

**THELMA PIGA BELTRAN, AND RAFAEL BELTRAN, PETITIONERS, VS.
JUDGE HIMERIO B. GARCIA, CIRCUIT CRIMINAL COURT JUDGE, 3RD
JUDICIAL DISTRICT, OLONGAPO CITY AND FISCAL RAYMUNDO M.
BLAN...**

G.R. No. L-30868. September 30, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an original action for certiorari and prohibition with preliminary injunction to annul the orders[1] dated July 31, 1969 and August 5, 1969[2] of respondent Judge and to stop both respondents in their respective capacities as Presiding Judge and District State Prosecutor of the Criminal Circuit Court for the Third Judicial District from further proceeding with the hearing of Criminal Case No. CCC-III-43-Zam-bales (1006-0) for Homicide entitled, "People of the Philippines v. Rafael Ragadio, et al.,"

Petitioners Thelma Piga Beltran and Rafael Beltran are the widow and the father, respectively, of Morie Beltran, the victim of the alleged offense in Criminal Case No. CCC-III-43-Zambales (1006-0). In their petition dated August 14, 1969 and filed on August 19, 1969, they charge the respondent with bias and partiality in favor of the accused and allege, among other things, that the four accused police officers were henchmen of Mayor Leopoldo Rabanes of San Marcelino, Zam-bales, a "compadre" of respondent State Prosecutor Raymundo M. Blanco, who in turn was so close to respondent Judge that his motions and petitions in the case were always sustained to the prejudice of petitioners; that "on or before June 22, 1969 days (sic) of trial" both respondents harassed the government witnesses and scolded them in open court whenever they could not answer questions at once; that the four accused would then join respondent Fiscal in laughing at the witnesses' discomfiture, thereby discouraging other government witnesses from appearing to testify; that in view of the unfavorable court atmosphere, where government witnesses "were laughed at, harassed and pestered, filed a formal complaint with the Secretary of Justice against respondent Fiscal on June 22, 1969; that before the criminal case was called for hearing on July 10, 1969, respondent Judge confronted petitioner Thelma Piga Beltran and asked her why her lawyer, Atty. David Advincula, Jr., filed a complaint against the Fiscal and warned her as follows: "if your lawyer cannot prove his complaint he will see what will happen and worse might happen to him; " that without any formal investigation, the Department of Justice dismissed petitioners' complaint against respondent Fiscal for lack of merit; 'that with the dismissal of said complaint, respondent Judge became more "ferocious in abusing the petitioners and their government witnesses," compelling petitioners to file a petition dated July 21, 1969 asking respondent Judge to inhibit himself from hearing the case, but in a Judge to facilitate the acquittal of the four (4) accused police officers," the petition was denied in an order dated July 31, 1969; that in retaliation respondent Judge on the same date issued an order of arrest against them and the government witnesses at the behest of respondent Fiscal; that petitioners and the government witnesses were "being hunted and arrested" such that the residents of San Marcelino, Zambales were surprised why they were the first ones who would go to jail instead of the four accused police officers; that the accused openly bragged that as long as respondents were handling the criminal

case they were certain of acquittal; that respondent Fiscal always "barks inside the courtroom against the petitioners" and the government witnesses and always threatens them with arrest; that Mayor Leopoldo Rabanes had threatened prosecution witness Manuel Laureta with death, according to the latter's testimony in court, but respondents did not order the arrest of the Mayor, which "proved that respondent(s) want to gun down petitioners and their witnesses in order that the homicide case be dismissed"; that Isabelo Rabadon, one of the prosecution witnesses ordered arrested by respondent Judge, when asked to explain his failure to appear, alleged that "Mayor Rabanes of San Marcelino, Zambales told him not to appear," but in spite of said testimony respondent Fiscal did not move for the arrest of the Mayor nor did the respondent Judge take any action; that the foregoing circumstances, taken together, proved that said respondents had conspired and agreed with Mayor Leopoldo Rabanes to harass petitioners and their witnesses in order that the four (4) accused police officers would be acquitted; and that petitioners had exhausted "all available extra-judicial remedies to disqualify" respondents from proceeding with the trial of the criminal case but to no avail.

In a resolution dated August 21, 1969, this Court ordered respondents to answer the petition and restrained them from further proceeding with the hearing in Criminal Case No. CCC-III-43-Zambales (1006-0).

In their Answer, respondents deny the charges of bias and partiality, misbehavior and lack of proper court decorum; and allege that there was no ground for respondent Judge to disqualify himself from hearing the case, and that the order of arrest dated July 31, 1969 was a necessary and legitimate court process to compel the attendance of prosecution witnesses who had failed to appear on the date of the trial.

Petitioners filed a reply; making further averments of fact to show that respondents were biased and partial in favor of the accused in the criminal case.

Upon motion of respondents and with the conformity of petitioners this Court appointed a Commissioner to receive the evidence. On July 30, 1971 the Commissioner submitted his report.

In resolving the issue of bias and partiality, it is necessary to state certain relevant facts and proceedings in connection with Criminal Case No. CCC--III-43-Zambales (1006-0), based on the evidence presented to the Commissioner, to wit:

On November 13, 1967 Morie Beltran, the victim of the alleged offense, was fatally shot. His widow, Thelma Piga Beltran, believed that the killing was politically motivated, the Pigas of San Marcelino, Zambales, being supporters of the political rival of Mayor Leopoldo Rabanes.

The PC authorities investigated the incident. On November 21, 1967 PC Lt. Roberto A. Ambrocio filed a complaint in the Office of the Provincial Fiscal in Olongapo City, charging the Chief of Police and seven (7) members of the police force of San Marcelino, Zambales, in connection with the killing. With Atty. Natalio Beltran as private prosecutor, the preliminary investigation was conducted by Second Assistant Provincial Fiscal David Rosete. After more than ten (10) months, or on October 2, 1968, Fiscal Rosete filed the corresponding information for homicide against Police Chief Rafael Ragadio, Pat. Ricardo Raguine, Pat. Cecilio Javier, and Pat. Francisco Jalasco in the Court of First Instance of Zambales Branch I, presided then by Judge Manuel Pamaran and later on by Judge Numeriano Estenzo. On October 14, 1968 Atty. Natalio Beltran formally entered his appearance as private prosecutor.

On February 17, 1969 the homicide case, together with several other cases, was transferred to the Criminal Circuit Court for the Third Judicial District, presided by respondent Judge. The accused were immediately arraigned on February 20, 1969 and with the assistance of their counsel, Atty. Valeriano S. Peralta, they entered the plea of "not guilty". By agreement of the parties the trial of the case was set for March 18, 19, 24 and 25.

On March 6, 1969 the records of Fiscal Rosete were forwarded to respondent Fiscal. The latter discovered that:

- "(a) the accused committed the offense in conspiracy 'with others who are still unidentifed';
- (b) there is not even a copy of the autopsy report on the deceased victim Mauro Beltran, and the physician who conducted the autopsy is not even listed as a prosecution witness;
- (c) the information makes mention of another injured victim, Vil-lamor de la Cruz, who is not even listed as a prosecution witness nor does it appear that he was ever investigated in connection with the case;
- (d) there are no paraffin test reports which the PC investigator agreed to produce during the preliminary investigation and their actual production appear not to have been pursued;
- (e) there are no exhibit-firearms used in the commission of the crime, and no empty cartridges/ shells were recovered at the scene of the crime, although it appears that the accused were in company with (5) PC soldiers who were admittedly armed with carbines and garand rifles."

On March 18, 1969, when the case was called for hearing, Atty. Peralta manifested that he had just learned that morning that as a member of the Provincial Board he was prohibited under the Decentralization Law from appearing as counsel for the accused police officers. He therefore asked for deferment of the hearing and informed the Court that he would request one Atty. Cardenas to appear for the defense. Respondent Judge remarked that the postponement might delay the early disposition of the case, whereupon respondent Fiscal manifested that after going over the evidence the prosecution had on hand he thought he would need time to reinvestigate the case. Respondent Judge decided to call the case in the afternoon.

When the case was called again, respondent Fiscal said that he was joining the defense in its motion for postponement so that he would have time to reinvestigate the case. Atty. Cardenas, who appeared for the defense, then manifested that he was not prepared for trial and that he had requested the Fiscal to join him in his motion for postponement, adding "that a reinvestigation of this case x x x would probably change the situation as far as my clients are concerned." After ascertaining the number of witnesses to be presented by both parties, respondent Judge postponed the hearing of the case until the next session of the Court in Zambales sometime in the second half of May or June.

On June 16, 1969 Atty. David R. Advincula, Jr. filed a "Notice of Appearance as Principal Counsel in behalf of the Offended Party."

When the case was called for hearing on the following day, June 17, Atty. Advincula, Jr. entered his appearance "as private prosecutor in collaboration with the Fiscal." Having noted the absence of the defense counsel, respondent Judge inquired from the accused as to what happened to their lawyers. Accused Ragadio replied that they had decided the day before to change their attorneys of record with another counsel in the person of Atty. Samuel B. Farrales. Thereafter the following dialogue between the Court and accused Ragadio took place:

"Q. Why did you not get your lawyer right away? Is that one way of delaying this case?

A. No, your Honor.

Q. Since when has this case been pending before this Court?

A. The information was filed on October 2, 1968, your Honor.

The Court then asked the Fiscal if he was ready with his witnesses. Answering in the affirmative, the latter further manifested:

"x x x. I would like to inform the Court that last March 18, 1969, I started conducting the reinvestigation of

this case because there are facts and circumstances that I would like to clarify before proceeding in the further pro-secution of this case. Since it hap-pened to be the last days of our stay in Olongapo City, I was not able to terminate the same. Now that we are here, I intend to terminate said re-investigation in order to ascertain the facts, which to me, are all material in the prosecution of this case... and considering further that the crime charged is serious, I would like to be sure of my stand."

The Fiscal intimated that he needed at least two weeks to finish the reinvestigation. After being assured by accused Ragadio that their lawyer would be ready on July 10, 1969, the Court set the case for trial on that date.

On June 22, 1969 private prosecutor David R. Advincula, Jr. filed a letter-complaint with the Secretary of Justice seeking the relief of District State Prosecu-tor Raymundo M. Blanco as prosecutor of the homicide case on the following grounds:

1. That despite the fact that the four accused policemen had been arraigned already for homicide on an information filed by Assistant Fiscal Rosete, the state prosecutor at his own behest con-ducted a re-investigation of the case and had been making comment that there was no prima facie evidence against the accused and that the case should have not reached the court.
2. That the case could not be tried because of too much technicalities on the part of State Prosecutor Blanco, thus helping much the defense.
3. That the State Prosecutor Blanco is a "compadre" of Mayor Leopoldo Rabanes of San Marcelino, Zambales.
4. That there was a tendency on the part of State Prosecutor Blanco to whitewash the case.

In view of the aforesaid complaint private prosecutor Advincula filed a pleading styled as "Motion to Adjust Date of Hearing," asking for postponement "until the Department of Justice can designate a new prosecutor."

When the case was called for hearing on July 10, 1969 the Court called the attention of the State Prosecutor to the motion of Atty. Advincula asking for the postponement of the hearing. When asked to comment, the State Prosecutor vigorously objected to said motion, thus:

"I vigorously object to the said motion, your Honor, because my duty as District State Prosecutor is to pro-secute cases specially assigned before this Court, regardless of whoever the parties are, and regardless of whatever kind of complaint the lawyer may have lodged against me with the Department of Justice - much less the administra-tive complaint, until I am legally re-lieved to prosecute this case; although, personally, your Honor, I feel that this private prosecutor might have certain reasons of his own in asking for the postponement."

The new defense counsel, Atty. Farrales, also asked the Court to set the case for hearing on another date because he was not yet prepared. Then the following dialogue took place:

COURT:

Now, if this case is set for another date, will you be ready by then?

ATTY. FARRALES:

Yes, your Honor. I need at least two (2) weeks time.

COURT:

Because the Court does not like to (see) this case pending indefinitely. This case, according to the records, was filed last September, 1968 and it has been pending for more than a year now and the trial has not yet begun.

And now, there is the motion asking for the indefinite postponement of the hearing of this case. The Court

views this motion in a different way, because as long as there is a public prosecutor, this Court will proceed with the trial of this case; unless, of course, if the private prosecutor has cogent reasons to disregard the public pro-secutor or the District State Pro-secutor.

So you will be ready by next week?

ATTY. FARRALES:

Yes, Your Honor.

COURT:

Are the offended parties here?

FISCAL BLANCO:

Mrs. Beltran is here, your Honor.

COURT (to Mrs. Beltran):

Are you the widow?

MRS. BELTRAN:

Yes, sir.

COURT:

The Court would like to tell you that regardless of the fact that you have your own private counsel, it is the desire of the Court to have your case tried immediately, especially you are the offended party, because there is a public prosecutor or fiscal who can pro-secute the case for you.

Do you have any idea when your counsel will be ready? The Court would like to emphasize upon you, being the offended party, that as much as possible, I want to dispose this case immediately.

Because the nature of the motion of your counsel does not even spe-cify any date when the case will be heard, and the Court will not leave the dates of hearing at the disposition of the parties.

Escribano, will you check up in the calendar the available date next week for this case.

ATTY. PREGRINO:

July 31st, your Honor.

ATTY. FARRALES:

Then we can have this case set for successive dates so that we can finish this case, your Honor.

x x x x x x x x

COURT: (to the Widow, Mrs. Beltran):

Will you inform the Court whether your lawyer, Atty. Advincula, will be available on the 31st of this month?

The Court would like to finish your case as soon as possible, and the Court believes that that is also your desire; but your lawyer's desires, maybe, otherwise.

MRS. BELTRAN:

May be, sir.

COURT:

We cannot let the disposition of this case on the wishes of one party only; we have to observe also the rights of the other party.

So, we will schedule this case on the 31st?

MRS. BELTRAN:

Yes, sir.

Thereupon, the Court dictated the following order:

"When this case was called for hearing, the District State Prosecutor called the attention of the Court to the motion filed by the private prosecutor, Atty. David R. Advincula, attached to the records, for postponement of the hearing of this case until such time when his complaint for re-lief of the prosecuting fiscal with the Department of Justice is resolved, to which motion the District State Prosecutor vigorously objected. On the other hand, defense counsel, Atty. Samuel Farrales, manifested that his services were just retained by the accused and he would need sometime within which to go over the re-cords before he could enter into trial.

"The Court believes that the prayer for indefinite postponement of the hearing of this case will unduly delay disposition of this case, and in case the party concerned shall not be able to secure the remedy sought in his pleadings the hearing on this case shall continue as scheduled herein. However, to afford the parties time to work out their respective positions, the trial of this case is set on July 31, 1969 and August 1, 1969, at 8:30 o'clock in the morning, August 4, 1969 at 2:30 o'clock in the afternoon, and August 5, 1969."

Having failed to obtain an indefinite postpone-ment of the hearing, private prosecutor Advincula filed a motion dated July 21, 1969, asking the presiding Judge to inhibit himself from conducting the trial. In an order dictated in open court on July 31, 1969, the Court denied the motion for lack of merit, thus:

"For resolution is the petition of Private Prosecutor Atty. David Advincula for inhibition on the ground that the Court had scheduled the trial of this case on July 31, August 1, 4 and 5, 1969, even before said Private Prosecutor could work out with the Department of Justice his position in relation to his complaint for the relief of the District State Prosecutor. Finding the grounds alleged in the petition not to be a just and valid reason for inhibition in accordance with the provisions of Rule 137 of the Rules of Court, the same, for lack of merit, is hereby denied; the trial of this case shall continue as scheduled even as the defense counsel insisted on an early trial for his clients.

"There is nothing in the Order of this Court, dated July 10, 1969, that upholds the position of the District State Prosecutor, and as decreed there-in 'the Court believes that the prayer for indefinite postponement of the hear-ing of this case(as prayed for by the private prosecutor) will unduly delay disposition of this case, and in case the party concerned shall not be able to secure the remedy sought in his pleadings the hearing of this case shall continue as scheduled therein,. Verily, as manifested by the District State Prosecutor, the Department of Justice, in a letter to Atty. Advincula, dated July 17, 1969, copy of which is asked to be attached to the records of the case, dismissed the complaint for lack of merit. The Court is not concerned with who prosecutes this case as long as delay is avoided, it appearing that this case has been pending since Septem-ber 30, 1968 and the accused, who are all members of the police department of San Marcelino, are under suspension from October 2, 1968 up to the present time, and there are only three remaining policemen doing police duty in said municipality."

During the hearing on July 31, 1969 the prosecution presented Isabelita P. Espiritu, former NBI Ballistician, and Dr. Servando Gutierrez, the physician who performed the autopsy of the victim. After Dr. Gutierrez had tes-tified, the Court called for the next witness. Whereupon, the Fiscal made the following manifestation:

"Your Honor please, the private pro-secutor had been trying to look for the other witnesses who he said were in Court earlier before the hearing this morning but they were not around according to him. I even called out the names of these witnesses but they were not here except Miss Espiritu and Dr. Gutierrez who came later. In view of this development, I will be constrained to move for their arrest."

After some inquiries, the Court issued the following order:

"In view of the absence of the pro-secution witnesses namely, PC Sergeants Orlando Acierto, Isabelo Rabadon, Florentino Malinis, and Villamor de la Cruz, Rafael Beltran and Thelma Piga Belgran who, according to the records, were duly notified of the hearing for today, and upon petition of the District State Prosecutor, let a warrant for the arrest of all these witnesses be issued.

"Considering that this case has been previously scheduled for trial on August 1, 4 and 5, 1969, the continuation of the hearing of this case on those dates as previously scheduled shall continue."

The hearing scheduled for August 1, 1969 was cancelled by the trial court in view of the absence of the prosecution witnesses and of Atty. Samuel B. Farrales, counsel for the defense. The latter was cited to explain why he should not be held in contempt of court for his non-appearance.

The hearing set for August 4, 1969 was cancelled by the trial court *motu proprio*.

After the case was called for hearing on August 5, 1969 the trial court immediately asked Atty. Farrales to explain his non-appearance in court on August 1, 1969. Finding the explanation to be satisfactory, the court lifted its order of August 1 against said counsel. At this juncture, Atty. Natalio Beltran asked the court to relieve him as private prosecutor because his clients allegedly failed to pay him and "besides, they have engaged the services of another private prosecutor." Since the motion was without the conformity of his clients who were not yet present at the time, the court denied it.

Sgts. Acierto, Rabadon, and Malinis were also required to explain why they were absent on August 1, 1969. Sgt. Rabadon made the following explanation:

"I was here, sir, downstairs together with Mayor Rabanes from 8:00 to 9:30 o'clock in the morning. But when Mayor Rabanes informed me, after coming up here, that the case was already postponed, I went home already, sir."

The other two PC sergeants also explained their absence to the satisfaction of the presiding Judge. After admonishing all of them to see the Fiscal first before leaving the court whenever they were cited as government witnesses, the trial court lifted the order of arrest against the three PC sergeants.

Sgt. Rabadon was placed on the witness stand during the morning session, but his testimony had to be suspended because the firearm allegedly recovered from the weapons carrier had not been brought to court. Before adjournment Atty. Beltran reiterated his motion to withdraw as private prosecutor, but the trial judge did not act on the motion in view of the manifestation of the victim's widow that she would agree to his withdrawal if the other private prosecutor was available.

The Court then inquired from the Fiscal if he had other witnesses besides the PC troopers. The Fiscal replied that there were other prosecution witnesses, namely, Jose Bacod, Villamor de la Cruz, and Manuel Laureta but they had not appeared yet and intimated that he would be constrained to ask for their arrest. When reminded by the Clerk of Court that there was an order of arrest against the three witnesses, the trial court directed the Clerk to give the warrants of arrest to a certain Sgt. Garcia for the apprehension of said witnesses. At this juncture, the defense counsel moved to dismiss the case for failure to prosecute but was turned down. Then the following dialogue between the trial court and fiscal took place:

COURT:

What is the testimony of the complaining witnesses here about? Is her testimony not yet in order?

I remember that there was a warrant for her arrest.

FISCAL BLANCO:

Yes, your Honor.

COURT:

What are we going to do?

She will be lodged in jail until such time when she will be testifying, because she may not appear in Court again at the next hearing of this case.

FISCAL BLANCO:

For the moment, she will not testify yet; and we ask for the issuance of a subpoena to her, and that the warrant for her arrest be lifted with the promise that she will appear in Court on subsequent hearing of this case.

COURT:

Are you making that assurance to the Court that her appearance will be available...

FISCAL BLANCO:

I might as well confer with her, your Honor.

COURT:

If not, the Court will be constrained to put her in prison.

FISCAL BLANCO:

Yes, your Honor, she will appear on the subsequent hearings of this case. She promised me that she will appear.

COURT:

Motion granted. We will just call this case at 4:00 o'clock this afternoon.

At the resumption of the hearing in the afternoon, private prosecutor Natalio Beltran was allowed to conduct the direct examination of Sgt. Florentino Malinis upon motion of respondent Fiscal. In the course of the examination respondent Judge observed that the witness was getting hostile and he called the attention of both respondent Fiscal and Atty. Beltran to his observation. The Fiscal did not make any counter move, while Atty. Beltran continued with his direct examination.

Before Sgt. Malinis was cross-examined, Atty. Beltran manifested that Rafael Beltran, one of the prosecution witnesses ordered arrested, was ready to explain his non-appearance in court on July 31, 1969. After hearing the explanation, the respondent Judge asked the Fiscal for his comment. Then the following dialogue took place:

FISCAL BLANCO:

May I request, your Honor, that the warrant issued for his arrest be lifted?

COURT:

Is there any assurance to the Court that this witness will come to court to testify, because this Court would not like anymore excuses next time; otherwise, we will incarcerate this witness until such time he can testify.

Upon hearing that Rafael Beltran would testify on the civil aspect of the case only and that the victim was a farmer, respondent Judge remarked that the maximum compensation that could be awarded was P12,000.00, with or without the testimony on said aspect. Atty. Beltran then manifested that since the sum of P12,000.00 as compensation was acceptable to them, he would dispense with the testimony of Rafael Beltran. With the manifestation of the private prosecutor and with the explanation of Rafael Beltran, the court lifted the warrant issued for his arrest.

After the cross-examination of Sgt. Malinis, Atty. Beltran asked for postponement of the hearing on the ground that the other prosecution witnesses were not available. Sustaining the motion, the court reset the hearing for August 18, 1969, thus:

"For lack of material time it being already 6:30 o'clock in the evening, and upon petition of the prosecution on the ground that its witnesses who were ordered arrested have not been apprehended, and upon agreement of the parties, the continuation of the hearing of this case is hereby set at 2:30 o'clock in the afternoon of August 18, 1969 and to continue in the afternoons of the succeeding dates."

At the hearing of this case on August 18, 1969 the prosecution presented only Villamor de la Cruz. After the Fiscal had manifested that for the moment he had no other witness to present, the defense counsel reiterated his motion to dismiss for failure to prosecute but the Court immediately denied it. Before adjourning the session, the Judge warned the Fiscal that the case had been dragging for a long time and that the evidence for the prosecution should have been completed by that time. The Judge further observed that the prosecution witnesses were coming one by one, to which observation the Fiscal readily agreed. The hearing would have been resumed on September 8 and 11, 1969 but for this Court's restraining order of August 22, 1969.

From the foregoing narration of facts the following conclusions may be drawn:

1. The motions or petitions of respondent Fiscal were sustained by respondent Judge because the same were meritorious and not because of the alleged close personal relationship between them.
2. There was no occasion for the two respondents to harass and scold government witnesses "on or before June 22, 1969 days of trial" because the first prosecution witness was presented only on July 31, 1969.
3. The prosecution witnesses who had testified so far were NBI Agent Isabelita Espiritu, Dr. Servando Gutierrez of the Olongapo City General Hospital, Sgts. Rabadon and Malinis of the Philippine Constabulary and Villamor de la Cruz. If those witnesses were "laughed at, harassed and pestered" by respondents, certainly such abusive acts would have elicited a protest from private prosecutor Beltran, who was present in court whenever there was a hearing, but no such protest was made.
5. There is no indication whatsoever that with the dismissal of the complaint against respondent Fiscal, respondent Judge became more against in abusing the petitioners and their witnesses." In their motion asking respondent Judge to inhibit himself from hearing the case, petitioners did not allege that he had abused them or their witnesses.
6. The order of arrest dated July 31, 1969 was a necessary and legitimate court process to compel the attendance of witnesses who had failed to appear on the date of trial despite due notice. It was not a retaliatory move against petitioners. As a matter of fact, not one of the prosecution witnesses was actually arrested and jailed because respondent Judge, upon hearing their explanations readily lifted said order.

7. The allegation that "petitioners, Thelma Piga Beltran, Rafael Beltran, together with government witnesses PC Sergeants Malinis, Villamor and de la Cruz, are being hunted and arrested" is a misrepresentation of fact, since the order of arrest against them was lifted by respondent Judge.

8. The allegation that Manuel Laureta testified in court that Mayor Rabanes had threatened him with death is belied by the fact that said Laureta has not yet testified in the case.

9. The alleged explanation of Sgt. Rabadon to the effect that he failed to appear in court on July 31, 1969 because Mayor Rabanes told him not to appear is not substantiated; hence, there was no basis for any action to be taken against said Mayor.

As observed by the Commissioner appointed by this Court, "the petitioners by their testimonies, have markedly toned down their accusation from one of positive assertion to merely one of suspicion." But mere suspicion that respondents are partial to the accused is not enough. There should be evidence to prove the charge. On this point the Commissioner's findings are as follows:

"With respect to the respondent Judge, x x x the charge of partiality in favor of the accused is not supported by evidence. The orders of postponement were all made either at the instance of the prosecution or without the objection of the prosecution and were deemed necessary in the interest of fairness and justice. In fact, the respondent Judge's interest in the early termination of the case, whatever its outcome, is shown by his repeated warnings to both parties not to delay the case. The order of July 31, 1969 calling the prosecution's attention to the fact that the case be expedited inasmuch as the accused "are under suspension from October 2, 1968 up to the present time, and there are only three remaining policemen doing police duty in said municipality," is not a proof of the respondent Judge's partiality towards the accused but of the Judge's concern that the rights of the accused may be safeguarded. That the Judge was impartial is further shown by the fact that when witness Sgt. Florentino Malinis turned hostile, the respondent immediately called the fiscal's and the private prosecutor's attention to the witness' hostility."

Likewise, there is no truth to the petitioners' accusation of respondent Fiscal's partiality to the accused."

"x x x. The repeated postponements of the case, the re-investigation of the case and the stern warnings given to absent witnesses were all made in the interest of justice. The alleged fraternization by the respondent Fiscal with the accused, x x x, even if true, would only show that the respondent is friendly with the accused and not necessarily partial to them. There is no provision of law that requires the prosecuting Fiscal to be unfriendly with the accused. The constant presence of the Mayor of San Marcelino at the hearings of the case and the amicable relationship between the Mayor and the respondents, even if true, are no proof of the alleged conspiracy existing between the Mayor and the respondents to exonerate the accused. The questionable order of arrest of petitioners may have been a cause of embarrassment for petitioners and a source for jubilation of the accused but it certainly is not conclusive proof of respondents' partiality towards the accused. The portion for the order of arrest, the threats to put petitioners in jail and the passive attitude shown by respondent Fiscal when a prosecution witness turned hostile could be attributed to the hurt feelings of the Fiscal as a result of the complaint filed against him by the petitioners with the Department of Justice. Such conduct, on the part of the Fiscal, though censurable could perhaps be understandable in the light of the Fiscal's frustrations and difficulties in prosecuting the case due to lack of cooperation of the investigating authorities and the belligerent attitude of petitioners themselves and Private Prosecutor David Advincula." (Commissioner's Report, pp. 41-42).

We find the foregoing findings of the Commissioner to be substantiated by the evidence presented in the investigation he conducted.

Wherefore, the petition is hereby dismissed and the temporary restraining order issued by this Court is lifted, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Fernando, and Makasiar, JJ., concur in this opinion and that of Justice Teehankee.

Zaldivar, Castro, Barredo, and Villamor, JJ., concur.

Teehankee, J., concurs in a separate opinion.

[1] Order of arrest of prosecution witnesses, including petitioners.

[2] Order postponing the hearing of the case in view of the failure to apprehend the prosecution witnesses who were ordered arrested.

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CONCURRING OPINION

TEEHANKEE, J.:

This case should impress upon respondents the intangible imperatives of not only being actually impartial but also maintaining the appearance of strict impartiality, so as not to arouse needlessly the suspicions of either of the parties, as in the case of herein petitioners.

While bias and prejudice are not to be presumed especially if weighed against a judge's sacred obligation under his oath of office to administer justice without respect to person,[1] the Court has at the same time admonished judges to so conduct themselves and exercise their discretion in a way that the people's and litigants' "all-important confidence in the impartiality of the judiciary" is ever nurtured and upheld.[2]

Considering that the killing was believed to be politically motivated, petitioner-widow of the deceased victim and her family being supporters of the political rival of the mayor of San Marcelino, Zambales, whose four police officers are accused in the case of having gunned down the victim, petitioners had reason to be apprehensive about the mayor's constant presence at the hearings and his "amicable relationship" with respondents.[3] Under such circumstances, their apprehension was justifiably heightened by respondent judge's order for the arrest of petitioners and the prosecution witnesses, which was "a cause for embarrassment" for them and a "source of jubilation for the accused,"[4] when an admonition to them that their non-appearance at the continuation might cause dismissal of the case might have served as well.

Respondent fiscal's seeming zeal in the prosecution of the case to the extent of securing the respondent court's order for the arrest of the offended party and the prosecution witnesses is not borne out by the Court's commissioner's report to the effect that "the motion for the order of arrest, the threats to put petitioners in jail and the passive attitude shown by respondent fiscal when a prosecution witness turned hostile could be attributed to the hurt feelings of the fiscal as a result of the complaint filed against him by the petitioners with the Department of Justice." Under these circumstances and "the alleged fraternization by respondent fiscal with the accused,"[5] I believe that petitioners' recourse properly lies in going back to the Department of Justice and requesting the designation of another prosecutor vice respondent fiscal to handle the prosecution of the criminal case below.

[1] *Arteche vs. de la Rosa*, 58 Phil. 589.

[2] Luque vs. Kayanan, 29 SCRA 165; Pimentel vs. Salanga, 21 SCRA 160.

[3] Commissioner's report, cited at p. 18 of the main opinion.

[4] Idem.

[5] Idem.

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