

RESTITUTO BINABAY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HONORABLE HERMINIO C. MARIANO, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH X, RESPONDENTS.

G.R. No. L-31008. January 30, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is an original action for certiorari and prohibition, with preliminary injunction, to restrain respondent Honorable Herminio C. Mariano, as Presiding Judge of the Court of First Instance, Rizal, Branch X, from conducting further proceedings in Criminal Case No. 19503 of said court, entitled "People of the Philippines vs. Restituto Binabay." Soon after the filing of the petition, We issued the temporary restraining order prayed for.

As the defendant in said case, petitioner Restituto Binabay is charged therein with serious illegal detention, committed, according to the information, dated June 28, 1969, as follows:

"That on or about the 26th day of June, 1969, in Fort Bonifacio, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a private individual (without justifiable ground or reason and by means of force and intimidation) did, then and there wilfully, unlawfully and feloniously kidnap and illegally detain one Georgie Malongat, a child one and a half years of age, (by then and there taking and carrying him away from his parents against his will and consent,) depriving him of his liberty for about seven (7) hours."

The information was amended on July 3, 1969 to allege:

"That on or about the 26th day of June, 1969, in Ft. Bonifacio, Municipality of Makati, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, private individual, did, then and there willfully, unlawfully and feloniously kidnap, with threats to kill, Georgie Malongat, a minor, for purpose of separating said child from his parents, detaining said minor for a period of seven (7) hours."

When the case was called for hearing on August 27, 1969, counsel for the petitioner stated that he wished "to make representations" to the Court; that he was "willing to plead guilty to a lesser offense"; and that he "invoked" or pleaded that a "lighter penalty" than that prescribed by law for the offense charged be imposed. The Court then went into a consideration of the imposable penalty, mentioning, in connection therewith, certain details - presumably supplied by the parties - having a bearing on the circumstance surrounding the commission of said offense. Defense counsel and the private prosecutor, as well as the father of the kidnapped child and petitioner herein, like-wise, made some statements. Thereafter, petitioner's counsel said:

"At the arraignment of this case, the accused pleaded Not Guilty, to the crime charged. After clarification of the facts of this case and admissions made by defense counsel in behalf of the accused and also admissions of facts relevant to this case made by the prosecution, it is my duty to enter a plea of Guilty after making the accused realize and appreciate the consequences of such an act. We, however, throw the fate of the accused to

the leniency of the Court and request the Court for an appreciation of the mitigating circumstances of plea of guilty and the provisions of the last paragraph of Article 268 of the Revised Penal Code."

Thereafter, petitioner was "rearraigned." Then, the Branch Clerk of Court stated: "Accused enters the plea of guilty to the lesser offense," without specifying the same. This was followed by further statements of fact made by the Assistant Fiscal, the private prosecutor and the defense counsel. There-upon, respondent Judge orally announced that he had found petitioner herein guilty of "the crime of serious illegal detention described under Art. 267 of the Revised Penal Code in relation to the third paragraph of Art. 268" of the same Code and that, considering, inter alia, the mitigating circumstance of plea of guilty, the penalty imposed upon him was an indeterminate sentence ranging from two (2) years, four (4) months and one (1) day of prision correccional to seven (7) years and four (4) months of prision mayor, "to pay a fine of P500, without subsidiary imprisonment in case of insolvency, and to pay the costs."

When the judgment was being put in writing, immediately thereafter, respondent Judge noticed that petitioner had been inadvertently "rearraigned under the original information, dated June 28, 1969, to which he pleaded guilty, not under the amended information, dated July 3, 1969." Hence, respondent Judge forth-with issued an order, dated August 27, 1969, setting aside the proceedings held that morning and declaring the same "null and void," at the same time setting the case for arraignment (presumably under the amended information) on September 8, 1969 at 8:30 a.m. On the date last mentioned, petitioner's counsel filed an "urgent motion" praying that the arraignment be held at 10:00 a.m. instead of 8:30 a.m. Petitioner was actually rearraigned, under the amended information, on September 9, 1969. He then entered a plea of not guilty, and the case was set for trial on September 29, 1969.

Prior thereto, or on September 24, 1969, petitioner, however, commenced the present action against the People of the Philippines and respondent Judge, to restrain the latter from conducting any further proceedings in said criminal case, alleging that the same would place him twice in jeopardy of punishment for the same offense, upon the ground that the judgment orally given on August 27, 1969 had become final and executory, he having allegedly begun to serve his sentence immediately thereafter.

Petitioner's claim is devoid of merit. To begin with, he did not set it up in the lower court. Besides, petitioner was a detention prisoner since June 28, 1969. From the court room, he was brought back to the provincial jail in Pasig, Rizal, on August 27, 1969, as such detention prisoner, not to serve his sentence. He did not and could not have begun to serve the aforementioned sentence, no order of commitment having been issued therefor. And no such order could have been issued for no written judgment had ever been rendered. Pursuant to Rule 120, section 2, of the Rules of Court, "the judgment must be written x x x personally and directly prepared by the Judge and signed by him x x x." Indeed, when respondent Judge was about to comply with this provision, he found out that petitioner had inadvertently been rearraigned under the original information, despite the fact that, since July 3, 1969, it had been superseded by the amended information, so that the original information was, on August 27, 1969, legally non-existent. As a consequence, the arraignment under such original information and petitioner's plea to the charge therein set forth were properly declared null and void, and no valid judgment could have been rendered in the case, on August 27, 1969. Again, the plea of not guilty entered by the petitioner, on September 9, 1969, upon arraignment under the amended information, amounted to a waiver of "all objections which are grounds for a motion to quash," one of which is that of former jeopardy.[1]

The present case is, accordingly, dismissed and the restraining order issued on September 29, 1969, hereby dissolved and set aside, with costs against petitioner, Restituto Binabay.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Makalintal and Makasiar, JJ., did not take part.

[1] Rule 117, sections 2(h) & 10, Rules of Court.

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