

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. DANIEL C. MACARAEG, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, BRANCH XIV, AND VASCO VIC VALDEZ Y BIN...

G.R. No. L-49172. January 14, 1986

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

This is a petition for certiorari and mandamus with preliminary injunction, to annul and set aside the order of the respondent Judge, denying the petitioner's motion to compel the attendance of the accused private respondent at the trial of a criminal case for purposes of identification, as well as the order denying the motion for the reconsideration of said order.

The private respondent Vasco Vic Valdez y Bince, was charged with Homicide before the then Court of First Instance of Pangasinan, Branch XIV, docketed therein as Crim. Case No. 603-R, for the death of one Severa Paulo on December 22, 1977, and posted bail for his provisional release. Attached to the Bail Bond was a waiver which stipulated that trial may proceed in his absence.

When the case was called for trial, the prosecution presented, as its first witness, one Welino Paulo who, when asked if he could identify the accused, answered in the affirmative. Since the accused was not present in court, the prosecution asked the court to order the presence of the accused so that he could be identified by Welino Paulo. Counsel for the accused, however, objected to the motion. He invoked the waiver contained in the Bail Bond and contended that the presence of the accused is part of his defense. Resolving the issue, the trial court, invoking the case of *Aquino vs. Military Commission No. 2*,^[1] denied the motion. The court said:

"The legal issue that needs to be resolved before the prosecution could terminate the direct examination of Welino D. Paulo, an alleged eyewitness to the commission of the offense complained of, is whether or not the Court can validly compel the accused to be present during the trial for the purpose of having him identified by the prosecution eyewitness as the perpetrator of the offense. There is no question that the accused has waived his presence during the trial. Needless to state, the prosecution sustains the affirmative view and the defense, the negative.

"The issue at bar was one of those squarely raised in the *Aquino* case (L-37364, May 9, 1975; Supreme Court Decisions, May 1975, 855, 906-911), where six out of ten Justices voted that the accused may not even be compelled to be present during the trial when he is to be identified by the witnesses of the prosecution while four voted that the accused may be compelled in this instance. The reason of the majority is that the accused must not be compelled to assist the prosecution in proving its case. As a matter of fact, the prosecution arm of the Government has adopted the majority rule (*Legal Trends for Government Prosecutors*, published by U.P. Law Center, March 1976, pp. 31-32).

"Following the majority opinion in the said case, this Court rules that it cannot validly compel the presence of

the accused during the trial when he is to be identified by the prosecution witnesses." [2]

The prosecution moved for the reconsideration of the order, but the respondent Court denied the motion. [3] Hence, the present recourse. As prayed for, a temporary restraining order was issued, restraining the respondent Court from further proceeding with the hearing of Crim. Case No. 603-R. [4]

We find merit in the petition. The rule adopted by the Court in the case of *Aquino vs. Military Commission No. 2* (supra) is that while the accused may waive his presence at the trial of the case, his presence may be compelled when he is to be identified. The Court said:

"It is for the foregoing reasons that the writer of this opinion voted with the six (6) Justices who ruled on the full right of petitioner to waive his presence at said proceedings.

"Since only six (6) Justices (Fernando, Teehankee, Barredo, Antonio, Muñoz Palma and Aquino) are of the view that petitioner may waive his right to be present at all stages of the proceedings while five (5) Justices (Castro, Makasiar, Esguerra, Concepcion Jr. and Martin) are in agreement that he may so waive such right, except when he is to be identified, the result is that the respondent Commission's Order requiring his presence at all times during the proceedings before it should be modified, in the sense that petitioner's presence shall be required only in the instance just indicated. The ruling in *People vs. Avancena* is thus pro tanto modified." (Underscoring supplied)

The Court has so ruled that We find no reason to change our stand on the issue.

WHEREFORE, the petition is GRANTED and the orders issued by the respondent Judge on August 16, 1978 and October 2, 1978 in Crim. Case No. 603-R of the then Court of First Instance of Pangasinan, entitled: "*People of the Philippines, plaintiff, versus Vasco Vic Valdez y Bince, accused,*" are hereby ANNULLED and SET ASIDE. The respondent Judge or whoever might be acting in his place is hereby ORDERED to ISSUE the necessary process to compel the attendance of the accused at the hear-ing of the said criminal case for purposes of identification. The temporary restraining order heretofore issued is LIFTED and SET ASIDE. With costs against the private respondent.

IT IS SO ORDERED.

Abad Santos, Escolin, Cuevas, and Alampay, JJ. concur.

[1] G.R. No. L-37364, May 9, 1975, 63 SCRA 546.

[2] Rollo, p. 14.

[3] Id., p. 15.

[4] Id., p. 17.

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