

**FISCAL CELSO M. GIMENEZ AND FEDERICO B. MERCADO,
PETITIONERS, VS. HON. RAMON E. NAZARENO, PRESIDING JUDGE,
COURT OF FIRST INSTANCE OF CEBU AND TEODORO DE LA VEGA,
JR., RESPONDENTS.**

G.R. No. L-37933. April 15, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Two basic issues are raised for Our resolution in this petition for certiorari and mandamus. The first is whether or not a court loses jurisdiction over an accused who after being arraigned, escapes from the custody of the law. The other issue is whether or not under Section 19, Article IV of the 1973 Constitution, an accused who has been duly tried in absentia retains his right to present evidence on his own behalf and to confront and cross-examine witnesses who testified against him.

The following facts are not in dispute:

On August 3, 1973, Samson Suan, Alex Potot, Rogelio Mula, Fernando Cargando, Rogelio Baguio and the herein private respondent Teodoro de la Vega, Jr., were charged with the crime of murder.

On August 22, 1973 all the above-named accused were arraigned and each of them pleaded not guilty to the crime charged. Following the arraignment, the respondent judge, Hon. Ramon E. Nazareno, set the hearing of the case for September 18, 1973 at 1:00 o'clock in the afternoon. All the accused, including private respondent, were duly informed of this.

Before the scheduled date of the first hearing the private respondent escaped from his detention center and on the said date, failed to appear in court. This prompted the fiscals handling the case (the petitioners herein) to file a motion with the lower court to proceed with the hearing of the case against all the accused praying that private respondent de la Vega, Jr. be tried in absentia invoking the application of Section 19, Article IV of the 1973 Constitution which provides:

"SEC. 19. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified. (Underscoring supplied)."

Pursuant to the above-written provision, the lower court proceeded with the trial of the case but nevertheless gave the private respondent the opportunity to take the witness stand the moment he shows up in court.[1]

After due trial, or on November 6, 1973, the lower court rendered a decision dismissing the case against the five accused while holding in abeyance the proceedings against the private respondent. The dispositive portion is as

follows:

"WHEREFORE, insofar as the accused Samson Suan, Alex Potot, Rogelio Mula, Fernando Cargando, and Rogelio Baguio are concerned, this case is hereby dismissed. The City Warden of Lapu-Lapu City is hereby ordered to release these accused if they are no longer serving sentence of conviction involving other crimes.

The proceedings in this case against the accused Teodoro de la Vega, Jr. who has escaped on August 30, 1973 shall remain pending, without prejudice on the part of the said accused to cross-examine the witnesses for the prosecution and to present his defense whenever the court acquires back the jurisdiction over his person."[2]

On November 16, 1973 the petitioners filed a Motion for Reconsideration questioning the above-quoted dispositive portion on the ground that it will render nugatory the constitutional provision on "trial in absentia" cited earlier. However, this was denied by the lower court in an Order dated November 22, 1973.

Hence, this petition.

The respondent court, in its Order denying the Motion for Reconsideration filed by the herein petitioners, expressed the opinion that under Section 19, Article IV of the 1973 Constitution, the private respondent, who was tried in absentia, did not lose his right to cross-examine the witnesses for the prosecution and present his evidence.[3] The reasoning of the said court is that under the same provision, all accused should be presumed innocent.[4] Furthermore, the lower court maintains that jurisdiction over private respondent de la Vega, Jr. was lost when he escaped and that his right to cross-examine and present evidence must not be denied him once jurisdiction over his person is reacquired.[5]

We disagree.

First of all, it is not disputed that the lower court acquired jurisdiction over the person of the accused-private respondent when he appeared during the arraignment on August 22, 1973 and pleaded not guilty to the crime charged. In criminal cases, jurisdiction over the person of the accused is acquired either by his arrest or voluntary appearance in court. Such voluntary appearance is accomplished by appearing for arraignment as what accused-private respondent did in this case.

But the question is this - was that jurisdiction lost when the accused escaped from the custody of the law and failed to appear during the trial? We answer this question in the negative. As We have consistently ruled in several earlier case,[6] jurisdiction once acquired is not lost upon the instance of parties but continues until the case is terminated.

To capsulize the foregoing discussion, suffice it to say that where the accused appears at the arraignment and pleads not guilty to the crime charged, jurisdiction is acquired by the court over his person and this continues until the termination of the case, notwithstanding his escape from the custody of the law.

Going to the second part of Section 19, Article IV of the 1973 Constitution aforecited a "trial in absentia" may be had when the following requisites are present: (1) that there has been an arraignment; (2) that the accused has been notified; and (3) that he fails to appear and his failure to do so is unjustified.

In this case, all the above conditions were attendant calling for a trial in absentia. As the facts show, the private respondent was arraigned on August 22, 1973 and in the said arraignment he pleaded not guilty. He was also informed of the scheduled hearings set on September 18 and 19, 1973 and this is evidenced by his signature on the notice issued by the lower court.[7] It was also proved by a certified copy of the Police Blotter[8] that private respondent escaped from his detention center. No explanation for his failure to appear in court in any of the scheduled hearings was given. Even the trial court considered his absence unjustified.

The lower court in accordance with the aforestated provisions of the 1973 Constitution, correctly proceeded with the reception of the evidence of the prosecution and the other accused in the absence of private respondent, but it erred when it suspended the proceedings as to the private respondent and rendered a decision as to the other accused only.

Upon the termination of a trial in absentia, the court has the duty to rule upon the evidence presented in court. The court need not wait for the time until the accused who escaped from custody finally decides to appear in court to present his evidence and cross-examine the witnesses against him. To allow the delay of proceedings for this purpose is to render ineffective the constitutional provision on trial in absentia. As it has been aptly explained:

"x x x The Constitutional Convention felt the need for such a provision as there were quite a number of reported instances where the proceedings against a defendant had to be stayed indefinitely because of his non-appearance. What the Constitution guarantees him is a fair trial, not continued enjoyment of his freedom even if his guilt could be proved. With the categorical statement in the fundamental law that his absence cannot justify a delay provided that he has been duly notified and his failure to appear is unjustified, such an abuse could be remedied. That is the way it should be, for both society and the offended party have a legitimate interest in seeing to it that crime should not go unpunished." [9]

The contention of the respondent judge that the right of the accused to be presumed innocent will be violated if a judgment is rendered as to him is untenable. He is still presumed innocent. A judgment of conviction must still be based upon the evidence presented in court. Such evidence must prove him guilty beyond reasonable doubt. Also, there can be no violation of due process since the accused was given the opportunity to be heard.

Nor can it be said that an escapee who has been tried in absentia retains his rights to cross-examine and to present evidence on his behalf. By his failure to appear during the trial of which he had notice, he virtually waived these rights. This Court has consistently held that the right of the accused to confrontation and cross-examination of witnesses is a personal right and may be waived. [10] In the same vein, his right to present evidence on his behalf, a right given to him for his own benefit and protection, may be waived by him.

Finally, at this point, We note that Our pronouncement in this case is buttressed by the provisions of the 1985 Rules on Criminal Procedure, particularly Section 1(c) of Rule 115 which clearly reflects the intention of the framers of our Constitution, to wit:

"x x x The absence of the accused without any justifiable cause at the trial on a particular date of which he had notice shall be considered a waiver of his right to be present during that trial. When an accused under custody had been notified of the date of the trial and escapes, he shall be deemed to have waived his right to be present on said date and on all subsequent trial dates until custody is regained. x x x"

Accordingly, it is Our considered opinion, and We so hold, that an escapee who has been duly tried in absentia waives his right to present evidence on his own behalf and to confront and cross-examine witnesses who testified against him. [11]

WHEREFORE, in view of the foregoing, the judgment of the trial court in Criminal Case No. 112-L in so far as it suspends the proceedings against the herein private respondent Teodoro de la Vega, Jr. is reversed and set aside. The respondent judge is hereby directed to render judgment upon the innocence or guilt of the herein private respondent Teodoro de la Vega, Jr. in accordance with the evidence adduced and the applicable law. No pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

[*] Section 14(2), Article III of the 1987 Constitution has similar provision.

[1] Decision, Page 15, Rollo.

[2] Decision, pages 23-24, Rollo.

[3] Page 32, Rollo.

[4] Pages 32 and 71, Rollo.

[5] Page 24, Rollo.

[6] *Lat vs. Phil. Long Distance Co.*, 69 SCRA 425 (1975); *Tuvera vs. de Guxman* 13 SCRA 729 (1965); In the Matter of the Petition for Habeas corpus of Rolando N. Abadilla, G.R. No. 79173, December 1, 1987.

[7] Annex A, page 10, Rollo.

[8] Annex B, page 12, Rollo.

[9] Enrique M. Fernando. *The Constitution of the Philippines*, 1977 ed., page 701.

[10] *U.S. vs. Anastacio*, 6 Phil. 413; *U.S. vs. Rota*, 9 Phil. 426; *U.S. vs. Binayoh*, 35 Phil. 23; *U.S. vs. Golanco*, 11 Phil. 575.

[11] *People vs. Salas*, 143 SCRA 163, 166-167.

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