

BASILIO S. PALANG, PETITIONER, VS. HONORABLE MARIANO A. ZOSA, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, BRANCH V, AND JULIETO P. HERRERA, RESPONDENTS.

G.R. NO. L-38229. August 30, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

This petition for certiorari and prohibition was predicated on the fear and the misgivings that the trial judge, respondent Mariano A. Zosa, may find it difficult to live up to the ideal set forth in *Gutierrez vs. Santos*. The due process clause requires a "hearing before an impartial and disinterested tribunal * * * every litigant (being) entitled to nothing less than the cold neutrality of an impartial judge." [1] Briefly, the basis of the complaint was that after respondent Judge had acquitted private respondent Julieta P. Herrera of the crime of estafa, with the statement in his opinion that the charge was nothing but a "clear concocted story" with the testimonies being "rehearsed and rehashed, therefore, maliciously presented by the [offended party, now petitioner] causing great damage and prejudice [to Herrera's moral and social] standing and a destruction of [his] image as well as [his] character * * *," [2] the aforesaid Herrera, thus acquitted, now private respondent here, filed an action for damages against the complainant, now petitioner. It is his submission here that considering the language used by respondent Judge, he would not be able to decide such civil case justly and impartially.

When required to comment, respondents filed an answer instead, maintaining that there is no basis for disqualification. Memoranda was thereafter required from both parties. That was done, and the case was thus ready for decision. At that stage, there was from private respondent Herrera a motion to withdraw opposition, wherein he alleged: "1. That respondent [Julieta P. Herrera] sincerely believes in the early disposition and termination of the above-entitled case, that it realizes to withdraw his Opposition to herein Petitioner's petition; 2. That, time is of the essence, and by way of his withdrawal, the above-entitled case can therefore be calendared on the earliest possible time by the court who may eventually be assigned, thereby tried on the merits; 3. That this motion of herein respondent [Julieta P. Herrera] is made for reason of expediency in order that early disposition of the case by way of trial on the merits be attained." [3]

Thereafter, a manifestation was filed by respondent Judge to the following effect: "The undersigned Presiding Judge of Branch V of the Court of First Instance of Cebu, formal party respondent in the above-entitled case, was furnished with a copy of the 'Motion for Certiorari and Prohibition with Preliminary Mandatory Injunction' on June 29, 1974. With the withdrawal of the opposition of respondent Julieta P. Herrera, the undersigned finds no reason why he should not inhibit himself from trying Civil Case No. R-13620, entitled Julieta P. Herrera, Plaintiff vs. Basilio Palang, Defendant.' In view of this development, the undersigned respectfully manifests that he voluntarily inhibits himself from conducting the trial of the said case. Therefore, the dismissal of the above-entitled petition appear to be in order." [4]

This voluntary inhibition by respondent Judge is to be commended. He has lived up to what is expected of

occupants of the bench. The public faith in the impartial administration of justice is thus reinforced. It is not enough that they decide cases without bias and favoritism. It does not suffice that they in fact rid themselves of prepossessions. Their actuation must inspire that belief. This is an instance where appearance is just as important as the reality. Like Caesar's wife, a judge must not only be pure but beyond suspicion. At least, that is an ideal worth striving for. What is more, there is deference to the due process mandate.[5]

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

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] L-15824, May 30, 1961, 2 SCRA 219, 254.

[2] Petition, par 6.

[3] Motion To Withdraw Opposition to Petitioner's Petition for Certiorari and Prohibition with Preliminary Mandatory Injunction, pars. 1-3.

[4] Manifestation of respondent Judge dated July 1, 1974.

[5] Cf. Gutierrez vs. Santos, L-15824, May 30, 1961, 2 SCRA 249. This decision was cited with approval in Del Castillo vs. Javelona, L-16742, September 29, 1962, 6 SCRA 146; People vs. Gomez, L-22345, May 29, 1967, 20 SCRA 293; Austria vs. Masaquel, L-22536, August 31, 1967, 20 SCRA 1247; Zaldivar vs. Estenzo, L-26065, May 3, 1968, 23 SCRA 533; Geolina vs. Gonzalez, L-26310, September 30, 1971, 41 SCRA 66; Mateo, Jr. vs. Villaluz, L-24756, March 31, 1973, 50 SCRA 18.

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