

**THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE
HONORABLE SEGUNDO M. ZOSA, JUDGE OF THE COURT OF FIRST
INSTANCE OF SA-MAR, JUSTINA SALAZAR LA-PIDARIO, TOMAS
MACASIL, SR., AND...**

G.R. No. L-41672. March 30, 1977

Ponente: ANTONIO, J.

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ANTONIO, J.:

Certiorari to annul the Order of respondent Judge of the Court of First Instance of Samar, re-versing the judgment of conviction rendered by the Municipal Court of Daram, Samar in Criminal Case No. 3093. The petition is premised upon the follow-ing facts:

On September 22, 1974, Justina Salazar Lapidario, Tomas Macasil, Sr. and Santos Macasil, Sr., private respondents, were convicted of the crime of grave coercion by the Municipal Court of Daram, Samar. The judgment of conviction was appealed to the Court of First Instance of Samar, Branch I, presided over by the Honorable Segundo M. Zosa, and the appeal was docketed as Criminal Case No. 878. Upon a finding that the proceedings before the Mun-icipal Court were not duly recorded, respondent Judge ordered the prosecution to present anew its evidence in a trial de novo. On December 2, 1974, private respondents were arraigned before respond-ent Court. The prosecution commenced the presenta-tion of its evidence on January 10, 1975, and rested its case on April 17, 1975. On April 25, 1975, the defense filed a motion to dismiss on the ground that the prosecution had failed to prove the element of violence, which is an indispensable element of the crime of grave coercion. The prosecution filed an opposition to the motion to dismiss on May 5, 1975. On June 5, 1975, respondent Court issued the Order subject matter of this petition, dismissing the case for insufficiency of evidence. A motion for recon-sideration of the afore-mentioned Order was filed by the prosecution on the ground that respondent Court had no jurisdiction to review or try the appealed case, but the same was denied on August 20, 1975.

Petitioner contends that; (1) the appeal from the judgment of the Municipal Court of Daram, Samar, lies directly with the Court of Appeals, the crime of grave coercion being within the concurrent juris-diction of said Municipal Court and the Court of First Instance; hence, the latter had no jurisdic-tion over the appeal; and (2) respondent Court should not have tried the case de novo because, contrary to its finding that the proceedings in the Municipal Court were not recorded, said proceedings were in fact recorded in typewritten form, the same having been transmitted to respondent Court together with the records of the case.

On the other hand, respondents aver that the proceedings in the Municipal Court of Daram, Samar were not duly recorded because the typewritten notes transmitted by it to respondent Court were neither certified nor signed by the stenographer who purportedly took notes of the proceedings, and that the prosecution did not object to the exercise of the court's jurisdiction, but instead presented its evidence and submitted it to the judgment of said court. It was only after the case was dismissed that it raised for the first time the question of jurisdiction.

It will be noted that petitioner, thru the pro-secution, failed to seasonably object to the findings of the respondent Judge that the proceedings in the inferior court had not been duly recorded and, therefore, a trial de novo had to be conducted. Instead of interposing an objection to this course of action, the prosecution went through the process of trial, thereby indicating their conformity with such findings of the respondent Court. It was only after the Order dismissing the case against private respondents had been issued that, in a motion for reconsideration, the prosecution came up with the assertion that the proceedings in the inferior court had been duly recorded. This being the case, petitioner can no longer ventilate before this Court the issue of whether or not there was proper recording in the inferior court, particularly as the same is a question of fact which we are not in a position to resolve. Parties must take the consequences of the position they assume.[1] A party who has taken one position, by which he has benefited at the expense of the other is estopped from repudiating that and taking another inconsistent position to the prejudice of the other.[2] Besides, the finding of respondent Court, in its Order of December 2, 1974, that the proceedings were not recorded in accordance with law appears to be supported by the record.

There is no question that the crime of grave coercion, which is punishable by arresto mayor or a fine of not exceeding P500.00, falls within the concurrent jurisdiction of the municipal and city courts with the Courts of First Instance.[3] It must be noted that while under the original Section 45 of the Judiciary Act of June 17, 1948, the Court of First Instance has "appellate jurisdiction over all cases arising in municipal and justice of the peace courts in their respective provinces", this conferment of general appellate jurisdiction was subsequently modified by latter amendments. Thus, Section 87 of the Judiciary Act, as amended by Republic Act No. 2613 on August 1, 1959, specifically provided that all cases falling within the concurrent jurisdiction of "justices of the peace of provincial capitals" and "judges of municipal courts" with the Courts of First Instance shall be "tried and decided on the merits by the respective justices of the peace and municipal judges. Proceedings had shall be recorded and decisions therein shall be appealable directly to the Court of Appeal or the Supreme Court, as the case may be." On June 22, 1963, pursuant to Republic Act No. 3828, justices of the peace and justice of the peace courts were converted into municipal judges and municipal courts and were granted authority to appoint their clerk-stenographers. On August 4, 1969, Republic Act No. 6031 took effect. This law converted municipal and city courts into courts of record and made final the decisions of Courts of First Instance in appealed cases falling under the exclusive original jurisdiction of municipal and city courts, except on questions of law. Under the last paragraph of Section 45 of the Judiciary Act, as amended by Republic Act No. 6031, it was specifically provided that in "cases falling under the concurrent jurisdictions of the municipal and city courts with the Courts of First Instance, the appeal shall be made directly to the Court of Appeals whose decision shall be final." This subsequent enactment must, therefore, be deemed as another exception to the original rule contained in Section 45 of Republic Act No. 296 that the Courts of First Instance shall have appellate jurisdiction over all cases arising in city and municipal courts. This construction is in harmony with the statutory purpose of expediting the termination of cases by limiting the number of appeals from the decisions of municipal courts. Thus, cases falling under the exclusive original jurisdiction of the municipal and city courts are appealed to the Courts of First Instance, and the decision of the latter shall be final, provided that the findings of fact contained in said decision are supported by substantial evidence as basis thereof, and the conclusions are not clearly against the law and jurisprudence. Upon the other hand, in cases falling under the concurrent jurisdictions of municipal and city courts with the Courts of First Instance, the appeal shall be made directly to the Court of Appeals whose decision, except on questions of law, shall be final. This is evident from the discussion of Senate Bill No. 659, which is now Republic Act No. 6631.[4]

In order that it could be appealed directly to the Court of Appeals, the proceedings should be recorded. In the absence of a full and complete records of the proceedings, the trial of the case by the Municipal Court of Daram

was not conducted in accordance with law.

In the light of Our ruling in *Aquino v. Estenzo*,^[5] the proceedings taken before the Municipal Court of Daram, Samar under the circumstances should, therefore, be considered null and void. In *Aquino*, We said:

"We hold that the proceedings in the City Court of Ormoc City in Criminal Case No. 5640 was a nullity, not because the City Court had no jurisdiction to try the case but because the requirement of the law that the proceedings be recorded was not complied with. When it was provided in Sec. 87 (c) of Rep. Act 296, as amended by Rep. Act 2613, that the city courts of chartered cities have like jurisdiction as the Court of First Instance to try parties charged with an offense in which the penalty provided by law does not exceed of prison correccional or imprisonment for not more than six years or fine not exceeding P3,000.00 or both, the city court thereby acts as a Court of First Instance and its decisions are appealable directly to the Court of Appeals or to the Supreme Court, as the case may be. When the city court tries cases of this nature and it acts as a Court of First Instance, it must perforce act as a court of record. The very law itself provides that in the exercise of this jurisdiction by the municipal courts of provincial capitals and by city courts the proceedings must be recorded. Certainly, the decisions of the city courts or of the municipal courts of provincial capitals in the exercise of this jurisdiction are similar to decisions of the Court of First Instance, and their decisions cannot be appealed to the Court of Appeals or to the Supreme Court, as the case may be, if there are no records of their proceedings. 'When a city court, or the municipal court of provincial capitals, does not record its proceedings in the trial of a case in the exercise of its jurisdiction under Sec. 87(c) of Republic Act 296, as amended then it does not exercise its jurisdiction in accordance with law and, therefore, the proceedings had before it are null and void.'" (At pp. 23-24).

Notwithstanding that the court involved in the *Aquino* case is a city court and not a municipal court, We find no cogent reason why the principles enunciated in said case could not be applicable to the case at bar.

Rather than return the case to the Daram Court for a new hearing which would unduly delay the matter, it was within the competence of the Court of First Instance of Samar to take cognizance of the case in the exercise of its original jurisdiction and decide the case on the merits.

WHEREFORE, the petition for certiorari is here-by DISMISSED, without pronouncement as to costs.

Fernando, (Chairman), Barredo, and Concepcion, Jr., JJ., concur.

Aquino, J., concurs in the result in a separate opinion.

[1] *Casey v. Galle*, 94 U.S. 673, 24 L. ed. 168.

[2] *Daniels v. Tearney*, 102 U.S. 415, 26 L. ed. 187.

[3] Article 286, Revised Penal Code. See Section 87(c) in relation to Section 44 of the Judiciary Act.

[4] Discussion on Senate Bill. No. 659, as reported in the Senate Congressional Record, Vol. IV, No. 69, pp. 4270--4273, May 19, 1969:

"Senator LAUREL. Mr. President, appeals on matters within the concurrent jurisdiction of both courts of First Instance and municipal courts are made direct to the Court of Appeals or Supreme Court under the present situation as contemplated by this bill.

"Senator PADILLA. Even they started in the municipal court?

"Senator LAUREL. Yes, Your Honor. If they are within the concurrent jurisdiction of the court, the appeal is direct to the Court of Appeals and the Supreme Court.

* * * * *

"Senator PADILLA. Are those amendments approved in this bill or in another bill?

"Senator LAUREL. In this bill, Your Honor.

"Senator PADILLA. Do I understand, Your Honor, that my proposal now has been partially considered and approved?

"Senator LAUREL. Yes, by the Committee - and it was present.

"Senator PADILLA. But it does not appear in this amendment by substitution.

"Senator LAUREL. For instance, on the first page, from line 15, Mr. President, it reads: 'IN CASES FALLING UNDER THE EXCLUSIVE ORIGINAL JURISDICTION OF MUNICIPAL AND CITY COURTS WHICH ARE APPEALED TO THE COURT OF FIRST INSTANCE, THE DECISION OF THE LATTER SHALL BE FINAL.' By automatic operation of cases not within exclusive original jurisdiction, that will mean concurrent. These are not covered by the rule requiring finality of the decision of courts of first instance under the principle of "*Expressio unius est exclusio alterius*." (Italics supplied.)

[5] SCRA 18.

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CONCURRING OPINION

AQUINO, J.:

I concur in the result. The Court of First Instance of Samar had appellate jurisdiction over the grave coercion case tried by the municipal court of Daram, Samar because accord-ing to the first paragraph of section 45 of the Judiciary Law, Courts of First Instance "have appellate jurisdiction over all cases arising in city and municipal courts, in their respec-tive provinces, except over appeals from cases tried by muni-cipal judges of provincial capitals or city judges pursuant to the authority granted under the last paragraph of section 87" of the Judiciary Law.

The grave coercion case was tried by the municipal court of Daram, not by virtue of the last paragraph of section 87 but by virtue of paragraph (c) of section 87.

Republic Act No. 6031 amended section 45 by providing that "in cases falling under the concurrent jurisdictions of the municipal and city courts with the courts of first instance, the appeal shall be made directly to the Court of Appeals whose decision shall be final".

That amendment does not mean that a case which was tried by a municipal court (which is not a municipal court of a provincial capital nor a city court) and which case falls within the concurrent jurisdiction of the municipal court and the Court of First Instance, should be appealed directly from the municipal court to the Court of Appeals.

The decision of the municipal court in that case is still appealable to the Court of First Instance because that

appeal is clearly provided for in the above-quoted first paragraph of section 45.

What that amendment means is that the appeal from the decision of the Court of First Instance in that case is a matter of right, as distinguished from the decision of the Court of First Instance in cases exclusively cognizable by the inferior court.

In the latter case, the decision of the Court of First Instance is no longer appealable. It is final except that a petition for review may be filed on the ground that the factual findings of the Court of First Instance are not supported by substantial evidence and its conclusions are clearly against the law and jurisprudence.

In the instant case, the Court of First Instance had appellate jurisdiction over the grave coercion case as expressly provided in the first paragraph of section 45. A trial de novo had to be held because the proceeding was not duly recorded.

It may be argued that if a case falling within the concurrent jurisdiction of the municipal court (not a municipal court of the provincial capital) and the Court of First Instance was tried by the municipal court and the proceeding was duly recorded, there is no sense in requiring that the decision in that case be appealed to the Court of First Instance.

But, as, already stressed, the first paragraph of section 45 is quite explicit on that point. It uses the term "all cases", meaning cases exclusively cognizable by the inferior court as well as cases falling within the concurrent jurisdiction of the inferior court and the Court of First Instance.

The only exception is the class of cases tried by the municipal court of the provincial capital or the city court under the last paragraph of section 87, as distinguished from paragraph (c) of section 87. The grave coercion herein does not fall under that exception.

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