VOLUME 16 NOVEMBER, 1967 NUMBER 2

ATENEO LAW JOURNAL

CONTENTS

ARTICLE

NOTES

VOLUME 16 NOVEMBER, 1967 NUMBER 2

ATENEO LAW JOURNAL

A PRELIMINARY EXAMINATION OF THE NEW PROCEDURE OF PRELIMINARY INVESTIGATION

Ruperto Kapunan, Jr. *

Criminal procedure is defined as the method pointed out by law for the apprehension, trial, or prosecution, and the fixing of the punishment of those persons who have broken, or violated, or are supposed to have broken or violated, the laws prescribed for the regulation of the conduct of the people of the community, and who have thereby laid themselves liable to fine, or imprisonment or both.[1] This process of bringing the accused to face the penalty for his felonious act necessarily involves the State's intrusion into the personal liberty of the accused. Furthermore, it pits, at least in theory, the whole might of the State's prosecuting machinery against the limited defense resources of the puny individual. For these reasons, the Constitution of the Philippines manifestly restricts and delimits the scope and area of the State's avenging fury.

A casual look at the Bill of Rights of the Constitution immediately discerns a predominant concern for the treatment of a person accused of a criminal offense. Article III, section 1, paragraph 15 provides that "no person shall be held to answer for a criminal offense without due process of law," although the right of the accused to due process is adequately protected by the general due process clause in the first paragraph of the same section. The next six paragraphs grant to the accused other specific rights which have the cumulative effect of placing him on a fair footing from which to defend himself against the formidable resources of the prosecuting State.

Among those specific rights granted to him is the right to a speedy trial. Undoubtedly, this is a very important right. It "was adopted upon general considerations growing out of the experience of past time, and was intended to prevent the Government from oppressing the citizen by holding criminal prosecutions suspended

* A.B., LL.B., Judge, Court of First Instance of Manila.

[1] BOUVIER'S LAW DICTIONARY 730.

over him for an indefinite time . . . and to prevent delays in the customary administration of justice, by imposing upon judicial tribunals an obligation to proceed with reasonable dispatch in the trial of criminal accusations." [2] It is true that a swift trial is not necessarily just and fair. But it is equally true that a long and tedious one is necessarily prejudicial to both the government and the accused, be he innocent or guilty.

To secure and implement the constitutional guarantee and to shorten and simplify the proceedings in the courts of justice, especially in the apprehension and prosecution of the person accused of a crime, the Supreme Court, pursuant to Article VIII, section 13 of the Constitution, approved the Rules of Court. These rules were designed to give, and they generally do give, justice to all involved in the criminal action — the injured party, the person accused, and the State.

However, just as important as the accused's right to speedy process while facing trial is the right of the individual to be protected from undue prosecutions and charges, to be protected from unwarranted trials in the first place. A criminal trial necessarily means expense, anxiety, and inconvenience for the person charged with an offense. It is converted into an instrument of injustice when it is imposed upon an innocent man whose guilt is not even shown to be probable. The Rules of Court, mindful of this fact, therefore also sought to protect the rights of the individual from harassment and false accusations. The Supreme Court promulgated several rules to be followed in the conduct of preliminary investigations, whether made by an inferior court or by a Court of First Instance.

A preliminary investigation is intended to see if there exist some reasonable grounds for believing that a crime has been committed and that the person accused is probably the one who committed it. It is not intended to determine the actual guilt or innocence of the accused but only the appearance or semblance thereof to justify the putting into action of the machinery of State prosecution or the laying idle of the same. In the words of the Supreme Court:

> The object and purpose of a preliminary investigation, or a previous inquiry of some kind before an accused is placed on trial, is to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from an open and public accusation of a crime, from the trouble, expense, and anxiety of a public trial, and also to protect the state from useless, and expensive trials. [3]

[2] *Ex parte Turman*, 26 Tex. 708, 710, 84 Am. D. 593. (1863).
[3] U.S. v. Grant, 18 Phil. 122 (1910).

The proceedings are summary in nature and should therefore not in any case drag on for an unreasonable length of time because a preliminary investigation is not a trial nor a part thereof. [4]

However, in the conduct of preliminary investigations under the Rules of Court, the defendant is given the right to cross-examine the witnesses presented by the prosecution. This right to cross-examine has however been time and again abused by the defendants, probably with a view to prolonging the investigation and in that way harass the complainant and his witnesses. Ultimately, as had happened in many cases, the complainant and/or his witnesses refuse to appear at the investigation, or later on at the trial, resulting in the necessity of dropping the case.

Recently, Republic Act No. 5180 was passed by the Congress of the Philippines with the intent to remedy this situation. The explanatory note of the bill submitted to the Senate by Senator Lorenzo Tañada called the attention of the legislature to the unfavorable features of the current practice in the conduct of preliminary investigations. It said:

> Inspite of the summary nature of preliminary investigations, such investigations are presently conducted like regular trials where the complainant and his witnesses are made to testify on direct examination and then are cross-examined by the accused or his counsel. If the accused elects to present his defense, he and his witnesses undergo the same rigors of direct and cross-examination. Technical objections which are normally interposed in a trial are also raised in such investigations thus contributing to its great delay.
>
> Under the provisions of Section 14, Rule 112, of the New Rules of Court of the Philippines, the accused is accorded a "right to be heard, to cross-examine the complainant and his witnesses, and to adduce evidence in his favor." The rule is *silent* as to the manner in which the evidence of the complainant or the accused should be received. So the accused, especially when represented by counsel, often demands that the witnesses against him be presented by "Questions And Answers Method" after which they are subjected to cross-examination by the defense counsel. Thus, we find preliminary investigations that drag not only for months but sometimes for years because of the cumbersome nature of the same. By the time the case is filed in court, some witnesses for the government have lost interest or cannot be located, undue expenses have been incurred both by the government and the accused and in some instances, when the order for arrest of the accused is issued, he is nowhere to be found.

[4] U.S. v. Marfori, 35 Phil. 666 (1916); People v. Datu Galantu, 68 Phil. 485 (1939).
[5] People v. Badilla, 48 Phil. 718 (1926).

Section 1 of the said law gives a new method of conducting preliminary investigations which seeks to eliminate the above-mentioned features of the old practice of preliminary investigations under the New Rules of Court. It provides:

> Notwithstanding any provision of law to the contrary and except when an investigation has been conducted by a judge of first instance, city or municipal judge or other officer in accordance with law and the Rules of Court of the Philippines, no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or any of his assistants or by a state attorney or his assistants without first giving the accused a chance to be heard in a preliminary investigation conducted by him by issuing a corresponding *subpoena*. If the accused appears, the investigation shall be conducted in his presence and he shall have the right to be heard, to cross-examine the complainant and his witnesses and to adduce evidence in his favor. If he cannot be *subpoenaed*, or if *subpoenacd*, he does not appear before the fiscal or state attorney or his assistants, the investigation shall proceed without him. The investigating fiscal or state attorney or his assistants shall require the complainant and his witnesses to submit their testimonies in affidavit form duly sworn to before said investigating fiscal or state attorney which shall constitute their testimony on direct examination in such an investigation, subject to the right of the accused or his counsel to cross-examine said complainant and his witnesses. Similarly, if the accused decides to adduce evidence in his favor, the accused, if he desires to testify on his behalf, and his witnesses shall be required to submit their testimonies in affidavit form duly sworn to which shall constitute their testimony on direct examination subject to the cross-examination by the complainant or his counsel.
>
> The investigating fiscal or state attorney or his assistant shall help both the complainant and the accused and their witnesses in the preparation and execution of their affidavits if so requested to do so.
>
> The fiscal or state attorney or his assistants shall certify under oath in the information to be filed by him that the defendant was given a chance to appear in person or by counsel at said examination and investigation; provided that no assistant fiscal or state attorney may file an information except with the prior authority of the city or provincial fiscal or state attorney and only in a case which he himself conducted the preliminary investigation.

It is apparent that the most salient feature of this section is the introduction of a new procedure. Instead of the injured party personally testifying at the preliminary investigation, his sworn statement or affidavit on the facts upon which his complaint is based, may be presented. The defense may then cross-examine the

complainant on the basis of the facts alleged in his affidavit. The same procedure is provided in the case of the accused. If the latter chooses to present his side of the case, he may offer his affidavit and he may be cross-examined by the prosecution on the facts contained therein. The witnesses of either side are examined in the same way. This procedure is calculated to hasten the stage of preliminary investigations and shorten the period required for the determination of probable cause.

There is no doubt that by this innovation, the proceedings at the preliminary investigation are shortened at least in theory. The lengthy presentation of the testimony on direct examination elicited by the tedious "questions and answers" method, which is usually punctuated by technical objections, is substituted by the simple expedient of presenting an affidavit or affidavits containing the facts constituting the offense, duly sworn to before the investigating officer. The proceedings are shortened by, at least theoritically, one-half of the time required by the old method of preliminary investigation under the New Rules of Court.

Practically, however, the innovation may have very little to do in the line of shortening the proceedings. It was earlier pointed out that preliminary investigations are lengthened because of the abuse by the defendants of their right to cross-examine the complainant and his witnesses. The same right is given to the accused in the new law. Consequently, the same possibility of abuse exists in favor of the defendant who is determined to harass his complainant out of the case. The greatest factor in the delay of preliminary investigations therefore remains unchecked by the new features of the law.

A more serious criticism of the new law suggests itself. The Congress seems to have forgotten a danger newly-created by the law. The new procedure may actually work unduly to the advantage of the defendant who intends to have his case dismissed by dubious means. This is particularly prevalent in the City of Manila. An example which is familiar to all who are actively engaged in criminal practice will illustrate this danger and point out the shortcomings of the new law. A files a complaint in the City Fiscal's Office against B. The fiscal sets the date of investigation and notices are sent to the parties. The defendant, however, does not appear deliberately or because he did not receive the notice, or waives his right to preliminary investigation, and the fiscal files an information based on the affidavit submitted by the complainant and his witnesses. However, when the case is called for trial, the complainant fails to appear either because he has gone back to the province, or has moved to another place without leaving a

forwarding address. Or maybe, the complainant has been threatened or advised to take a vacation, expenses paid. Under such circumstances, the prosecution finds itself unable to present its case. The information must necessarily be dismissed, never to be filed again because the dismissal will be in fact an acquittal based on the lack of evidence.

On the other hand, under the procedure prescribed by the Rules of Court, if the complainant and his witnesses have personally testified at the preliminary investigation and the defense had been given all the opportunity to cross-examine them, their testimonies at the preliminary investigation may be read into the record at the trial and thus form part of the evidence of the state. This is expressly authorized by Section 1 (f) of Rule 115 of the New Rules of Court which provides in part as follows:

> . . . Where the testimony of a witness for the prosecution has previously been taken down by question and answer in the presence of the defendant or his attorney, the defense having an opportunity to cross-examine the witness, the testimony or deposition of the latter may be read, upon satisfactory proof to the court that he is dead, or incapacitated to testify or cannot with due diligence be found in the Philippines . . .

The danger of lack of evidence is thus avoided and the trial is not impaired.

Of course, it must be admitted that the defendant who is decided to scare the complainant and his witnesses may go about his task even before the preliminary investigations are held. But that danger exists even under the new law. Our criticism of the latter is not that the defendant can cow down or frighten his complainant and the witnesses into not appearing at all, but that it enables him to do so even after the stage of preliminary investigation is over. Under the New Rules of Court, the fiscal can present his evidence in spite of the subsequent unwillingness of the complainant and his witnesses, so long as the preliminary investigation has been conducted in due course. Under the new law, the case of the prosecution is made uncertain by the simple fact of the accused refraining from cross-examining the complainant and his witnesses.

The desire of the Legislature to hasten the conduct of preliminary investigations is very laudable. But it seems that the amendment made to the present law is not absolutely necessary. The investigating fiscal is vested with quasi-judicial functions. In the exercise of his discretion, he has the power to cut short the cross-examination of the complainant, more so if it is apparent that the purpose is merely to prolong the cross-examination and harass

the complainant and his witnesses. After all, the purpose of the preliminary investigation is simply to determine the existence of a probable cause for believing that a crime has been committed and that the person charged is probably the one who committed it. The fault lies not in the law but upon the individual conducting the investigation. Politics, influence, or even friendship may cause the investigator to be lax and condescending to the extreme. The solution therefore lies not in changing the method of preliminary investigations but in improving the quality of those who conduct them.