

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIPE MALUNSING, ET AL., DEFENDANTS, MANUEL VILLEGAS,
DEFENDANT-APPELLANT.**

G.R. No. L-29015. April 29, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

It was the failure of the lower court to respect the constitutional right to counsel,[1] so it is alleged, that is the basis for seeking the reversal of a conviction for murder of appellant Manuel Villegas.[2] There is more than ample support in the records for the charge thus hurled. As therein shown, Attorney Geronimo Pajarito explicitly manifested in the opening of the trial that appellant intimated to him that he had his own lawyer.[3] There was an admission that he did appear for him in the preliminary investigation but only because there was no other counsel.[4] Parenthetically, it may be observed that while in the original complaint there were two other accused with the same surname as the lawyer, Geremias Pajarito and Samuel Pajarito, after such preliminary investigation, no doubt due to the efforts of this particular lawyer, possibly a kinsman, they "were both discharged for lack of probable cause." [5] To resume, the lower court at this stage then asked whether the appellant notified Attorney Pajarito about his change of mind. When he answered in the negative, the Court stated: "All right, you have a lawyer who is appearing for you." [6] It is to the credit of such counsel that he had reservations about the matter, stating that as the accused had manifested that he had dispensed with his services, his representation might later on be questioned. [7] The court was not sufficiently impressed. Appellant was informed that "the Court will give you a lawyer. Atty. Pajarito is appointed as counsel de oficio for you. We will proceed with the trial." [8] After marking it of record that he was appointed as such counsel de oficio, the attorney was asked whether he wanted to confer with appellant. This was the answer: "I think I know the case." [9] The Court then immediately proceeded with the hearing, having the first witness called. [10] In the decision itself, there is this meaningful admission by the court: "No evidence was presented for and in behalf of Manuel Villegas." [11]

This is how the matter was characterized in the brief of appellant: "The prosecution during the trial presented its witnesses, and likewise all the defendants, * * * except the appellant Manuel Villegas, took the witness stand and testified for and in their defense. The appellant is a very old man, ignorant and unlettered; during the entire proceedings in the case, the appellant while present did not know what was going on; the trial court never apprised the appellant of his fundamental right to be assisted by a lawyer; the trial court did not even bother inquiring why the appellant Manuel Villegas did not take the witness stand, [something out of the ordinary as] all defendants, except the appellant, had testified; and the trial court went on throughout the proceedings of the case without knowing why the appellant did not testify, that if the appellant testified what would his testimony be like, what would be his demeanor during his testimony, * * *." [12] Hence, his insistence that no deference was shown to the constitutional right to counsel. We are inclined to agree and we reverse. Considering, however, the gravity of the offense charged, instead of an acquittal, there should be a new trial with all the safeguards thrown around an accused.

1. That would be to vindicate a fundamental safeguard which in this case, perhaps from a desire of the lower court to proceed with the trial and thus ease what could be a congestion in its sala, was inadvertently disregarded. It is not enough that a counsel de oficio was appointed, especially so as here, where the accused had indicated that he wanted a lawyer of his choice, a decision prompted moreover by the fact that he had lost confidence in the member of the bar thus designated. Nor is it to manifest respect for this right if the counsel de oficio thus named, instead of conferring with the accused, would just blithely inform the judge that he was already fully prepared for his exacting responsibility. It was unintended, of course, but the result could not rightly be distinguished from pure travesty. Appellant could then rightfully invoke this constitutional guarantee. Inasmuch as it is intended to assure a just and fair proceeding, he is entitled at the most to a new trial where he can be duly represented either by a counsel of his choice or by one appointed de oficio, one who would discharge his task in a much more diligent and conscientious manner and would not readily assume that he need not bother himself unduly with familiarizing himself further with all aspects of the case. For only in such a way may there be an intelligent defense. If the matter be viewed thus, there is no unfairness to the state either. It can still see to it that a person against whom a probable cause had been found would have to stand trial, but, to repeat, with all the constitutional safeguards.

2. It would not be amiss to refer to the opinion of Chief Justice Moran in *People v. Holgado*,^[13] where the importance of this right was stressed. Thus: "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 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. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the Court to apprise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one de oficio for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own."^[14] There are a number of American Supreme Court decisions to the same effect. In one of them, *William v. Kaiser*, Justice Douglas succinctly summed up the matter thus: "[The accused] needs the aid of counsel lest he be the victim of overzealous prosecutors, of the law's complexity, or of his own ignorance or bewilderment."^[15]

What is more, it is one of the worthwhile innovations of the present Constitution that even at the stage of custodial interrogation when the police agencies are investigating a man's possible connection with a crime, he is already entitled to counsel.^[16] In a true sense, that is merely to underscore the historical fact that even under the organic acts^[17] prior to the 1935 Constitution, there was an awareness of the importance of the right to counsel.^[18] This is not of course to assert that this Court in the past had invariably accorded it an interpretation favorable to the stand of an accused. Thus in *United States v. Labial*,^[19] a 1914 decision, it was held that the failure of the record to disclose affirmatively that the trial judge advised the accused of their right to counsel is not sufficient ground for the reversal of a conviction. When *Labial* was affirmed in *United States v. Escalante*,^[20] decided in 1917, Justice Malcolm was moved to file a vigorous dissent. It suffices to recall his conformity to the view of Cooley that this is "perhaps the privilege most important to the person accused of crime."^[21] It is in that spirit, or something akin to it, that the framers of the 1935 Constitution approached the subject. Of even greater relevance is the fact that the present fundamental law has, as above indicated, vitalized still further its worth and significance.

WHEREFORE, the lower court decision of December 4, 1967 insofar as it found Manuel Villegas guilty of the crime of murder is reversed and a new trial ordered forthwith for such accused. This decision is immediately

executory. No costs.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Article III, Section 1, par. 17 of the 1935 Constitution, The applicable provision at the time of the hearing, insofar as pertinent reads: "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, * * *."

[2] He was accused along with a certain Felipe Malunsing and Alfredo Rivera.

[3] T.s.n., Session of December 21, 1965, 2.

[4] Ibid.

[5] Decision, Appendix to Brief for Appellant, 1.

[6] T.s.n., Session of December 21, 1965, 2.

[7] Ibid, 3.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Decision, Appendix to Brief for Appellant, 3.

[12] Brief for the Defendant-Appellant, 2.

[13] 85 Phil. 752 (1950). Before this leading case, the following decisions may be noted: People v. Cachero, 73 Phil. 426 (1941); People v. Miranda, 78 Phil. 418 (1947); People v. Prieto, 80 Phil. 138 (1948); and People v. Silerio, 81 Phil. 124 (1948).

[14] Ibid, 756-757. Cf. Montilla v. Sullano, 89 Phil. 434 (1951); People v. Nabaluna, 101 Phil. 402 (1957); and People v. Espejo, L-27708, Dec. 19, 1970, 36 SCRA 400.

[15] 323 US 471 (1945).

[16] According to Article IV, Section 20 of the Constitution insofar as relevant: "Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence." Cf. Magtoto v. Manguera, L-37201-02, March 3, 1975.

[17] Cf. The Philippine Bill, Section 5 (1902) and the Philippine Autonomy Act, Section 3 (1916).

[18] Cf. U.S. v. Gimeno, 1 Phil. 236 (1902); U.S. v. Santos, 4 Phil. 419 (1905); U.S. v. Palisoc, 4 Phil. 207 (1905); U.S. v. Bacarrisas, 6 Phil. 539 (1906); U.S. v. Capa, 19 Phil. 125 (1911); U.S. v. Go Leng, 21 Phil. 420 (1912); U.S. v. Laranja, 21 Phil. 500 (1912); U.S. v. Ramirez, 26 Phil. 616 (1914) U.S. v. Labial, 27 Phil. 82 (1914); U.S. v. Custan, 28 Phil. 19 (1914); U.S. v. Kilayko, 31 Phil. 371 (1915); Tamayo v. Gsell, 35 Phil. 953 (1916); U.S. v. Escalante, 36 Phil. 743 (1917); People v. Abuyen, 52 Phil. 722 (1929); People v. Del Rosario, 56 Phil. 796 (1931); Chua Go v. Collector of Customs, 59 Phil. 523 (1934).

[19] 27 Phil. 82.

[20] 36 Phil. 743.

[21] Ibid, 747.

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