

ARSENIO PASCUAL, JR., PETITIONER-APPELLEE, VS. BOARD OF MEDICAL EXAMINERS, RESPONDENT-APPELLANT, SALVADOR GATBONTON AND ENRIQUETA GATBONTON, INTERVENORS-APPELLANTS.

G.R. No. L-25018. May 26, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

The broad, all-embracing sweep of the self-incrimination clause,[1] whenever appropriately invoked, has been accorded due recognition by this Court ever since the adoption of the Constitution.[2] *Bermudez v. Castillo*,[3] decided in 1937, was quite categorical. As we there stated: "This Court is of the opinion that in order that the constitutional provision under consideration may prove to be a real protection and not a dead letter, it must be given a liberal and broad interpretation favorable to the person invoking it." As phrased by Justice Laurel in his concurring opinion: "The provision, as doubtless it was de-signed, would be construed with the utmost liberality in favor of the right of the individual intended to be served." [4]

Even more relevant, considering the precise point at issue, is the recent case of *Cabal v. Kapunan*,[5] where it was held that a respondent in an administrative proceeding under the Anti-Graft Law[6] cannot be required to take the witness stand at the instance of the complainant. So it must be in this case, where petitioner was sustained by the lower court in his plea that he could not be compelled to be the first witness of the complainants, he being the party proceeded against in an administrative charge for malpractice. That was a correct decision; we affirm it on appeal.

Arsenio Pascual, Jr., petitioner-appellee, filed on February 1, 1965 with the Court of First Instance of Manila an action for prohibition with prayer for preliminary injunction against the Board of Medical Examiners, now respondent-appellant. It was alleged therein that at the initial hearing of an administrative case[7] for alleged immorality, counsel for complainants announced that he would present as his first witness herein petitioner-appellee, who was the respondent in such malpractice charge. Thereupon, petitioner-appellee, through counsel, made of record his objection, relying on the constitutional right to be exempt from being a witness against himself. Respondent-appellant, the Board of Examiners, took note of such a plea, at the same time stating that at the next scheduled hearing, on February 12, 1965, petitioner-appellee would be called upon to testify as such witness, unless in the meantime he could secure a restraining order from a competent authority.

Petitioner-appellee then alleged that in thus ruling to compel him to take the witness stand, the Board of Examiners was guilty, at the very least, of grave abuse of discretion for failure to respect the constitutional right against self-incrimination, the administrative proceeding against him, which could result in forfeiture or loss of a privilege, being quasi-criminal in character. With his assertion that he was entitled to the relief demanded consisting of perpetually restraining the respondent Board from compelling him to testify as witness for his adversary and his readiness or his willingness to put a bond, he prayed for a writ of preliminary injunction and

after a hearing or trial, for a writ of prohibition.

On February 9, 1965, the lower court ordered that a writ of preliminary injunction issue against the respondent Board commanding it to refrain from hearing or further proceeding with such an administrative case, to await the judicial disposition of the matter upon petitioner-appellee posting a bond in the amount of P500.00.

The answer of respondent Board, while admitting the facts stressed that it could call petitioner-appellee to the witness stand and interrogate him, the right against self-incrimination being available only when a question calling for an incriminating answer is asked of a witness. It further elaborated the matter in the affirmative defenses interposed, stating that petitioner-appellee's remedy is to object once he is in the witness stand, for respondent "a plain, speedy and adequate remedy in the ordinary course of law," precluding the issuance of the relief sought. Respondent Board, therefore, denied that it acted with grave abuse of discretion.

There was a motion for intervention by Salvador Gatbonton and Enriqueta Gatbonton, the complainants in the administrative case for malpractice against petitioner-appellee, asking that they be allowed to file an answer as intervenors. Such a motion was granted and an answer in intervention was duly filed by them on March 23, 1965 sustaining the power of respondent Board, which for them is limited to compelling the witness to take the stand, to be distinguished, in their opinion, from the power to compel a witness to incriminate himself. They likewise alleged that the right against self-incrimination cannot be availed of in an administrative hearing.

A decision was rendered by the lower court on August 2, 1965, finding the claim of petitioner-appellee to be well-founded and prohibiting respondent Board "from compelling the petitioner to act and testify as a witness for the complainant in said investigation without his consent and against himself." Hence this appeal both by respondent Board and intervenors, the Gatbontons. As noted at the outset, we find for the petitioner-appellee.

1. We affirm the lower court decision on appeal as it does manifest fealty to the principle announced by us in *Cabal v. Kapunan*.^[8] In that proceeding for certiorari and prohibition to annul an order of Judge Kapunan, it appeared that an administrative charge for unexplained wealth having been filed against petitioner under the Anti-Graft Act,^[9] the complainant requested the investigating committee that petitioner be ordered to take the witness stand, which request was granted. Upon petitioner's refusal to be sworn as such witness, a charge for contempt was filed against him in the sala of respondent Judge. He filed a motion to quash and upon its denial, he initiated this proceeding. We found for the petitioner in accordance with the well-settled principle that "the accused in a criminal case may refuse, not only to answer incriminatory questions, but, also, to take the witness stand."

It was noted in the opinion penned by the present Chief Justice that while the matter referred to an administrative charge of unexplained wealth, with the Anti-Graft Act authorizing the forfeiture of whatever property a public officer or employee may acquire, manifestly out of proportion to his salary and his other lawful income, there is clearly the imposition of a penalty. The proceeding for forfeiture while administrative in character thus possesses a criminal or penal aspect. The case before us is not dissimilar; petitioner would be similarly disadvantaged. He could suffer not the forfeiture of property but the revocation of his license as a medical practitioner, for some an even greater deprivation.

To the argument that *Cabal v. Kapunan* could thus be distinguished, it suffices to refer to an American Supreme Court opinion highly persuasive in character.^[10] In the language of Justice Douglas: "We conclude * * * that the Self-Incrimination Clause of the Fifth Amendment has been absorbed in the Fourteenth, that it extends its protection to lawyers as well as to other individuals, and that it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it." We reiterate that such a principle is equally applicable to a proceeding that could possibly result in the loss of the privilege to practice the

medical profession.

2. The appeal apparently proceeds on the mistaken assumption by respondent Board and intervenors-appellants that the constitutional guarantee against self-incrimination should be limited to allowing a witness to object to questions the answers to which could lead to a penal liability being subsequently incurred. It is true that one aspect of such a right, to follow the language of another American decision,[11] is the protection against "any disclosures which the witness may reasonably apprehend could be used in a criminal prosecution or which could lead to other evidence that might be so used." If that were all there is then it becomes diluted.

The constitutional guarantee protects as well the right to silence. As far back as 1905, we had occasion to declare: "The accused has a perfect right to remain silent and his silence cannot be used as a presumption of his guilt." [12] Only last year, in *Chavez v. Court of Appeals*, [13] speaking through Justice Sanchez, we reaffirmed the doctrine anew that is the right of a defendant "to forego testimony, to remain silent, unless he chooses to take the witness stand - with undiluted, unfettered exercise of his own free genuine will."

Why it should be thus is not difficult to discern. The constitutional guarantee, along with other rights granted an accused, stands for a belief that while crime should not go unpunished and that the truth must be revealed, such desirable objectives should not be accomplished according to means or methods offensive to the high sense of respect accorded the human personality. More and more in line with the democratic creed, the deference accorded an individual even those suspected of the most heinous crimes is given due weight. To quote from Chief Justice Warren, "the constitutional foundation underlying the privilege is the respect a government * * * must accord to the dignity and integrity of its citizens." [14]

It is likewise of interest to note that while earlier decisions stressed the principle of humanity on which this right is predicated, precluding as it does all re-sort to force or compulsion, whether physical or mental, current judicial opinion places equal emphasis on its identification with the right to privacy. Thus according to Justice Douglas: "The Fifth Amendment in its Self-Incrimination clause enables the citizen to create a zone of privacy which government may not force to surrender to his detriment." [15] So also with the observation of the late Judge Frank who spoke of "a right to a private enclave where he may lead a private life. That right is the hallmark of our democracy." [16]

In the light of the above, it could thus clearly appear that no possible objection could be legitimately raised against the correctness of the decision now on appeal. We hold that in an administrative hearing against a medical practitioner for alleged malpractice, respondent Board of Medical Examiners cannot, consistently with the self-incrimination clause, compel the person proceeded against to take the witness stand without his consent.

WHEREFORE, the decision of the lower court of August 2, 1965 is affirmed. Without pronouncement as to costs.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Sanchez, and Capistrano, JJ., concur.

Teehankee and Barredo, JJ., took no part.

Concepcion, C.J., and Castro, J., on official leave.

[1] Section 1, Clause 18, Art. III, Constitution.

[2] It was so even under previous organic acts. Cf. *United States v. Navarro*, 3 Phil. 143 (1904); *Beltran v. Samson*, 53 Phil. 570 (1929).

[3] 64 Phil. 483.

[4] *Ibid*, p. 492. This constitutional command, according to Justice Fortas, "has [been] broadly applied and

generously implemented in accordance with the teaching of the history of the privilege and its great office in mankind's battle for freedom." Re Gault, 387 US 1 (1967).

[5] 6 SCRA 1059 (1962).

[6] Republic Act No. 1379 (1955).

[7] No. 639 of Respondent Board entitled Salvador Gatbonton v. Arsenio Pascual.

[8] 6 SCRA 1059 (1962).

[9] Republic Act No. 1379.

[10] Spevack v. Klein, 385 US 511 (1967).

[11] Murphy v. Waterfront Commission of New York, 378 US 52 (1964).

[12] United States v. Luzon, 4 Phil. 343 (1905). Cf. United States v. Junio, 1 Phil. 50, decided three years earlier: "It appears from the record that a copy of the complaint was served upon the accused and he was required to plead 'guilty' or 'not guilty' in accordance with section 18 of General Orders, No. 58. He pleaded 'not guilty.' In response to this request the defendant made a statement. We are of the opinion that this procedure is illegal. The judge had no right to compel the accused to make any statement whatever."

[13] 24 SCRA 663.

[14] Miranda v. Arizona, 384 US 436 (1966).

[15] Griswold v. Connecticut, 381 US 479 (1965).

[16] United States v. Grunewald, 233 F2d 556 quoted in Miranda v. Arizona, 384 US 436 (1966).

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