

ARMANDO MORALES, PETITIONER, VS. HON. PLACIDO RAMOS, IN HIS CAPACITY AS JUDGE OF BRANCH IV, COURT OF FIRST INSTANCE OF QUEZON CITY, AND JUSTINIANO CORTEZ, CITY ATTORNEY OF QUEZO...*G.R. No. L-24298. February 25, 1975*

Ponente: ANTONIO, J.

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Original action for certiorari and mandamus to nullify the order, dated March 9, 1965, of respondent Judge Placido Ramos of the Court of First Instance of Rizal, Branch IV, Quezon City, and to require the respondents to recognize and enforce petitioner's right to be tried with the aid of assessors, as provided in Section 40 of Republic Act No. 537, in relation to Rule 32 of the Revised Rules of Court.

The records show that on February 18, 1965, petitioner Armando Morales, and five (5) others, namely, Orador Pingol, Homer Jingco, Angel David, Jose Aguilus and Maximo Guilas, were charged with the crime of kidnapping with ransom, under Article 267 of the Revised Penal Code, before said Court of First Instance of Rizal in Criminal Case No. 6287, presided over by respondent Judge Placido Ramos. Subsequently, Armando Morales filed a motion, dated March 1, 1965, for the appointment and immediate submission of a list of qualified assessors to assist the court in considering the question of fact involved in Criminal Case No. Q-6287, as authorized by Section 40 of Republic Act No. 537,[1] otherwise known as the Revised Charter of Quezon City, in relation to Rule 32[2] of the Revised Rules of Court. The pertinent portion of said Section 40 of Republic Act No. 537 reads, as follows:

"Assessors in the courts in the city. — The aid of assessors in the trial of any civil or criminal action in the municipal court, or the Court of First Instance, within the city, may be invoked, in the manner provided in the Rules of Court."

This motion was opposed by the prosecuting Fiscal. On March 9, 1967, the respondent Judge issued an order denying petitioner's motion on the grounds, among others, (1) that it is not the statutory intent that trial with assessors shall be applied to criminal cases; and (2) that the provision of Section 40 of the Revised Charter of Quezon City is directory and not mandatory. His motion for reconsideration having been denied on March 10, 1965 by respondent Judge, petitioner instituted the present petition contending that said orders amounted to a grave abuse of discretion arising from a wilful neglect to perform a duty specifically enjoined by law and that petitioner has no other plain, speedy and adequate remedy in the ordinary course of law, except to invoke the aid of this Court to immediately command the respondent Judge to give due course and enforce the right of petitioner.

Respondents denied the material allegations of the petition and, by way of special and affirmative defenses, alleged, among others, (1) that Armando Morales, by his acts subsequent to the filing of the present petition on March 12, 1965, has waived and/or must be deemed to have waived his right to have a trial with the aid of assessors and is now in estoppel to assert such right when his lawyers actively participated during the trial of

Criminal Case No. Q-6257 by cross-examining the prosecution witnesses; (2) that a writ of preliminary injunction should not issue to restrain the prosecution of criminal offenses (*Lava vs. Gonzales*, L-23048, July 31, 1963); (3) petitioner has never questioned the jurisdiction of the trial court over the subject matter and/or the person of the accused in Criminal Case No. Q-6257; consequently its actuations in the exercise of such jurisdiction are not correctible by certiorari (*Matanod vs. Alejandro*, L-22502-03, June 30, 1964), and any erroneous conclusions of law or fact committed in the exercise of such jurisdiction are mere errors of judgment not correctible by certiorari (*J.R.S. Business Corporation vs. Imperial Insurance*, L-10691, July 31, 1964), much less of mandamus; and (4) that nowhere in any of the sections from Rule 110 to Rule 127, inclusive (Criminal Procedure), can we find any provision pertinent to trial with the aid of assessors.

After the submission of the respective memorandum of the parties, this case was submitted for decision on August 4, 1965.

On October 7, 1965, counsel for the respondents filed with this Court a manifestation, alleging among others, (1) that on August 27, 1965 a decision in Criminal Case No. Q-6257, (wherein petitioner Armando Morales was tried jointly with Orador Pingol, Homer Jingco and Angel David, the proceedings of which is being sought to be enjoined by petitioner Morales in this case) was rendered and promulgated as per attached certification of Special Deputy Clerk of Court Floro Alejo of the trial court (Annex A, Manifestation); (2) that in said decision, petitioner Armando Morales was found guilty of the offense charged and sentenced to suffer imprisonment of reclusion perpetua (life imprisonment); (3) that said decision had already become final and executory there being no appeal taken therefrom by petitioner within the period provided by law; (4) that the inaction of petitioner clearly indicated his conformity and satisfaction with his sentence rendered therein; and (5) that the foregoing events and circumstances has made the present petition to appear as moot and academic.

Considering that the decision in Criminal Case No. Q-6257 finding the petitioner Armando Morales guilty of the offense charged and sentencing him to suffer imprisonment of reclusion perpetua, has already become final and executory, there being no appeal interposed by petitioner, the present petition has become moot.

WHEREFORE, in view of the foregoing the present petition is hereby dismissed.

Fernando, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

[1] Similar to Sec. 49 of Rep. Act No. 409, otherwise known as the Charter of the City of Manila.

[2] Rule 32 of the Revised Rules of Court has its origin Sections 153 and 154 of the Code of Civil Procedure.

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