

JOSE G. GEOTINA, PETITIONER-APPELLANT, VS. THE HON. JOSE L. GONZALEZ, IN HIS CAPACITY AS MUNICIPAL JUDGE OF SURIGAO, SURIGAO DEL NORTE, THE PROVINCIAL FISCAL OF SURIGAO DEL NORT...

G.R. No. L-26310. September 30, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

On August 30, 1965 Rosario R. Calderon filed with the municipal court of Surigao, Surigao del Norte, presided by Judge Jose L. Gonzalez (hereinafter referred to as the respondent judge), a criminal complaint[1] for serious physical injuries through reckless imprudence against Dr. Jose G. Geotina (hereinafter referred to as the petitioner) and Remedios Kierulf. After conducting the requisite preliminary examination, the respondent judge dismissed the criminal action as to Kierulf. Thereafter, he ordered the arrest of the petitioner, fixing the bond for his provisional liberty at P300.

On October 27, 1965 the petitioner filed a motion to disqualify the respondent judge from hearing the criminal case, alleging as ground therefor the relationship of the latter to the complainant Calderon within the sixth civil degree by affinity - a disqualification explicitly spelled out in section 1 of Rule 137 of the Rules of Court. Said section pertinently states:

"Section 1. Disqualification of judges. - No judge or judicial officer shall sit in any case ... in which he is related to either party within the sixth degree of consanguinity or affinity... computed according to the rules of the civil law..."

The petitioner established the relationship of the complainant Calderon to the respondent judge thus: The husband of Calderon and the respondent judge have common great grandparents - Juan Gonzalez and Ramona Rodriguez. Juan and Ramona Gonzalez begot two children - Pantaleona and Simon. Pantaleona married Luis Calderon. The spouses Luis and Pantaleona begot a son whom they also named Luis. The son Luis married Rosario Zerda. Luis and Rosario Calderon begot a son, Juanito, who married another Rosario, the complainant in the criminal action. On the other hand, Simon Gonzalez married Geronima Samson. The spouses Simon and Geronima begot a son, Ricardo, who married Visitacion Legaspi. The couple, Ricardo and Visitacion Gonzalez, begot a son - Jose, the respondent judge.

The motion for disqualification, opposed by the respondent provincial fiscal, was denied by the respondent judge upon the ground that he bears no relationship either to the plaintiff, the People of the Philippines, or to the defendant, Dr. Jose G. Geotina (petitioner and appellant herein) - the only parties he considers as litigants in the criminal case. The respondent judge also considered the complainant Calderon as a mere witness in the criminal action, not a party within the contemplation of section 1 of Rule 137.

Twice, on November 6, 1965 and on March 1, 1966, the petitioner moved for reconsideration of the order denying

his motion for disqualification, to no avail. So the petitioner, on April 4, 1966, filed with the Court of First Instance of Surigao del Norte a petition for prohibition with preliminary injunction, seeking (1) the annulment of the orders denying his motion for disqualification and motions for reconsideration, and (2) the issuance of an order directing the respondent judge to cease and desist from trying the criminal action.

On April 12, 1966 the respondent provincial fiscal moved for the dismissal of the petition, alleging as ground therefor lack of cause of action.

On April 15, 1966 the Court of First Instance issued an order dismissing the petition, holding that

“... the provisions of Sec. 2, Rule 137 of the New Rules of Court, are clear and specific to the effect that no appeal shall be taken of the determination of the Judge affected in favor of his competency until after the case has been decided by him. It is, therefore, clear that up to this moment the petitioner cannot and should not have filed this case in this Court. He should await the decision of the municipal Judge who has resolved in favor of his competency to try said criminal case. It is only in the event that the municipal Judge renders a decision of conviction when the counsel should take the necessary steps to protect his client.”

On May 17, 1966 the court a quo rejected the petitioner's motion for reconsideration of May 7, 1966. Hence, the present appeal.

Resolution of the central issue posed by the present appeal requires a determination of whether the petitioner (the defendant in the criminal complaint) may avail of a special civil action for prohibition to restrain the respondent judge, allegedly disqualified to sit in the case, from hearing the criminal action, independently of the remedy of appeal provided for by section 2 of Rule 137 of the Rules of Court.

The petitioner specifically imputes error to the court a quo in the latter's (1) treating his petition for prohibition as an appeal from the orders of the respondent judge denying his motion for disqualification and subsequent motions for reconsideration, and (2) applying section 2 of Rule 137 as basis for dismissing his petition. The petitioner argues that the lower court failed to regard the special civil action for prohibition as the proper remedy in the case at bar, considering that the respondent judge, despite his disqualification, insisted on hearing the criminal case. Such insistence, according to the petitioner, constitutes grave abuse of discretion amounting to lack or excess of jurisdiction. The petitioner adds that appeal in this instance is not a speedy and adequate remedy in the ordinary course of law.

On the other hand, the respondents rest their case solely on the provisions of section 2 of Rule 137. They contend that appeal after final judgment in the criminal action is the proper remedy available to the petitioner.

It thus behooves us to inquire into the coverage and intentment of sections 1 and 2 of Rule 137 of the Rules of Court.

Section 1 reads:

"SECTION 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

"A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

Section 2 provides:

"SEC. 2. Objection that judge disqualified, how made and effect. - If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case."

The intendment of section 1 is incontestably that a judge, sitting in a case, must at all times be wholly free, disinterested, impartial and independent. Elementary due process requires a hearing before an impartial and disinterested tribunal. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity.[2] To effect this intendment fully, section 1 enumerates the grounds for the disqualification of a judge.

The first paragraph of section 1 refers exclusively to legal grounds for challenging a judge's competency. The second paragraph thereof authorizes a judge to inhibit himself voluntarily, in the absence of any challenge from either party, on good, sound or ethical grounds,[3] or for just and valid reasons other than those mentioned in the first paragraph. The same second paragraph leaves the matter of disqualification to the sound discretion of the judge.

Section 2 prescribes the procedure to be followed by a litigant seeking the disqualification of a judge based on any of the grounds enumerated in section 1. Section 2 purports to protect the judge who falls within the compass of any of the prohibitory provisions of section 1 from any misunderstanding as to his judicial actions.[4] Thus, the section requires the objection to be stated in writing, with the ground therefor stated therein. The same section then requires the judge to make a determination of his competency, and to proceed with the trial of the case or to withdraw therefrom, in accordance with such determination.

If a party objects to the qualification of a judge based on the ground of relationship to a party to the case within the prohibited degree and the challenged judge denies such relationship and rules in favor of his own competency, then the judge has no recourse but to proceed with the case. In such an event, section 2 allows no appeal from or stay of the determination of the judge in favor of his competency until after final judgment in the main case. This rule allowing a challenged judge to continue to try a case as well applies in those instances when a party objects to the judge's competency on circumstances not constitutive of legal grounds for disqualification. The rationale for the rule is that a judge is duty bound not to sit in the trial of a given case if legally disqualified, and to proceed with the trial and decision of the case if not legally disqualified. "He cannot shirk the responsibility without the risk of being called upon to account for his dereliction." [5] The remedy of the aggrieved party, in the first case, consists of a challenge against the determination made by the judge of his competency in the appeal from the principal case. In the latter case, where a judge, not legally disqualified under the first paragraph of section 1, does not inhibit himself, the aggrieved party still has a right to relief. If it appears that the aggrieved party was the victim of an unfair and partial trial because of the judge's bias or prejudice, this Court will not hesitate to order a new trial, if necessary, in the interest of justice.[6]

The prohibitory provision embodied in section 2 against an appeal from or stay of the proceedings undoubtedly applies in all civil cases. For in the said cases, the party aggrieved, in his appeal to the proper court from the final judgment rendered in the main case, may raise the question of the correctness of the determination by the judge of his competency to sit in the case. In criminal cases, the same rule applies where the accused seeks the disqualification of the judge. In this case, the accused, in the event of his conviction, has the opportunity to question the judge's ruling on his competency in his appeal from the decision on the merits. In the event of his

acquittal, the accused has no cause for complaint against the judge's ruling of non-disqualifi-cation.[7]

Where, however, the prosecution or the offended party seeks the judge's disqualification, the restriction finds no appli-cation. For where the judge decides in favor of his own com-petency, proceeds to try the case, and renders a verdict of acquittal, the prosecution or offended party has neither the right to appeal nor any plain, speedy and adequate remedy in the ordinary course of law to have the ruling of the judge on the motion seeking his disqualification reviewed on appeal,"... since no appeal from the judgment of acquittal could possibly be taken by the prosecu-tion by virtue of the double jeopardy provision of the Constitution." [8] Hence, resort to the extraordinary remedies or special civil actions of prohibition and certiorari constitutes the only means available to the prosecution or the offended party for the review by a superior court of the judge's denial of the motion seeking his disqualification on existing and valid legal grounds.

Reverting now to the case at bar, one circumstance stands out and commands our attention: that the legal ground for the respondent judge's disqualification is indubitable. The respondent judge makes no denial whatsoever of his relationship within the sixth degree of affinity to the complainant Calderon. On record remains the petitioner's uncontested claim of admission on the part of the respondent judge of his relationship to the complainant Calderon within the prohibited degree. Instead of disputing the petitioner's averment of his relationship to the complainant Calderon, the respondent judge, in his order dated October 28, 1965, denying the petitioner's motion to disqualify, evaded the vital question and instead ruled on the inapplicability of section 1 on the ground that he bears no relationship to either the People of the Philippines, the plaintiff, or Dr. Jose G. Geotina, the accused (petitioner and appellant herein) - the only parties he considers as litigants in the criminal action. On record, therefore, the respondent judge's relationship to the complainant Calderon within the prohibited degree is, we repeat, indubitable.

The respondent judge's observation regarding the inappli-cability of section 1 of Rule 137 on the ground that he bears no relationship to either the People of the Philippines, the plaintiff, or the petitioner Geotina, the accused, completely ignores the interest of the complainant Calderon in the criminal prosecution. A crime constitutes a public offense against the State; for this reason, section 1 of Rule 110 of the Rules of Court directs the commencement of all criminal actions in the name of the People of the Philippines. But a crime also constitutes an offense against the aggrieved or offended party; for this reason, section 15 of Rule 110 allows the intervention of the offended party in the pro-secution of the offense, subject to the exceptions provided therein. The right of the offended party to exact civil liability arising from the offense finds express recognition in our laws and jurisprudence.

Moreover, the respondent judge's interpretation of the phrase "either party" as used in section 1 of Rule 137 - limiting the reference solely to either the plaintiff or the defendant in a criminal action - defies elementary logic and common sense. No section of the Rules of Court, no article of the Revised Penal Code and the Civil Code of the Philippines, excludes the aggrieved person as a party to a criminal action. On the other hand, several sections[9] of the Rules of Court and two provisions[10] of the Revised Penal Code and the Civil Code of the Philippines recognize the offended party as a party to the criminal action.

The record of the case at bar also reveals that the respondent judge, despite his relationship to the complainant Calderon within the prohibited degree and the protestations of the petitioner, adamantly refused to inhibit himself from proceeding with the criminal action and insisted on sitting in judgment. In this connection, we observe that section 1 of Rule 137 allows a judge, although disqualified on the grounds enumerated therein, to sit in a case, but only upon the written consent of all the parties in interest, signed by them and entered upon the record. This exception, we believe, applies without regard to the indubitability of the legal ground for the dis-qualification of a judge. Hence, although the proscribed relation-ship exists, if the parties, with knowledge of the ground for the

disqualification, waive their objection to the competency of the judge by authorizing him in writing to proceed with the case, then the judge, armed with such written consent, is free to try the litigation before him.

The refusal of the respondent judge to disqualify himself and his insistence to hear the criminal case in the face of the express prohibition contained in section 1 of Rule 137, to our mind, constitute grave abuse of discretion amounting to lack or excess of jurisdiction. Strict compliance with the stringent rule on disqualification on account of relationship between the judge and one of the parties serves not only to protect the rights of the parties and assure an impartial administration of justice but also to prevent erosion of the people's confidence in the judiciary.

Considering, therefore, the indubitability of the relationship between the respondent judge and the complainant Calderon within the proscribed degree, the refusal of the said respondent to withdraw from the criminal case despite the objection persistently interposed by the petitioner to his competency, and the all-important principle of maintenance of the confidence of the people in the impartiality of the administration of justice, we believe that the resort by the petitioner to the special civil action of prohibition to restrain the respondent judge from proceeding with the criminal action is appropriate. We hold that the prohibitory provision against an appeal from or a stay of the proceedings contained in section 2 of Rule 137 does not operate to bar an accused person, in proper cases, from availing of the special civil action of prohibition before superior courts for determination, ahead of the judgment on the merits, of whether the challenged judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to disqualify himself.

Finally, we must set aright certain inaccurate concepts articulated by the petitioner regarding the viability and nature of a disqualified judge's decision. The petitioner claims that the disqualification of a judge renders him without jurisdiction and, consequently, his judgment in the action before him is a nullity. To our mind, the disqualification of a judge does not necessarily render his judgment null and void. Neither section 1 nor section 2 of Rule 137 so states. The disqualification of the person called upon to preside over a specific case does not divest his court of jurisdiction over the subject-matter of or the persons of the parties to the said case. At most, the disqualification strikes only at the authority of the challenged judge to preside over the trial of the specific case and therein to exercise the jurisdiction of the court. Important is the distinction between the jurisdiction of the court and the authority of the judge called upon to exercise such jurisdiction. A judge may be disqualified to try, sit in or act in a specific case, but his disqualification does not destroy the jurisdiction of the court which he presides. Thus, if subsequently the judgment of a disqualified judge should be set aside as null and void by a higher court, the nullity stems not from the court's lack of jurisdiction but from the absence of authority on the part of the disqualified judge to try the given case.

We therefore hold that the respondent judge is without authority to preside over the criminal case in question. Section 1, in commanding him to withdraw from the case herein involved, necessarily divests him of all authority to act in any judicial capacity in connection therewith. We further hold that where the disqualifying fact is indubitable and the parties to the case make no waiver of such disqualification, as in the case at bar, sec. 1 forthwith completely strips the judge of authority to proceed. All his acts in the premises are without authority of law.

ACCORDINGLY, judgment is hereby rendered setting aside (1) the order of the Court of First Instance of Surigao del Norte dismissing the petition for prohibition, and (2) the orders of the respondent judge denying the motion for his disqualification and subsequent motions for reconsideration. The respondent judge is hereby ordered to refrain permanently from taking further action in criminal case 5042. No pronouncement as to costs.

Let a copy of this decision be forwarded to the Honorable, the Secretary of Justice.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Fernando, J., concurs except as to that portion concerning the effect of a judge's disqualification.

Barredo, J., reserves his vote.

[1] Docketed as criminal case 5042.

[2] Gutierrez v. Hon. Santos, et al., L-15824, May 30, 1961, 2 SCRA 249; Del Castillo v. Javelona, et al., L-16742, September 29, 1962, 6 SCRA 146.

[3] Del Castillo v. Javelona, et al., *ibid*.

[4] People of the Philippines v. Lopez, et al., 44 OG 3213.

[5] People of the Philippines v. Moreno, 83 Phil. 286.

[6] Dais v. Torres, et al., 57 Phil. 897; Pimentel v. Salanga, L-27934, September 18, 1967, 21 SCRA 160.

[7] Paredes, et al. v. Hon. Gopengco, et al., L-23710, September 30, 1969, 29 SCRA 688.

[8] Paredes, et al. v. Hon. Gopengco, et al., *ibid*.

[9] Sections 2, 4, 5, 11 and 15 of Rule 110; sections 1 and 2 of Rule 111; and section 1 of Rule 127.

[10] Article 107 of the Revised Penal Code and article 33 of the Civil Code of the Philippines.

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