Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-33502. July 31, 1975]

FEDERICO CABREJAS, NARDO SORIANO, WESCESLAO MONTENEGRO, ANGELES CABREJAS, and JOSE GUINCAO, *petitioners, vs.* **HON. LUIS P. DONGALLO, as Judge of Municipal Court of Malaybalay, Bukidnon, and EULALIO D. ROSETE, as Provincial Fiscal of Bukidnon,** *respondents.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; DISMISSAL OF THE CASE; CRIMINAL CASE DISMISSED FOR FAILURE OF PROVINCIAL FISCAL TO PRESENT EVIDENCE; CASE AT BAR.— Before any definitive action on the petition could be taken, there was on February 19, 1975, a motion to dismiss the same. It is worded thus: "1. That the petition for [*certiorari, mandamus* with preliminary injunction] has been filed and given due course by this Honorable Tribunal; 2. That the cause of action in said petition is to secure a ruling from this Honorable Tribunal to compel the Honorable respondent Judge Dongallo to try the case of *People v. Federico Cabrejas, et al.* (Criminal Case No. 1877) on the merits considering that the case is one for arson defined and penalized under Article 322, paragraph 4 of the Revised Penal Code which carries a penalty of *prision correccional* in its medium and maximum periods or a duration of 2 years, 4 months and 1 day to 6 years, hence within the jurisdiction of his Court; 3. That the Municipal Court of Malaybalay, Bukidnon presided over by respondent Hon. Judge Dongallo is a capital town Municipal Court by reason of which petitioners herein maintained that Hon. Judge Dongallo should try said arson case on the merits under its enlarged jurisdiction (R. A. 3828) which provides that a Municipal Court of the capital town has jurisdiction to try criminal cases the penalty of which does not exceed *prision correccional*. Hon. Judge Dongallo, however, sustained the contention of the Provincial Fiscal of Bukidnon that since the said arson case is within the concurrent jurisdiction of both his court and the CFI of Bukidnon, and since the criminal complaint in said case filed in his court alleged the

Supreme Court E-Library

phrase [within the preliminary jurisdiction], his court acquired jurisdiction only for purposes of preliminary investigation; 4. However, Hon. Judge Dongallo reversed [his] stand by stating that he will try said arson case on the merits and required the Provincial Fiscal of Bukidnon on December 20, 1972 to present its evidence but the latter refused, 90 respondent Judge Dongallo dismissed the case, . . .," Then came a resolution of this Court where it was noted that the copy of respondent Judge's order of dismissal was not attached and counsel for petitioners was required to submit such order. On April 23, 1975, there was a compliance with the aforesaid resolution enclosing the aforesaid order. There is no question then as to the criminal case having been dismissed.

RESOLUTION

FERNANDO, *J.*:

In this *certiorari* and mandamus proceeding filed by petitioners who were the accused for the crime of arson in Criminal Case No. 1877 of the municipal court presided by respondent Judge Luis P. Dongallo,[1] what is assailed are two orders of respondent Judge, the first denying a motion of petitioners praying that the case of arson against them be tried on the merits instead of a preliminary investigation being merely conducted by respondent Judge, and the second, a denial of the motion for reconsideration. It is their contention that the offense falls within the jurisdiction of respondent Judge and that the prosecution is not given the option to determine in cases of concurrent jurisdiction between a municipal court and a court of first instance where the case is triable. In a resolution of this Court, the Provincial Fiscal of Bukidnon was required to comment on the petition. He manifested that the offense imputed the accused would be that of arson as defined in Article 322, paragraph 4 of the Revised Penal Code. Subsequently, an answer was filed by the Provincial Fiscal sustaining the stand of respondent Judge. The case was

[1] The Provincial Fiscal of Bukidnon, Eulalio D. Rósete, was included as part respondent.

Supreme Court E-Library

set for hearing but there was no appearance on the part of either the petitioners or respondents.

Before any definitive action on the petition could be taken, there was on February 19, 1975, a motion to dismiss the same. It is worded thus: "1. That the petition for [*certiorari*, with preliminary injunction] has been filed and given due course by this Honorable Tribunal; 2. That the cause of action in said petition is to secure a ruling from this Honorable Tribunal to compel the Honorable respondent Judge Dongallo to try the case of *People v. Federico Cabrejas, et al.* (Criminal Case No. 1877) on the merits considering that the case is one for arson defined and penalized under Article 322, paragraph 4 of the Revised Penal Code which carries a penalty of *prision correccional* in its medium and maximum periods or a duration of 2 years, 4 months and 1 day to 6 years, hence within the jurisdiction of his Court; 3. That the Municipal Court of Malaybalay, Bukidnon presided over by respondent Hon. Judge Dongallo is a capital town Municipal Court by reason of which petitioners herein maintained that Hon. Judge Dongallo should try said arson case on the merits under its enlarged jurisdiction (R. A. 3828) which provides that a Municipal Court of the capital town has jurisdiction to try criminal cases the penalty of which does not exceed *prision correccional.* Hon. Judge Dongallo, however, sustained the contention of the Provincial Fiscal of Bukidnon that since the said arson case is within the concurrent jurisdiction of both his court and the CFI of Bukidnon, and since the criminal complaint in said case filed in his court alleged the phrase [within the preliminary jurisdiction], his court acquired jurisdiction only for purposes of preliminary investigation; 4. However, Hon. Judge Dongallo reversed [his] stand by stating that he will try said arson case on the merits and required the Provincial Fiscal of Bukidnon on December 20, 1972 to present its evidence but the latter refused, 90 respondent Judge Dongallo dismissed the case, ***,"[2] Then came a resolution of this Court where it was noted that the copy of respondent Judge's order of dismissal was not attached and counsel for petitioners was

[2] Motion to Dismiss Petition, 1-2.

Supreme Court E-Library

required to submit such order. On April 23, 1975, there was a compliance with the aforesaid resolution enclosing the aforesaid order. There is no question then as to the criminal case having been dismissed.

WHEREFORE, the petition is dismissed for being moot and academic.

Barredo, Antonio, Aquino, and *Concepcion, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. Nos. L-35377-78. July 31, 1975]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CAMILO PILOTIN, VINCENT CRISOLOGO, ISIDRO PUGAL and ERNING ABAÑO,** *defendants-appellants.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; TRANSFER OF VENUE; PRESENT HOSTILE SENTIMENT AGAINST THE ACCUSED AT THE PLACE OF TRIAL IS A JUSTIFICATION FOR TRANSFER OF VENUE.— Section 5(4), Article X of the Constitution expressly empowers this Court to "order a change of venue or place of trial to avoid a miscarriage of justice". Here, what is involved is not merely a miscarriage of justice but the personal safety of movant Crisologo, the accused. It would be absurd to compel him to undergo trial in a place where his life would be imperilled. Present hostile sentiment against the accused at the place of trial is a justification for transfer of venue (*State vs. Siers*, 136 S. E. 503, 103, W. Va. 30; 22 C.J.S. 310). We find Crisologo's motion to be meritorious. The change of venue involves not merely the charge of the place of hearing but also the transfer of the *expediente* of Criminal Case No. 3949 to another court. According to Crisologo's motion, the