

Criminal Investigation in the Office of the City Fiscal of Manila

I N the City of Manila, the accused in a criminal prosecution is not entitled, as of right, to a preliminary investigation. (Act No. 612, Sec. 2; Act No. 2711, Secs. 2465, as amended by Commonwealth Act No. 537, Sec. 1, and 2474; U.S. v. McGovern, 6 Phil. 621; U.S. v. Ocampo, 18 Phil. 1; Ocampo v. U.S., 234 U.S. 91; U.S. v. Grant et al, 18 Phil. 122; Hashim v. Boncan et al, IX L.J. 109, holding that Secs. 2465, as amended, and 2474, Act No. 2711, were not repealed by Sec. 2, Rule 108, Rules of Court) In all other places, except the Cities of Cebu (Commonwealth Act No. 58, Sec. 46) and Iloilo (Commonwealth Act No. 158, Sec. 62), the accused has a right to a preliminary investigation (U.S. v. Grant et al, *supra*), and failure to grant him such investigation, unless waived (U. S. v. Lete, 17 Phil. 79), constitutes a denial of due process and, therefore, a reversible error. (U.S. v. Banzuela, 31 Phil. 564; U.S. v. Marfori, 35 Phil. 666; Conde v. Judge of First Instance of Tayabas, 45 Phil. 173)

But the absence of the above-mentioned right does not preclude the City Fiscal of Manila from summoning and causing the accused to be investigated on charges filed against him. This is a practice

of long standing. That which is new consists in not informing the accused of the charges brought against him and of the supporting testimony and evidence. It thus seems that the accused becomes the subject of an investigation where only the probability of his guilt, not that of his innocence, is inquired into. This practice in the City of Manila certainly deserves comparison with the practice and procedure observed with a high degree of meticulous care in other places of this country.

Pursuant to Rule 108, Rules of Court, the preliminary investigation has two stages: the first, consisting of a preliminary examination of the complainant and his witnesses (Secs. 6 and 7) to determine whether the accused is probably guilty of the offense charged and, if so, to issue a warrant for his arrest; and the second, is the procedure set forth in Section 11 by which the accused, after his arrest, is informed of the complaint and of the substance of the testimony and evidence against him, and the presentation of evidence in his behalf, if he so desires. (Moran, Comments on the Rules of Court, Vol. II, pp. 406-407) This right to be so informed and to present witnesses or evidence in his behalf, if he so

desires, is secured to the accused in all places except the Cities of Manila, Cebu and Iloilo. The purpose of the law, in the words of Mr. Justice Trent, is "to secure the innocent against hasty, malicious and oppressive prosecutions, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials". (U.S. v. Grant et al., 18 Phil. 122, 147; U.S. v. Marfori, 35 Phil. 666, 669)

Are not these objects and purposes of a preliminary investigation worthy of consideration in the City of Manila? Surely, it cannot be said with good reason that the City of Manila is an exception to the principle laid down in U.S. v. Grant, *supra*. Are persons accused of crime in this City any less entitled to certain guarantees laid down down by the law? And is not the State, in cases of criminal prosecution in this City entitled to be protected "from useless and expensive trials?"

Sections 2465, as amended, and 2474 of the Administrative Code provide for a procedure distinct from that set forth in Rule 108, Rules of Court. Section 2465, as amended, charges the City Fiscal with the prosecution of all crimes, and also of all violations of City Ordinances, in the City Court of First Instance or Municipal Court. For the purpose of carrying out this function, he is enjoined to cause to be investigated all charges of crimes and violations of City

Ordinances and have the necessary informations prepared and filed against the persons charged. The City Fiscal or any of his assistants may conduct investigations by taking evidence of witnesses, and for this purpose may, by subpoena, summon witnesses to appear and testify under oath before him. The attendance of an absent or recalcitrant witness may be enforced by application to the Municipal Court or the Court of First Instance. Section 2474 provides that, in cases triable before the Municipal Court, the accused shall not be entitled to a preliminary examination, except a summary one, to enable the Court to fix the bail, in any case where the prosecution announces itself ready, and is ready, for trial within three days, excluding Sundays, after the request for an examination is presented. The same provision lays down the rule that, in cases triable only before the Court of First Instance, the accused shall not be entitled, as of right, to a preliminary examination in any instance where the City Fiscal, after due investigation, shall have presented an information against him in the proper form; but the Court of First Instance may make such summary investigation into the case as it may deem necessary to fix the date of trial or to determine whether the offense is bailable.

It would seem, therefore, that the objects and purposes of a preliminary investigation cannot inure to the benefit of the accused in the City of Manila, where such inves-

tigation is not granted to him. Because the accused is not entitled, as of right, to a preliminary investigation in the City of Manila, may the City Fiscal summon the accused and direct against him questions without previously informing him of the charges filed against him and of the substance of the supporting testimony and evidence? May the City Fiscal conduct an "inquisitorial" examination and thus obtain from defendant's own lips the evidence necessary?

It is true that no witness, including the accused, summoned to testify before the City Fiscal is under obligation to give any testimony tending to incriminate himself. (Sec. 2465, as amended, Act No. 2711) But, without informing the accused of the charges filed against him and of the supporting evidence and testimony, how can the accused determine whether testimony elicited by a question tends to incriminate him or not? It is true that the accused may be accompanied by counsel. But how can counsel determine whether the testimony to be elicited by a question tends to incriminate the accused or not, since he is not previously informed of the charges filed and at least of the substance of the testimony and evidence presented against him? It is true that no testimony elicited from a witness by such examination may be used against such witness in any prosecution pending or thereafter instituted against him. (Sec. 2465, *supra*) But it cannot be denied

that, through an inquisitorial search, the accused may, unknowingly, by his own testimony provide his prosecutors with information as to the sources of evidence that may be used to bring about his conviction.

It may be claimed that this procedure is pursued for strategy. By and large, strategy is a dependable trick. It is resorted to when the chances of a fair conviction are slim. The success of strategy carries with it pleasant surprises although, in this case, the surprises will certainly not be pleasant to the accused. When the Constitution provides that "in criminal prosecutions the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf" (Sec. 1 (17), Article 3), and that "no person shall be compelled to be a witness against himself" (Sec. 1 (18), Article 3), did the Constitution contemplate to shield the guilty and thwart his conviction? Or did the Constitution, deriving benefit from the experience of mankind, contemplate that the accused before conviction is entitled to the foregoing rudiments of fair play?

With all the constitutional guarantees an accused person supposed-

ly enjoys in this country, that recognition of the rule that principles must prevail over strategy which is "inquisitorial", decidedly unfair and violative of the rules and expediency, this conclusion of square dealing ought to be deleted from our statute books. In would seem inevitable.

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