

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS.
SEGIFREDO L. ACLARACION, PETITIONER VS. HON. MAGNO S.
GATMAITAN, HON. JOSE N. LEUTERIO, COLONEL RUPERTO B. ACLE,
CHIEF OF POLICE...**

G.R. No. L-39115. May 26, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Segifredo L. Aclaracion functioned as a temporary stenographer in the Gapan branch of the Court of First Instance of Nueva Ecija from October 1, 1969 to November 21, 1971. His appointment expired on November 21, 1972 while he was working as a temporary stenographer in the Court of First Instance of Manila. Thereafter, he was employed as a stenographer in the Public Assistance and Claims Adjudication Division of the Insurance Commission, where he is now working.

After Aclaracion had ceased to be a court stenographer, the Court of Appeals required him to transcribe his stenographic notes in two cases decided by the Gapan court which had been appealed: Muncal vs. Eugenio, CA-G.R. No. 49711-R and Paderes vs. Domingo, CA-G.R. No. 52367-R. He failed to comply with the resolutions of the Court of Appeals. He was declared in contempt of court.

On May 29 and July 29, 1974 Justice Magno S. Gatmaitan and Justice Jose N. Leuterio, Chairmen of the Third and Seventh Divisions of the Court of Appeals, respectively, ordered the Chief of Police of Makati, Rizal, to arrest Aclaracion, a resident of that municipality, and to confine him in jail until he submits a complete transcript of his notes in the said cases.

Aclaracion was arrested on June 21, 1974 and incarcerated in the municipal jail. In a petition dated July 12, 1974 he asked the Court of Appeals that he be not required to transcribe his notes in all the cases tried in the Gapan court. He suggested that the testimonies in the said cases be retaken.

The Third Division of the Court of Appeals in its resolution of August 7, 1974 ordered the release of Aclaracion. Later, he transcribed his notes in the Muncal case. However, the warden did not release him because of the order of arrest issued by the Seventh Division.

On August 9, 1974 Aclaracion filed in this Court a petition for habeas corpus. He advanced the novel contention that to compel him to transcribe his stenographic notes, after he ceased to be a stenographer, would be a transgression of the rule that "no involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted" (Sec. 14, Art. IV, Bill of Rights, 1972 Constitution). He was averse to being subjected "to involuntary servitude sans compensation". He desired to be released from the obligation of transcribing his notes. (He filed his petition in forma pauperis).

The petition was heard on August 20, 1974. It was already moot because, as already noted, the Third Division of the Court of Appeals had ordered his release on August 7th. Another hearing was held on September 3, 1974 in

connection with the detention of Aclaracion at the instance of Justice Leuterio. At that hearing, this Court resolved to order Aclaracion's provisional release on condition that within twenty days thereafter he would complete the transcription of his notes in the Paderes case in his office at the Insurance Commission, Manila.

So, he was provisionally released without prejudice to the final ruling on his contention that he could not be compelled to transcribe his notes in the other cases because he was no longer connected with the judiciary and because his stenotype machine notes were standard notes which could be transcribed by stenographers trained in stenotype machine shorthand.

On September 4, 1974 Aclaracion was released from Makati jail. Upon representations made by the Clerk of Court of this Court with the Insurance Commissioner, the latter interposed no objection to Aclaracion's transcription of his stenographic notes either in this Court or in his office in the Insurance Commission.

On November 19, 1974 Aclaracion manifested that he had transcribed his notes in the Paderes case in his office at the Insurance Commission after he was provided by the Clerk of Court of this Court with the requisite supplies.

We have given Aclaracion's petition the attention and study which it deserves. The habeas corpus aspect of his petition has become moot in view of his release from jail during the pendency of his case. After much reflection, we have come to the conclusion that his request that he be relieved from transcribing his notes in the other cases cannot be granted.

We hold that an Appellate Court may compel a former court stenographer to transcribe his stenographic notes. That prerogative is ancillary or incidental to its appellate jurisdiction and is a part of its inherent powers which are necessary to the ordinary and efficient exercise of its jurisdiction and essential to the due administration of justice (See *State vs. Superior Court of Maricopa County*, 5 Pac. 2d 192, 39 Ariz. 242, Note 74, 21 C.J.S. 41; 20 Am. Jur. 2d 440; *Fuller vs. State*, 57 So. 806, 100 Miss 811).

The provision of section 12, Rule 41 of the Rules of Court that "upon the approval of the record on appeal the clerk shall direct the stenographer or stenographers concerned to attach to the record of the case five (5) copies of the transcript of the oral evidence referred to in the record on appeal" includes stenographers who are no longer in the judiciary. (See sec. 7, Rule 122 and sec. 7, R.A. No. 3749).

The traditional mode of exercising the court's coercive power is to hold the recalcitrant or negligent stenographer in contempt of court if he does not comply with the order for the transcription of his notes and imprison him until he obeys the order (Sec. 7, Rule 71, Rules of Court).

Another sanction to compel the transcription is to hold in abeyance the transfer, promotion, resignation or clearance of a stenographer until he completes the transcription of his notes. This is provided for in Circular No. 63 of the Secretary of Justice.

In the instant case, Aclaracion transcribed his notes in the Muncal and Paderes cases while he was an employee of the Insurance Commission. During the time that he made the transcription, he received his salary as such employee.

We hold that he could be required to transcribe his notes in other cases, particularly in the case of *Heirs of the Late Pacita Sicioco Cruz, etc. vs. La Mallorca Pambusco, et al.*, CA-G.R. No. 49687-R. The Court of Appeals, in its resolution of November 24, 1972, required him to transcribe his notes in that case.

The same Court in its resolution of February 20, 1975 in *Paterno vs. Tumibay*, CA-G.R. No. 51330-R imposed on Aclaracion a fine of one hundred fifty pesos for his failure to transcribe his notes in the said case and warned him that he would be arrested if he failed to submit his transcript within ten days from notice.

The same arrangement should be made by the Clerk of Court of this Court with the Insurance Commissioner that Aclaracion should be allowed to receive his salary while making the transcription.

Aclaracion's contention that to compel him to transcribe his stenographic notes would constitute involuntary servitude is not tenable. Involuntary servitude denotes a condition of enforced, compulsory service of one to another (*Hodges vs. U.S.*, 203 U.S. 1; *Rubi vs. Provincial Board of Mindoro*, 39 Phil. 660, 708) or the condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not (*Black's Law Dictionary*, 4th Ed., p. 961). That situation does not obtain in this case.

Also untenable is Aclaracion's argument that the imprisonment of a stenographer who had defied the court's resolution for the transcription of the notes constitutes illegal detention. The incarceration of the contemning stenographer is lawful because it is the direct consequence of his disobedience of a court order.[*]

However, in view of the fact that Aclaracion might have acted in good faith in not complying with the resolution of the Court of Appeals in the Paterno case, due to the pendency of the instant habeas corpus case (a fact which is inferable from his letter to this Court dated March 11, 1975), the fine of one hundred fifty pesos imposed on him is hereby remitted.

WHEREFORE, the petition for habeas corpus is dismissed. No costs.

SO ORDERED.

Makalintal, C.J., Makasiar, Antonio, Esguerra, Muñoz Palma, Concepcion Jr., and Martin, JJ., concur.

Castro, J., concurs in the result.

Fernando, J., concurs in the result in conformity with the view expressed by Justice Barredo and submits a brief opinion.

Teehankee, J., concurs in a separate opinion.

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

[*] In L-1494, *Gibbs vs. Rodriguez*, this Court passed a resolution dated July 3, 1947, upon motion of Stenographer F.M. Ejercito, ordering (1) the Clerk of Court of the Court of First Instance of Manila to forward to the said stenographer, for transcription, the notes taken by him and (2) requiring the parties to pay P200 as his stenographer's fees, he being no longer in the government service. Justice Perfecto in his dissent, quoted below, opined that Ejercito need not be compensated:

"We dissent from the second part of the resolution.

"The purpose of appointing court stenographers is to keep record of the spoken words which are or should be part of judicial proceedings, such as testimonies, statements of litigants and attorneys, and decisions, resolutions and orders. The record to be kept must be readable to any person in general, and specially to litigants, attorneys and court officers who have something to do with it, including judges who are to decide the case. The stenographer makes use of stenographic symbols or signs of conventional nature for his own convenience, so that he can note down the spoken words in a proceeding as fast as they are uttered. Those symbols and signs can only be read or deciphered by himself, or, in exceptional cases, by one who is an expert in reading stenographic characters of the system used by the writer of the notes. To uninitiated, they are inaccessible mystery.

"A court stenographer is not appointed for him to write stenographic notes, but because, by his ability to write

the spoken words with speed, through the medium of stenographic symbols, he is able to record faithfully the spoken words in a proceeding in Roman characters, readable to attorneys, parties, and judges concerned in each case. The essential duty of a stenographer is to make a readable record, to reproduce in Roman characters the words spoken in a proceeding, and not just to take down notes that he alone can read.

"If he has the ability of following the spoken words as uttered in a court proceeding by writing them directly in Roman characters, he can dispense with the use of stenographic notes without failing in his duties nor in the service expected from him. In our opinion, it is the duty of a stenographer to immediately transcribe in Roman characters whatever notes he has taken in any proceeding.

"The fact that the stenographer is no longer in the government service, does not relieve the stenographer from the duty of transcribing the notes he left untranscribed. Otherwise, miscarriage of justice will be the result. A court stenographer who had taken notes at the trial of an important case, by the simple expedience of resigning, may nullify all the trial, and give ground for a new trial which may have a different result than the first one, because in the new trial some of the important witnesses who have testified in the original trial may not be available. While we are of opinion that court stenographers are unjustly underpaid, and we will not spare any effort to emphasize the need that they be reasonably compensated for their services, we are not ready to lend our support to a legal theory which would relieve them from fully complying with the official duties of the position to which they were appointed and are or were paid salary."

In L-1364, *Loo Soo vs. Osorio*, this Court in its resolution dated July 30, 1947, ordered a stenographer to submit his transcript within ten days from notice and required the appellants to pay for the transcript at the rate of 45 centavos a page, under section 8, Rule 130 of the Rules of Court. Justice Perfecto reiterated his dissent.

"After arrangements for his compensation have been made, it has been held, under statute, to be the duty of the court stenographer to deliver the transcript with reasonable promptness to the clerk" (*Rappaport vs. Superior Court in and for Los Angeles County*, 102 Pac. 2d 526, 39 Cal. App. 2d 15).

In a Mississippi case, it was held that under the laws of that state "the resignation of a court stenographer does not relieve him of the duty of filing a transcript of the evidence taken down by him in a case tried before he resigned" (*Robertson vs. Southern Bitulithic Co.*, 92 So. 580, 129 Miss. 453).

"Even after his resignation the court stenographer can be compelled to file a transcript and return" (60 C.J. 23, note 50 citing *Keays vs. Doyle*, 48 New Brunswick I). A stenographic reporter may be compelled to file his transcript with the clerk (*Gjurich vs. Fieg*, 116 Pac. 745, 160 Cal. 231).

CONCURRING OPINION

BARREDO, J.:

I concur in the result. I believe it should be made clear that the dismissal of Aclaracion's petition for habeas corpus is because it has become academic, considering that arrangements have been and will continue to be made to allow him to transcribe the notes in question during his official time as employee of the Insurance Commission and he will in effect be, therefore, compensated for his work. He has been released from detention and will no longer be detained, unless he refuses to do the work in spite of the above arrangements with the Insurance Commission. The Court has agreed not to make any definite pronouncement in this case as to whether or not court stenographers have to be compensated when they have to transcribe, after they are already out of the service, notes taken by them during their tenures in office. A more definite ruling on this specific point will be made in a more appropriate case.

CONCURRING OPINION

FERNANDO, J.:

This concurrence in the separate opinion of Justice Barredo expressing his conformity with the result reached should not be construed as non-acceptance of the principles announced in the ably written ponencia for the Court by Justice Aquino. It is only that with the habeas corpus petition, as stressed by Justice Barredo, having been impressed with an academic character, I do not feel called upon on this occasion to give expression to my views on the subject. I can go this far though. There is much to be said for the conclusion reached that an appellate court is not to be denied competence to require a court stenographer no longer in the service to transcribe his notes. If it were not thus, there would be an obstacle to the appropriate exercise of the reviewing function by such tribunal. On principle, there appears to be no valid objection to an appellate court, as stressed by Justice Teehankee in his separate opinion, "compelling a former court stenographer, under pain of contempt, to transcribe his stenographic notes and thereby complete the records of the case on appeal, in the exercise of its inherent powers for the effective and efficient exercise of its appellate jurisdiction and the due administration of justice." It does not to my mind, however, solve difficulties that its application may give rise to. There may be cases, when an appellate court will be confronted with the obstinacy of a former stenographer holding fast to the conviction, even if not altogether justified, that he is the victim of an oppressive court order and that there is a disregard of his constitutional right not to be subjected to involuntary servitude. So it did happen in this case, marked by petitioner's stubborn insistence of what he considered his sad and undeserved fate, one moreover, in his opinion, frowned upon by the Constitution. For a recognition that the exercise of the contempt power is warranted may still be attended with problems that defy easy and pat solutions. Its coercive aspect may be conceded, but given an individual like petitioner, not averse to suffering a species of martyrdom rather than give up a principle, and thus unable to yield obedience to an order requiring that he transcribe his notes, the detention consequent upon a contempt citation may be so prolonged that it assumes a punitive character. Then it appears to me the question is reached of whether there is involuntary servitude. From such a standpoint, I am not altogether persuaded that what is said in the opinion of the Court suffices for its disposition. There is, to my mind, a degree of complexity. For me, it should remain unresolved until the appropriate case comes. This is not it, as the petition has become moot and academic.

So, as is the case with Justice Barredo, I limit myself to concurring in the result.

CONCURRING OPINION

TEEHANKEE, J.:

I concur with the main opinion of Mr. Justice Aquino, more specifically with the principle therein reiterated that an appellate court may compel a former court stenographer, under pain of contempt, to transcribe his stenographic notes and thereby complete the records of a case on appeal, in the exercise of its inherent powers for the effective and efficient exercise of its appellate jurisdiction and the due administration of justice.

The work and compensation of a stenographer cover not only the taking of the stenographic notes which are merely symbols or marks decipherable only by himself or experts (which enable him to record with speed the spoken words during the court hearings and proceedings) but also and more importantly the transcribing of his stenographic notes so as to produce a written record of the hearings and testimonial evidence given by the witnesses as required by law.

As has been noted time and again, great delay if not miscarriage of justice has resulted from the stenographer's failure to transcribe or loss of his notes of the trial since the case then had to be remanded for new trial or retaking of the testimonies with the outcome thereof radically changed in the event that important witnesses were no longer available.

To obviate such cases of delay and failure of justice, several sanctions are imposed by law and implementing circulars to assure that the stenographer promptly and faithfully comply with his duty of completing the transcripts of his stenographic notes for the record.

Thus, section 7 of Republic Act 3749 provides that "no salary shall be paid to a court stenographer unless he submits a sworn statement to the effect that he has given requesting parties copies of transcripts of stenographic notes upon payment of proper fees, and transcripts have been completed and attached to the records of every appealed case within sixty days after receipt of notice from the appellate courts."

Rule 41, section 12 calls for the clerk upon approval of the record on appeal in civil cases "to direct the stenographer to attach to the record" the transcripts of the oral evidence required for the appeal, while Rule 122, section 7 similarly requires in criminal cases that upon filing of the defendant's notice of appeal, "the trial court shall direct the stenographic reporter to transcribe his notes of the proceedings" and that where the death penalty is imposed, the stenographer shall file the transcripts with the clerk within thirty days after promulgation of the sentence, regardless of whether the defendant has appealed or not (since such capital sentences are automatically transmitted to the Supreme Court for review).

Circular No. 63 of the Department of Justice dated August 31, 1972 restated the department's policies (likewise adopted by this Court after its assumption of supervision over all courts and personnel thereof pursuant to the 1973 Constitution) holding in abeyance the transfer, promotion, resignation or clearance of a stenographer who has "untranscribed notes in any appealed cases or (who) has not transcribed notes taken by him during hearings held by a former judge who had partly tried the case" until he submits a certificate of having completed and filed the transcripts, duly attested as correct by the proper clerk of court.

It is quite well settled then, as categorically held in the main opinion, that an appellate court may compel a former court stenographer to transcribe his stenographic notes under pain of contempt of court including incarceration until he shall have obeyed the order by completing the transcripts, under Rule 71, section 7, and that the question of compensation for his making the transcripts when already out of the service would not arise since the compensation already received by him during his tenure in office covers such transcription of the notes.

It should be made clear that it is only the specific case at bar which may present a different question on which the Court has reserved a definite ruling on the question of compensation in that in the case of herein petitioner Aclaracion, his employment as stenographer was only of a temporary character (although it lasted for two years) and the Department of Justice abruptly terminated his employment at the end of the said period without having given him time and opportunity to transcribe his notes. The Court did not need to make a definite ruling on compensation in petitioner's case — to govern the case of other temporary stenographers like him who were not given time and opportunity to complete their transcripts — since he has continued in the government service although in the Executive Department, which has now relieved him from his regular work therein and in effect assigned him the work of completing the transcripts required in pending appealed cases in the interest of the due administration of justice.

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