

CIRILO A. CINCO, DOMINGO AMARO, ANTONIO ABALOS AND ANDRES SABALZA, PETITIONERS, VS. SANDIGANBAYAN (SECOND DIVISION) AND THE PEOPLE OF THE PHILIPPINES,

G.R. Nos. 92362-67. October 15, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for review on certiorari seeks the reversal of a resolution issued by respondent Sandiganbayan dated February 23, 1990, which denied the petitioners' motion to quash Criminal Cases Nos. 13827 to 13832.

The antecedent facts as summarized by the respondent court are as follows:

"1. On April 20, 1981, Fredeswinda P. Balana lodged a letter-complaint with the Office of the Tanodbayan (now of the Special Prosecutor) against Cirilo A. Cinco, Jose Bantigue, Domingo Amaro, Antonio Abalos, Andres Sabalza, and others. She swore to her letter-complaint before Prosecutor Perfecto Llacar, Jr., who certified at the bottom thereof that he personally examined the affiant and that he was satisfied she executed and understood it (Annex A of Rejoinder, Record, pp. 125-132). The charge was docketed as TBP Case No. 81-042401.

"Cinco submitted his counter-affidavit on June 16, 1981, and supplemental counter-affidavit on July 16, 1981. Amaro executed his counter-affidavit in June 1981 and supplemental counter-affidavit on July 16, 1981; Abalos filed his counter-affidavit on June 18, 1981; Bantigue, on June 25, 1981; and the others, on various dates in the same year; Sabalza, however, did not.

"2. On June 11, 1982, Balana filed another letter-complaint against Cinco and Amaro, which she put under oath before Prosecutor Ricardo A. Buenviaje who also certified in writing that he personally examined the affiant and that he was satisfied she voluntarily executed and understood the letter-complaint (Annex B of Rejoinder, Record, pp. 133-134). The additional charge was given the number TBP Case No. 82-061408.

"Cinco submitted his counter-affidavit on August 11, 1982, and Amaro, on a date which does not appear on record, but in or before 1986.

"3. After the submission of the countervailing affidavits which the defense impliedly admitted, Balana presented her reply affidavits.

"4. The preliminary investigation of the charges was assigned to Prosecutor Ricardo A. Buenviaje, and it was up for resolution when he was appointed to the judiciary in 1986. It was then re-assigned to Prosecutor Gregorio G. Pimentel, Jr., who, on July 23, 1987, issued a resolution recommending the prosecution of the accused for alleged violations of Section 3(e) of Republic Act No. 3019 (Annex C of Rejoinder, Record, pp. 131-143). The resolution having been approved by Raul M. Gonzales, the then Tanodbayan, the corresponding informations for the said violations were filed with the Sandiganbayan on September 7, 1987, and docketed as Criminal Cases Nos. 12420 and 12421 against Cinco; 12422 against Bantigue, Amaro, Cinco, and Abalos; 12423 against Cinco; 12424 against Bantigue, Amaro, and Sabalza; and 12426 against Cinco.

"5. The accused filed a motion to quash on May 17, 1988, praying that the said informations be dismissed for lack of authority on the part of Tanodbayan Gonzales or his prosecutor to file them and invoking Zaldivar vs. Sandiganbayan, 160 SCRA 843, which had held that the Tanodbayan, now called Special Prosecutor, was '... clearly without authority to conduct preliminary investigations and to direct the filing of criminal cases with the Sandiganbayan, except upon orders of the Ombudsman. This right to do so was lost effective February 2, 1987. From that time, he has been divested of such authority.'

"After hearing the prosecution, this Court promulgated a resolution on July 5, 1988, granting the motion to quash. In that resolution, it observed

'... (T)he dismissal of these cases will be without prejudice to the right of the State, acting through the Hon. Ombudsman, to conduct a new preliminary investigation and refile the cases if the evidence warrants the same.'

"6. On August 4, 1988, Balana requested the re-filing of the cases, and in view thereof, the accused, through counsel, in turn requested on December 26, 1988, that she did so 'under separate and distinct charges in accordance with the new rules of preliminary investigation (Secs. 3 and 4, Rule 112 of the Rules of Court effective October 1, 1988) so that the respondents can refute her charges and specific evidences she may present in support of each separate charge (Annex A of Motion to Quash, Record, pp. 61-62).

"7. In his order of February 16, 1990, Prosecutor Eleuterio F. Guerrero, to whom the charges of Balana were re-assigned for preliminary investigation, denied the request of the accused and noting that the parties had already adduced their respective evidence in the preliminary investigation conducted by the previous prosecutor, gave her 10 days from receipt to manifest if she elected to adopt the same charges and evidence already submitted. In the same order, he also granted the accused an equal period to adduce their controverting evidence.

"Balana opted on March 8, 1989, to adopt her said charges and evidence, and the accused having failed to submit countervailing evidence or any pleading, Prosecutor Guerrero construed their omission as waiver.

"8. On June 27, 1989, he issued a resolution finding prima facie cases for alleged violations of Section 3(e) of Republic Act No. 3019 and recommending the filing of the corresponding informations. The Hon. Ombudsman approved the resolution. Accordingly, (Criminal Cases Nos. 13827 to 13832 against the petitioners) were instituted on August 28, 1989. Each information carries with it the certification of Prosecutor Guerrero

'that a preliminary investigation has been conducted in this case; that there is a sufficient ground to engender a well-founded belief that the crime charged herein has been committed and that the accused are probably guilty thereof.'" (Rollo, pp. 136-140).

On December 4, 1989, petitioners filed a Motion to Quash the informations filed in the aforementioned criminal cases on the following grounds:

- THE INFORMATIONS ARE NULL AND VOID BECAUSE SAME WERE FILED IN VIOLATION OF SECTION 3 OF RULE 112 OF THE RULES OF COURT AS AMENDED;
- THAT THE OFFICER WHO FILED THE INFORMATIONS HAD NO AUTHORITY TO DO SO; AND
- THAT THE INFORMATIONS DO NOT CONFORM SUBSTANTIALLY TO THE PRESCRIBED FORM." (Rollo, pp. 46-47)

After the filing of appropriate pleadings by the Ombudsman in opposition to and by the petitioners in support of the foregoing motion, the respondent court, on December 20, 1989, issued a resolution, the dispositive portion of which states:

"WHEREFORE, finding the Motion to Quash dated November 24, 1989, and submitted for resolution on January 29, 1990, to be without merit, the same is DENIED.

"SO ORDERED." (Rollo, p. 151)

Hence, this petition.

Petitioners submit the following assignment of errors:

"I. THE RESPONDENT SANDIGANBAYAN COMMITTED GRAVE AND SERIOUS ERROR IN NOT RULING THAT THE INFORMATIONS FILED IN CRIMINAL CASES NOS. 13827-32 IN QUESTION, ARE NULL AND VOID BECAUSE SAME WERE FILED IN VIOLATION OF SECTION 3 AND 4 OF RULE 112 OF THE NEW RULES OF COURT AS AMENDED;

"II. THAT RESPONDENT SANDIGANBAYAN COMMITTED SERIOUS AND GRAVE ERROR IN NOT RULING THAT THE PROSECUTOR WHO FILED THE INFORMATIONS HAD NO AUTHORITY TO DO SO; AND

"III. THAT THE RESPONDENT SANDIGANBAYAN COMMITTED SERIOUS AND GRAVE ERROR IN NOT FINDING THAT INFORMATIONS FILED IN CRIMINAL CASES NOS. 13827-32 DO NOT CONFORM SUBSTANTIALLY TO THE FORM PRESCRIBED IN SECTION 4 OF RULE 112 OF THE NEW RULES OF COURT." (Rollo, p. 19)

We affirm.

The peculiar circumstances of this case do not support petitioners' plea for a new preliminary investigation. It is true that the first informations filed against the petitioners were nullified because the then Special Prosecutor had no authority to do so in line with Our ruling in the Zaldivar case, Yet, a careful analysis of the facts shows that the nullity did not extend to the entire preliminary investigation proceedings undertaken by that office. We note that the preliminary investigation on Balana's charges started wayback in 1981. Between the years 1981 and 1983, the contending parties already submitted their counter and supplemental affidavits as well as a reply affidavit. All the requisite papers having been submitted, the preliminary investigation was up for resolution in 1986 when the Prosecutor who handled the case was promoted to the Judiciary in that same year. It was just unfortunate that the said resolution was issued in July 1987 and the informations filed in September of that year. Under such facts, it cannot be said that the proceedings before February 2, 1987 were null and void inasmuch as the then Tanodbayan was clothed with authority to conduct the same. Consequently, the portion of the investigation proceeding which consists in the oath of Balana to her letters-complaint, the certifications of Prosecutors Llacer and Buenviaje, Balana's evidence, and petitioners' counter and supplemental affidavits with their evidence are still effective and valid. To countenance the plea of petitioners who have already been afforded the right to a preliminary investigation conformably with PD 911 would be to grant a *fait accompli*. A new preliminary investigation will be useless and repetitious because the same facts and evidence will be elicited. The investigation proceedings in 1981 and 1983 being valid and proper, the Ombudsman through the Special Prosecutor III Eleuterio Guerrero could simply take over and continue from that point. This move will be more conducive to an orderly and speedy administration of justice.

Even granting *arguendo* that a new preliminary investigation is proper in this case, the same in effect had already been given to the petitioners. It is noteworthy that before his evaluation of the records of the first preliminary investigation, Special Prosecutor Officer III, Eleuterio F. Guerrero, required (1) Balana to manifest if she elected to adopt the same charges and evidence already submitted; and (2) petitioners to submit their controverting evidence if Balana decided to adopt the same charges. This directive partakes of the nature of a preliminary investigation which is nothing more than the submission of the parties' respective affidavits, counter-affidavits

and evidence to buttress their separate allegations. Balana opted to adopt her charges and evidence. Petitioners did not submit any countervailing evidence and consequently, lost the opportunity to submit additional arguments and supporting evidence in their favor. Their failure, therefore, should not work against the right of the complainant to an expeditious determination of her complaints.

Petitioners argue that the letters-complaint cannot serve as affidavits or evidence in support of the charges against petitioners allegedly constituting violations of Section 3, sub-par. (e) of RA No. 3019 as amended; that complainant never positively identified the other respondents and the offenses for which they are charged; and that she never presented affidavits of witnesses in support of the charge or charges against them.

We are not convinced. The Special Prosecutor has full discretion and control of the prosecution of criminal actions. He alone has the power to decide which as between conflicting testimonies or evidence should be believed (see *People v. Liggayu*, 97 Phil. 865). While indeed he has this full power, it does not follow, however, that the designation of the offense by the Fiscal is binding upon the court. Settled is the rule that it is ultimately the court which determines the nomenclature of the crime after the trial and following its own ascertainment of the facts needed to constitute the elements of the crime attributed to the accused (*People v. Eleuterio*, G.R. No. 63971, May 9, 1989, 173 SCRA 243, 251). In his study of the entire records of the preliminary investigation of Balana's charges, Special Prosecutor Guerrero believed that he has at least a prima facie evidence to establish the guilt of the petitioners and hence, re-filed the cases. This is enough. It must be emphasized that the Fiscal is not required to prove the guilt of the accused beyond reasonable doubt. Our statement in *Trocio v. Manta* (L-34834, November 15, 1982, 118 SCRA 241, 246), bears repeating, to wit:

"x x x When a fiscal investigates a complaint in order to determine whether he should file charges with the court against the person complained of, the scope of the investigation is far short of a trial of an accused before the court. It is not required that all reasonable doubt of the guilt of the accused must be removed; it is only required that the evidence be sufficient to establish probable cause that the accused committed the crime charged. x x x." (italics ours)

We also see no need for the Ombudsman to act favorably on petitioners' bill of particulars seeking to segregate the particulars of each of the six cases to support the re-filing of the six dismissed cases. The reason being that such procedure has no place in preliminary investigation where no finding of guilt is made. In *Bernabe, Jr., et al. v. Rosario* (G.R. No. 83095, July 19, 1988, En Banc Minute resolution), We held:

"x x x The investigating fiscal, to be sure, has discretion to determine the specificity and adequacy of averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form or substance or if he otherwise finds no ground to continue with the inquiry, or proceed with the investigation if the complaint is, in his view, in due and proper form. It certainly is not his duty to require a more particular statement of the allegations of the complaint merely upon the respondents' motion, and specially where after an analysis of the complaint and its supporting statements he finds it sufficiently definite to apprise the respondents of the offenses with which they are charged. x x x. Moreover, the procedural device of a bill of particulars, as the Solicitor General points out, appears to have reference to informations or criminal complaints filed in a competent court upon which the accused are arraigned and required to plead, and strictly speaking has no application to complaints initiating a preliminary investigation which cannot result in any finding of guilt, but only of probable cause. x x x." (Italics supplied)

It appears too that the respondent court found the petitioners' request for particulars of their respective offenses under Sec. 3 of RA No. 3019, unmeritorious. Such findings, being un rebutted, are binding on Us. Thus,

"2. The accused cannot plausibly claim that they were misled by the designations of the offenses charged against them and were at a loss as to what to controvert.

"(a) For if their claim were true they could not have prepared, verified, and submitted their respective counter-affidavits and supplemental counter-affidavits.

"(b) They are not ordinary government employees with modicum education. They are professionals. Amaro, Cinco, Abalos, and Sabalza are the School Administrator, Collecting and Disbursing Officer, College Instructor, and Secondary School Teacher, respectively, in Sumoroy Agro-Industrial School, a State College owned by the Government. Bantigue is a lawyer and Hearing Officer in the Ministry (now Department) of Education, Culture and Sports.

"(c) In the dismissed Criminal Cases Nos. 12422, 12424, and 12426, the accused were also charged with violations of Section 3(e) of Republic Act No. 3019. They filed motions for reinvestigation wherein they never complained that they were preliminarily investigated for alleged offenses other than for those violations. Instead, they narrated in Criminal Cases Nos. 12422 and 12426 their own versions of the facts constituting their defenses. This means that when they requested for specification of the accusations under Section 3(e), on December 26, 1988, they already understood that the letter complaints of Balana included charges under Section 3(e) and knew precisely what to controvert. So when Prosecutor Guerrero denied on February 16, 1989, their request and gave them 10 days to submit controverting evidence, they could have presented those defenses.

"3. The 1988 request for specification of the charges under Section 3(e) came too late, as it was made only long after the accused had presented their controverting evidence in 1981 and 1982 and after the preliminary investigation had been deemed submitted for resolution in or before 1986. To have granted the request was to unnecessarily conduct a new preliminary investigation and delay the resolution of the letter complaints." (Rollo, pp. 146-147)

Petitioners' apprehension that they might be put in jeopardy of being charged with informations or crimes other than the crime imputed in the dismissed cases is baseless. There could be no double jeopardy for the simple reason that they have not yet pleaded to the offense (see *Gaspar v. Sandiganbayan* (G.R. No. 68086, September 24, 1986, 144 SCRA 415, 420). Besides, a preliminary investigation is not a trial for which double jeopardy attaches. We ruled in *Tandoc v. Resultan* (G.R. Nos. 59241-44, July 5, 1989, 175 SCRA 37, 43) that:

"Preliminary investigation is merely 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."

Further, petitioners claim that the respondent court has supported their plea for another preliminary investigation when in the resolution of July 7, 1988, it directed that the dismissal of the informations against them will be without prejudice to the right of the Ombudsman to conduct a preliminary investigation and to re-file the cases if the evidence warrants the same.

Such contention is untenable. That portion of the respondent court's resolution is obiter dictum which lacks the force of an adjudication and should not ordinarily be regarded as such (see *Morales v. Paredes*, 55 Phil. 565, 567). We stated earlier that the fiscal or the Special Prosecutor has full discretion and control of the prosecution. The courts generally will not interfere with this power. As the respondent court held:

"Nowhere in the resolution of July 5, 1988, did this Court direct the conduct of a new preliminary investigation on the charges of Balana against the accused. It merely observed in that resolution that 'the dismissal of these cases will be without prejudice to the right of the State, through the Hon. Ombudsman, to conduct of a new preliminary investigation and re-file the cases if the evidence warrants the same.'

"This certainly is not such an order by any stretch of the imagination." (Rollo, p. 140--141)

Lastly, petitioners protest against the certification issued by Special Prosecutor Guerrero as highly irregular because it did not comply with Section 4, Rule 112 of the Rules of Court. They aver that he did not personally examine the complainants and witnesses; that he did not inform the petitioners of the complaint and of the evidence submitted against them and he did not give them the opportunity to submit controverting evidence since there was none to controvert. Hence, they conclude that the said irregularity renders the present informations null and void.

We do not agree. The well-reasoned dissertation of the respondent court in refutation of the aforesaid arguments needs no amplification. We therefore cite it as Our own:

"1. It has been held that if a preliminary investigation was actually conducted, the absence of the certification by the investigating fiscal that it was conducted is not fatal. This is the ruling in *Estrella vs. Ruiz*, 58 SCRA 779, 784, which arose when Presidential Decree No. 77 on preliminary investigation was enforced.

'It should be observed that Section 3 of Rule 110 [now Section 4] defines an information as nothing more than an 'accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court.' Thus, it is obvious that such certification is not an essential part of the information itself and its absence cannot vitiate it as such. What is not allowed is the filing of the information without a preliminary investigation having been previously conducted, and the injunction that there should be a certification is only a consequence of the requirement that a preliminary investigation should first be conducted.'

"Since the absence of the certification does not render null and void the information filed after a preliminary investigation was conducted, with more reasons the presence of a certification deficient in any respect does not have that effect.

"As already seen, in the instant cases, a preliminary investigation was actually held, and the accused were even afforded two opportunities to submit their controverting evidence.

"2. Prosecutor Guerrero expressly certified in each information that a preliminary investigation has been conducted in this case. Such preliminary investigation which actually took place is presumed to have been regularly held — that is, in accordance with law. It can therefore be said that the quoted certification impliedly includes the statement that the accused were informed of the complaint and evidence against them and that they were given the chance to controvert the same. That they were in fact so informed and given the chance cannot be denied. They could not have submitted their counter-affidavits and supplemental counter-affidavits in 1981 and 1982 had they not been aware of the accusations and evidence against them. With respect to Sabalza who did not submit counter-affidavit, he did not avail of the opportunity given him in the order of February 16, 1989, of Prosecutor Guerrero. He waived his right to present evidence.

"For the same reason, the same certification also carries with it the implied statement that 'as shown by the record,' Llacar and Buenviaje 'personally examined the complaint and his witnesses,' as in fact these prosecutors so certified in the letter-complaints of Balana.

"3. Untenable is the further contention that 'sufficient ground to engender a well-founded belief' is less categorical than 'reasonable ground to believe' and, therefore, not enough compliance with law. The quoted phrases are equivalent expressions conveying the same thought. This a mere perusal of the pertinent provisions of law demonstrates:

'Preliminary investigation is 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.' (Sec. 1, Rule

112, 1985 Rules).

'He shall certify under oath . . . that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof . . . ' (Sec. 4, Rule 112, 1985 Rules).' (Rollo, pp. 148-150)

ACCORDINGLY, the petition is hereby DENIED. The resolution of the Sandiganbayan, Second Division dated February 23, 1990 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Grino-Aquino, Regalado, and Davide, Jr., JJ., concur.

Melencio-Herrera, J., on leave.

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