

**OSCAR FAJARDO, CESAR FAJARDO AND RODRIGO DOLIENTE,
PETITIONERS, VS. HON. HIMERIO B. GARCIA, AS PRESIDING JUDGE
OF THE CIRCUIT COURT OF OLONGAPO CITY, RESPONDENT.**

G.R. No. L-38675. July 02, 1980

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The basic assumption of petitioners in this certiorari proceeding is the expanded concept in the present Constitution, which, in addition to granting an accused, as provided for in the 1935 Charter, the right to have compulsory process to secure the "attendance" of witnesses of his choice,[1] includes his right to compulsory process to secure "the production of evidence in his behalf." [2] It is their contention that medical testimony from a doctor who could testify on the wounds inflicted on them during the incident in question would be crucial to their defense. Unfortunately for them, however, the doctor had left the Philippines and was then residing in the United States. Since under the circumstances, compulsory attendance would not be feasible, their counsel, relying on the constitutional provision, sought from respondent Judge Himerio B. Garcia to send written interrogatories on the aforesaid doctor in his residence in the United States. A motion to that effect was duly filed, but it was denied by respondent Judge. The Solicitor General[3] was required to comment. It is his submission that the constitutional guarantee could not be stretched to include the right to serve interrogatories on a witness living abroad. According to the comment: "1. Service of written interrogatories is not a compulsory or coercive process. It is merely the delivery to a proposed deponent of a set or series of questions, the answers to which will constitute his deposition. 2. Service of written interrogatories by itself, does not obtain for the person utilizing them the twofold objectives specified in the constitutional guarantee which are; a) to secure the attendance of witnesses and b) to secure the production of evidence in behalf of the accused. It merely apprises the proposed deponent of the questions which he is requested to answer. He may decline to give the deposition, which ultimately will be submitted as his testimony. Clearly, therefore, service of written interrogatories is completely different or worlds apart from the compulsory process that is established in the constitution and accorded as an inviolate right of the accused.[4]

This Court, in view of the importance raised, resolved to consider such comment as answer and thereafter to set the case for hearing. Such a hearing was held; the parties were then given leave to submit simultaneously memoranda in amplification of their oral arguments. With the filing there-of, the case was deemed submitted for decision.

The facts are undisputed. To an information charging petitioners, Oscar Fajardo, Cesar Fajardo and Rodrigo Doliente, with the crime of murder, a plea of not guilty was entered. After which, the case was set for trial. The evidence for the prosecution disclosed that at the time of the arrest of petitioners on the evening of September 11, 1972, all of them were suffering from wounds on different parts of their bodies. The next day, the father of the accused Oscar Fajardo and Cesar Fajardo sent for a doctor, Dr. Herminio Academia by name, to examine and thereafter treat such wounds. Accordingly, that was done at the detention cell in Subic, Zambales. The corresponding medical certificates were then issued by such doctor. At the trial, during the reception of the

evidence for the defense on March 19, 1974, petitioner Oscar Fajardo testified. Reference was made by him to such medical certificate. When respondent Judge asked counsel for the defense where Dr. Herminio Academia was, the answer was that said doctor had left the country for abroad and was then residing in the United States. It was after the direct examination of petitioner Oscar Fajardo that respondent Judge was asked for leave to serve written interrogatories on Dr. Herminio Academia at his place of residence in the United States. It was argued that his testimony on the examination and treatment of the wounds on the bodies of all of the accused would be crucial for the defense, the offense charged being of a very serious character. Respondent Judge asked that a motion to that effect be filed. That was done, but in May of 1974, such motion was denied. Hence this petition for certiorari.

This is a certiorari petition. It is undoubted, to quote from *Panaligan v. Adolfo*,^[5] that the availability of this remedy is conditioned on a showing of "a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions."^[6] It is from that perspective that the success or failure of petitioners must depend. It is not to be forgotten, though, that the Constitution accords a high respect to the rights of an accused person conformably to the presumption of innocence. As was pointed out at the outset, it was further bolstered by the expanded concept of securing not only the attendance but likewise the production of evidence in his behalf. There is thus the need for the utmost caution on the part of the trial judge lest, in the exercise of his discretion, what the Constitution allows may be disregarded. His judgment on the matter should be guided by due recognition of the high estate accorded these constitutional rights. Certainly, if the denial thereof would lead to the defense of the petitioners being rendered nugatory, then a case for grave abuse of discretion has been shown.

This Court, after careful consideration of the matter, however, is of the thinking that it would be premature, at the very least, to conclude that such a fatal infirmity has infected the proceeding. The fact that the petitioners were treated in the hospital by a doctor in question could be testified to by other witnesses, including the nurses who must have been present. It cannot be assumed that there would be an insuperable objection to the presentation of the medical certificate as to the wounds alleged to have been inflicted, as they could very well show traces of such maltreatment. Even the length of their stay in the hospital could be verified by its records. On this point, an excerpt from *People v. Montejo*^[7] may furnish guidance: "Respondent Judge certainly has not been shown to be remiss in the fulfillment of his judicial duties. On the contrary, the petition would impute not only abuse of discretion, but grave abuse thereof, when precisely he was manifesting fealty to the well-settled doctrine that a trial judge should display receptivity to offers of evidence as well as to searching questions with the end in view of having the truth come out. It would appear then that the provincial fiscal who filed this petition was motivated more by the apprehension and misgiving that with further information and data furnished the Court, an acquittal would be likely. That of itself is no argument for a petition of this character. Precisely, the constitutional rights granted an accused are intended to assure a full and unimpeded opportunity for him to meet what in the end could be a baseless accusation. Moreover, at the stage of the trial reached, there was an element of prematurity to this proceeding. At any rate, the presumption to be indulged is that a trial judge can fairly weigh and appraise the evidence submitted by the respective parties. Petitions of this character certainly deserve no encouragement from this Tribunal."^[8] Nor must it be forgotten that, according to the facts, the prosecution was not oblivious to the demands of fairness when the evidence offered by it disclosed that petitioners at the time of their arrest were suffering from wounds inflicted on various parts of their bodies.

In the light of what has been stated, it becomes obvious why as of now, there is no need to make a definite pronouncement on the scope of the expanded concept of the constitutional right to secure not only the attendance of witnesses but the production of evidence. All that the decision stands for is that the standard required for the grant of certiorari has not been met.

WHEREFORE, this petition for certiorari is dismissed. No pronouncement as to costs.

Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

Barredo, J., concur on the assumption that petitioner may raise on a constitutional issue the denial in question in their appeal, if necessary.

Aquino, J., concur. The lower court's error in not allowing the interrogatories was not an error of jurisdiction. The three medical certificates should be admitted in evidence as part of the testimony of the three accused.

[1] Article III, Section 1, par. 17 of the 1935 Constitution provides: "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right * * * to have compulsory process to secure the attendance of witnesses in his behalf."

[2] According to Article IV, Section 19 of the present Constitution insofar as pertinent reads: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right * * * to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf."

[3] Solicitor General Estelito P. Mendoza was assisted by the then Assistant Solicitor General Hugo E. Gutierrez, Jr., now a Justice of the Court of Appeals and Solicitor Antonio L. Villamor.

[4] Comment, 5-6.

[5] L-24100, September 30, 1975, 67 SCRA 176.

[6] Ibid., 180. Since then, such a doctrine has been adhered to in the following cases: Sanchez v. Zosa, L-27043, Nov. 28, 1975, 68 SCRA 171; Manalo v. Mariano, L-33850, Jan. 22, 1976, 69 SCRA 80; Rañeses v. Teves, L-26354, March 4, 1976, 70 SCRA 4; Baluyot v. Paño, L-42088, May 7, 1976, 71 SCRA 86; De Laureano v. Adil, L-43345, July 29, 1976, 72 SCRA 148; Abuan v. Valera, L-42452, Aug. 16, 1976, 72 SCRA 301; Conchingyan, Jr. v. Cloribel, L-27070-71, April 22, 1977, 76 SCRA 361; People v. Vallarta, L-32728, June 30, 1977, 77 SCRA 476; Ilacad v. Court of Appeals, L-24435, Aug. 26, 1977, 78 SCRA 301; Bernabe v. Nicolas, L-38843, Aug. 26, 1977, 78 SCRA 341; Suria v. Juntereal, L-38695, July 1, 1978, 84 SCRA 5; Aratuc v. Commission on Elections, L-49705-09, Feb. 8, 1979, 88 SCRA 251; Santos v. Court of Appeals, L-42679, May 25, 1979, 90 SCRA 223; Enriquez v. Rivera, L-48948, June 19, 1979, 90 SCRA 641; Commodity Financing Co., Inc. v. Jimenez, L-31384, June 29, 1979, 91 SCRA 57.

[7] L-28699, April 29, 1975, 63 SCRA 488.

[8] Ibid., 491.

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