

**MANUEL BORJA, PETITIONER, VS. HON. RAFAEL T. MENDOZA,
JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU (BRANCH VI)
AND HON. ROMULO R. SENINING, JUDGE OF THE CITY COURT OF
CEBU (BRAN...**

G.R. No. L-45667. June 20, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

The jurisdictional infirmity imputed to respondent Judge Romulo R. Senining of the City Court of Cebu which was not remedied by respondent Judge Rafael T. Mendoza of the Court of First Instance of Cebu in this certiorari proceeding was the absence of an arraignment of petitioner Manuel Borja, who was accused of slight physical injuries. This notwithstanding, respondent Judge Senining proceeded with the trial in absentia and thereafter, in a decision promulgated on August 18, 1976, found him guilty of such offense and sentenced him to suffer imprisonment for a period of twenty days of *arresto menor*.^[1] Thereafter, an appeal was duly elevated to the Court of First Instance of Cebu presided by respondent Judge Mendoza.^[2] It was then alleged that without any notice to petitioner and without requiring him to submit his memorandum, a decision on the appealed case was rendered on November 16, 1976 affirming the judgment of the City Court. It is the contention of petitioner that the failure to arraign him is violative of his constitutional right to procedural due process,^[3] more specifically of his right to be informed of the nature and cause of the accusation against him and of his right to be heard by himself and counsel.^[4] There was thus, at the very least, a grave abuse of discretion. The Solicitor General,^[5] when asked to comment, agreed that the procedural defect was of such gravity as to render void the decision of the City Court affirmed by the Court of First Instance. The comment was considered as answer, with the case being submitted for decision.

Respect for the constitutional rights of an accused as authoritatively construed by this Court, duly taken note of in the comment of the Solicitor General, thus calls for the grant of the writ of certiorari prayed for.

1. The plea of petitioner to nullify the proceedings had in the criminal case against him finds support in the procedural due process mandate of the Constitution. It requires that the accused be arraigned so that he may be informed as to why he was indicted and what penal offense he has to face, to be convicted only on a showing that his guilt is shown beyond reasonable doubt with full opportunity to disprove the evidence against him. More-over, the sentence to be imposed in such a case is to be in accordance with a valid law.^[6] This Court, in *People v. Castillo*,^[7] speaking through Justice De Joya and following the language of the American Supreme Court, identified due process with the accused having "been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded within the authority of a constitutional law, * * *."^[8] An arraignment thus becomes indispensable as the means "for bringing the accused into court and notifying him of the cause he is required to meet * * *."^[9] Its importance was stressed by Justice Moreland as early as 1916 in the leading case of *United States v. Binayoh*.^[10] He pointed out that upon the accused being

arraigned, "there is a duty laid by the Code [now the Rules of Court] upon the court to inform [him] of certain rights and to extend to him, on his demand, certain others. This duty is an affirmative one which the court, on its own motion, must perform, unless waived." [11] To emphasize its importance, he added: "No such duty, however, is laid on the court with regard to the rights of the accused which he may be entitled to exercise during the trial. Those are rights which he must assert himself and the benefits of which he himself must demand. In other words, in the arraignment the court must act of its own volition, * * *." [12] In the terse and apt language of the Solicitor General: "Arraignment is an indispensable requirement in any criminal prosecution." [13] Procedural due process demands no less.

2. Nor is it only the due process guarantee that calls for the accused being duly arraigned. As noted, it is at that stage where in the mode and manner required by the Rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him. It is imperative that he is thus made fully aware of possible loss of freedom, even of his life, depending on the nature of the crime imputed to him. At the very least then, he must be fully informed of why the prosecuting arm of the state is mobilized against him. An arraignment serves that purpose. Thereafter, he is no longer in the dark. It is true, the complaint or information may not be worded with sufficient clarity. He would be in a much worse position though if he does not even have such an opportunity to plead to the charge. With his counsel by his side, he is thus in a position to enter his plea with full knowledge of the consequences. He is not even required to do so immediately. He may move to quash. What is thus evident is that an arraignment assures that he be fully acquainted with the nature of the crime imputed to him and the circum-stances under which it is allegedly committed. It is thus a vital aspect of the constitutional rights guaranteed him. It is not a useless formality, much less an idle ceremony.

3. An equally fatal defect in the proceeding had before respondent Judge Senining was that notwithstanding its being conducted in the absence of petitioner, he was convicted. It was shown that after one postponement due to his failure to appear, the case was reset for hearing. When that date came, December 14, 1973, without petitioner being present, although his bondsmen were notified, respondent Judge, as set forth in the comment of the Solicitor General, "allowed the prosecution to present its evidence invoking Letter of Instruction No. 40. Only one witness testified, the offended party herself, and three documents were offered in evidence after which the prosecution rested its case. Thereupon, respondent City Court set the promulgation of the decision on December 28, 1973." [14] It could then conclude: "Verily, the records clearly show that petitioner was not arraigned at all and was not represented by counsel throughout the whole proceedings in the respondent City Court." [15] It is indisputable then that there was a denial of petitioner's constitutional right to be heard by himself and counsel. As categorically affirmed by Justice Ozaeta for this Court in the leading case of *Abriol v. Homeres*: [16] "It is the constitutional right of the accused to be heard in his defense before sentence is pronounced on him." [17] He added further that such "constitutional right is inviolate." [18] There is no doubt that it could be waived, but here there was no such waiver, whether express or implied. It suffices to refer to another leading case, *People v. Holgado*, [19] where the then Chief Justice Moran emphatically took note of the importance of the right to counsel: "In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence." [20] With the violation of the constitutional right to be heard by himself and counsel being thus manifest, it is easily understandable why the Solicitor General agreed with petitioner that the sentence imposed on him should be set aside for being null.

4. The provision in the present Constitution allowing trial to be held in absentia is unavailing. It cannot justify the actuation of respondent Judge Senining. Its language is clear and explicit. What is more, it is mandatory. Thus:

"However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified." [21] As pointed out then by the Solicitor General, the indispensable requisite for trial in absentia is that it should come "after arraignment." The express mention in the present Constitution of the need for such a step emphasizes its importance in the procedural scheme to accord an accused due process. Without the accused having been arraigned, it becomes academic to discuss the applicability of this exception to the basic constitutional right that the accused should be heard by himself and counsel.

5. Nor did the appeal to the Court of First Instance presided by respondent Judge Mendoza possess any curative aspect. To quote anew from the comment of the Solicitor General: "Respondent Court of First Instance * * * considered the appeal taken by the petitioner as waiver of the defects in the proceedings in the respondent City Court. Precisely, the appeal itself is tantamount to questioning those defects. In fact, the Memorandum in support of the appeal unmistakably raised as error the absence of petitioner at the arraignment and cited jurisprudence, commentaries and the rules to bolster his position. Specifically, the absence of an arraignment can be invoked at anytime in view of the requirements of due process to ensure a fair and impartial trial." [22]

WHEREFORE, the petition for certiorari is granted. The decision of respondent Judge Romulo R. Senining dated December 28, 1973, finding the accused guilty of the crime of slight physical injuries, is nullified and set aside. Likewise, the decision of respondent Judge Rafael T. Mendoza dated November 16, 1976, affirming the aforesaid decision of Judge Senining, is nullified and set aside. The case is remanded to the City Court of Cebu for the prosecution of the offense of slight physical injuries, with due respect and observance of the provisions of the Rules of Court, starting with the arraignment of petitioner.

Barredo, Antonio, Aquino, and Fernandez, JJ., concur.
Concepcion, Jr., J., on leave.

[1] Petition, pars. 4-8.

[2] Ibid., 9.

[3] According to Article IV, Section 17 of the Constitution: "No person shall be held to answer for a criminal offense without due process of law."

[4] According to Article IV, Section 19: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."

[5] Solicitor General Estelito P. Mendoza was assisted by Assistant Solicitor General Jose F. Racela, Jr. and Solicitor Carlos N. Ortega.

[6] Cf. *Vera v. People*, L-31218, February 18, 1970, 31 SCRA 711.

[7] 76 Phil. 72. (1946).

[8] Ibid, 87. Reference was made to *Rogers v. Peck*, 199 US 425 (1905) and *Twining v. New Jersey*, 211 US 78 (1908).

[9] Ibid.

[10] 35 Phil. 23.

[11] Ibid, 27.

[12] Ibid.

[13] Comment of the Solicitor General, 4.

[14] Ibid, 2.

[15] Ibid, 8.

[16] 84 Phil. 525 (1949).

[17] Ibid, 529.

[18] Ibid, 534.

[19] 85 Phil. 752 (1950).

[20] Ibid, 756.

[21] Article IV, Section 19 of the Constitution.

[22] Comment of the Solicitor General, 9.

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