Firstly, it will be noted that petitioner had already filed his counter-affidavit, pursuant to the subpoena issued to him on April 17, 1989, wherein he controverted the charge against him and dismissed it as a malicious design of his political opponents and enemies to link him to the crime. We hold that this is sufficient compliance with the procedural requirement of the Rules of Court, specifically Section 3(b) of Rule 112 thereof. Besides, petitioner failed to show that the subpoena issued on April 25, 1989 involved a separate complaint charging an offense different and distinct from that charged in the complaint attached to the first subpoena issued to him earlier.

Secondly, the veracity and credibility of the witnesses and their testimonies are matters of defense best addressed to the trial court for its appreciation and evaluation.

Thirdly, the right of petitioner to ask clarificatory questions is not absolute. The fiscal has the discretion to determine whether or not he will propound these questions to the parties or witnesses concerned. As clearly provided for under Section 3(e), Rule 112 of the Rules of Court:

"(e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned."

Lastly, it has been held that "the proper forum before which absence of preliminary investigation should be ventilated is the Court of First Instance, not this Court. Reason is not wanting for this view. Absence of a preliminary investigation does not go to the jurisdiction of the court but merely to the regularity of the proceedings. It could even be waived. Indeed, it is frequently waived. These are matters to be inquired into by the trial court, not an appellate court." [12]

2. Petitioner further submits that there is no prima facie evidence, or probable cause, or sufficient justification to hold him to a tedious and prolonged public trial, on the basis of the following grounds: the questioned resolution of respondent Gingoyon is full of factual misrepresentations or misapprehensions; respondent's reliance on the decision of the Regional Trial Court against Felipe Galarion suffers from constitutional and procedural infirmities considering that petitioner was not a party thereto, much less was he given any opportunity to comment on or rebut the prosecution evidence; reliance on Rogelio Hanopol's testimony is likewise "contemptible," it being merely hearsay in addition to the fact that petitioner was never given the opportunity to cross-examine Hanopol at the time he testified in court; and the affidavit of Roxas dated March 30, 1989, which is the only evidence against petitioner, has been rendered nugatory by his affidavit of retraction dated June 20, 1990.

A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial. [13] The quantum of evidence now required in preliminary investigation is such evidence sufficient to "engender a well founded belief" as to the fact of the commission of a crime and the respondent's probable guilt thereof. A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well grounded belief that an offense has been committed

and that the accused is probably guilty thereof.[14] We are in accord with the state prosecutor's findings in the case at bar that there exists prima facie evidence of petitioner's involvement in the commission of the crime, it being sufficiently supported by the evidence presented and the facts obtaining therein.

Likewise devoid of cogency is petitioner's argument that the testimonies of Galarion and Hanopol are inadmissible as to him since he was not granted the opportunity of cross-examination.

It is a fundamental principle that the accused in a preliminary investigation has no right to cross-examine the witnesses which the complainant may present. Section 3, Rule 112 of the Rules of Court expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine. Thus, even if petitioner was not given the opportunity to cross-examine Galarion and Hanopol at the time they were presented to testify during the separate trial of the case against Galarion and Roxas, he cannot assert any legal right to cross-examine them at the preliminary investigation precisely because such right was never available to him. The admissibility or inadmissibility of said testimonies should be ventilated before the trial court during the trial proper and not in the preliminary investigation.

Furthermore, the technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation. If by its very nature a preliminary investigation could be waived by the accused, we find no compelling justification for a strict application of the evidentiary rules. In addition, considering that under Section 8, Rule 112 of the Rules of Court, the record of the preliminary investigation does not form part of the record of the case in the Regional Trial Court, then the testimonies of Galarion and Hanopol may not be admitted by the trial court if not presented in evidence by the prosecuting fiscal. And, even if the prosecution does present such testimonies, petitioner can always object thereto and the trial court can rule on the admissibility thereof; or the petitioner can, during the trial, petition said court to compel the presentation of Galarion and Hanopol for purposes of cross-examination.

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Davide, Jr., JJ., concur.

[1] Annex A, Petition; Rollo, 12.

[2] Annex B, id.; ibid., 24.

[3] Annex C, id.; ibid., 36.

[4] Annex E, id.; ibid., 41.

[5] Annex G, id.; ibid., 49.

[6] Annex H, id.; ibid., 61.

[7] Annex I, id.; ibid., 69.

[8] Tandoc, et al. vs. Hon. Resultan, etc., et al., 175 SCRA 37 (1989).

[9] Crespo vs. Mogul et al., 151 SCRA 462 (1987).

[10] Kwong Sing vs. City of Manila, 41 Phil. 103 (1920).

[11] G.R. Nos. 69863-65, December 10, 1990.

[12] Medina vs. Orozco, Jr., etc., 18 SCRA 1168 (1966); Ilagan, et al. vs. Enrile, et al., 139 SCRA 349 (1985); People vs. Escobar, et al., 157 SCRA 541 (1988).

[13] Section 1, Rule 112, Rules of Court.

[14] Mayuga vs. Maravilla, etc., et al., 18 SCRA 1115 (1966).

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