45 Phil. 173

[G.R. No. 21236. October 01, 1923]

AURELIA CONDE, PETITIONER, VS. THE HONORABLE JUDGE OF FIRST INSTANCE OF TAYABAS, FOURTEENTH JUDICIAL DISTRICT, AND THE PROVINCIAL FISCAL OF TAYABAS, RESPONDENTS.

D E C I S I O N

MALCOLM, J.:

The facts which this complaint in certiorari and prohibition disclose, as admitted by the Attorney-General, are not exactly complimentary to the administration of justice in the Philippine Islands. A case which, apparently, is simple in its nature, has been so managed by the prosecution as to deprive the accused of the constitutional right of a speedy trial and to at least give the appearance of having degenerated into a persecution of a poor midwife.

On December 28, 1922, Aurelia Conde is charged in an information filed in the justice of the peace court of Lucena, Tayabas, with the misdemeanor denominated *lesiones leves*. When the accused appears before the justice of the peace of Lucena accompanied by her lawyer on the day set for the trial, the fiscal changes the information so as to charge the accused with the crime of attempted murder. The new crime not being within the jurisdiction of the justice of the peace, the case is set for preliminary hearing. But at the date named, the fiscal does not appear, and the complaint is dismissed. In the meantime, however, upon the recommendation of the fiscal, the municipal council of Lucena, Tayabas, suspends the accused from her humble position. Two days after the complaint has been dismissed, the fiscal again becomes active and charges the accused anew with the crime of attempted murder. A new arrest, the filing of a new bond, and a preliminary hearing follow, and the case is transmitted to the Court of First Instance, where the fiscal files an information for the same crime, attempted murder. Six months later, or to be precise as to the date, on

August 30, 1923, the case is called for trial. The accused is present with her lawyer, and with her witnesses, some of whom have come from the neighboring Province of Marinduque. But the fiscal claims that he is not yet ready and obtains a postponement until the afternoon of the same day. The case is again called at the time named, the defendant is again ready to proceed, but the fiscal again desires further postponement. Three days later, on September 3, 1923, the accused once more appears with her attorney and witnesses, only to be met with the renewed petition of the fiscal for a few minutes of postponement. When the few minutes have grown into hours, he comes into court and informs the presiding judge that he has no evidence to sustain the charge of attempted murder, and, therefore, under his power to amend the information, charges the defendant with the new crimes of illegal detention and *lesiones graves*.

When the revised charge is presented, the counsel for the accused asks for a preliminary investigation, which is denied. Thereupon the accused is arraigned and ordered to plead to the information. But she remains silent, and notwithstanding the directions of the trial judge, refuses either to plead guilty or not guilty. The trial proceeds no further, because at this moment counsel gives notice of his desire to elevate the proceedings to the Supreme Court.

The Code of Criminal Procedure contains provisions directly applicable to the above state of facts.

Section 9 of the Code provides that the information or complaint may be amended in substance or form without leave of court at any time before the defendant pleads. This section, as the Attorney-General properly argues, lodges a discretionary power in the prosecuting officer. Ordinarily, the presentation of one information or complaint would be sufficient, or at the most one amended information or complaint is all that should be expected. Otherwise, if, as in this case, the provincial fiscal can constantly shift his attack, the accused would become the victim of official vacillation and procrastination.

The following sections of the Code of Criminal Procedure contain the well-known provisions providing for preliminary investigations. The right of an accused person not to be brought to trial except when remanded therefor as a

result of a preliminary examination before a committing magistrate, it has been held, is a substantial one. Its denial over the objections of the accused is prejudicial error, in that it subjects the accused to the loss of life, liberty, or property without due process of law. (U. S. *vs*. Marfori [1916], 35 Phil., 666.)

The Code of Criminal Procedure further provides in its section 24 that the court must require the defendant to plead. "If he refuses, a plea of not guilty shall be entered for him." This provision is so plain that no construction is necessary. Applied to the facts before us, it means that since the accused refused to plead, a plea of not guilty should have been entered for her.

In brief, the facts and the law show an accused woman who has been subjected to various investigations for different crimes, who has seen the prosecuting officer taking advantage of the authority granted him, file one information only to withdraw it, and present another, who notwithstanding her insistence on trial, has been made to wait for a long period of time, and who is finally forced to trial without a preliminary investigation and forced to plead to the information in direct contravention of our criminal law.

All this the Attorney-General practically admits in his return, which he calls an answer. Without attempting to deny the facts, the contention of the law officer of the government is, that the trial judge had jurisdiction of the proceedings, and consequently said jurisdiction should not be interfered with. What was said by this Court in the case of Herrera *vs*. Barretto and Joaquin ([1913], 25 Phil., 245), to the effect that the appellate court will not issue a writ of certiorari unless it clearly appears that the court to which it was directed acted without or in excess of jurisdiction, is a good rule. In one sense, it is correct to say that the Court of First Instance of Tayabas had jurisdiction of this case. In another sense, it is likewise correct to say that the writ of certiorari and prohibition will issue when necessary to the accomplishment of justice in the particular case. There is here more than mere error in procedure. There is an abuse of discretion in the application of the law. The discretion vested in the fiscal and trial judge is not an arbitrary power and must be exercised wisely and impartially in accordance with the law. Errors in the proceedings prejudicial to defendant's substantial rights which would, if the case were to proceed and appeal were to be taken, constitute

ground for reversal, exist in this case.

We are of the opinion that the relief sought by the petitioner in these proceedings should be granted. Indeed, if the petition was for habeas corpus rather than certiorari and prohibition, we might deem it just to issue the former writ, on account of the accused having been denied the right to the speedy trial, which is secured to accused persons by our organic and criminal law.

The remedy prayed for is granted. In accordance therewith, the petitioner shall be given a preliminary examination of the crime charged in the last amended information; the order of the trial judge requiring the petitioner to plead guilty or not guilty notwithstanding her desire not to do so is annulled, and the Court expects the provincial fiscal, as a *quasi*-judicial officer, to abstain from further harassing the accused with new and vacillating informations. Without special finding as to costs, it is so ordered.

Araullo, C.J., Johnson, Street, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

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