

AMADO A. YATCO, PETITIONER, VS. THE COURT OF APPEALS, RESPONDENT.

G.R. No. L-21144. January 30, 1971

Ponente: DIZON, J.

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DIZON, J.:

This is an appeal taken by Amado A. Yatco, member of the Philippine Bar, from the decision of the Court of Appeals affirming an order issued by the Court of First Instance of Manila in Criminal Case No. 35274 finding him guilty of contempt of court and sentencing him to pay a fine of P50.00. Grounds invoked in support of his plea for a reversal of the appealed decision are that (a) the contempt proceedings did not comply with the requirements of Section 3, Rule 64 of the Rules of Court, and that, (b) at any rate, the facts of the case do not warrant his conviction for contempt.

The facts found by the Court of Appeals are as follows:

"On the strength of an information for theft of clothing materials, accused Pedro Viray was arraigned on May 4, 1956. The case was set for August 28, 1956. On this date, defendant Amado A. Yatco moved for its postponement alleging illness on his part - which was granted for November 8, 1956. This subsequent setting, however, was postponed due to complainant Agustina Tecson's not having been subpoenaed accordingly and again the trial was set for February 28, 1957, when accused failed to appear in spite of his having been notified accordingly on time by his bailors - which resulted in the forfeiture of his bail-bond.

On May 5, 1957, defendant filed a motion for reconsideration of the order of forfeiture on the alleged ground that his client was sick on that very date, February 28, 1957. This motion was denied. However, on March 9, 1957, the accused was permitted to file an additional bail-bond raising the same to P2,000.00 and the court granted the accused temporary liberty.

Defendant was subsequently notified on April 16, 1957, of the hearing set for July 29, 1957, the corresponding notice having been signed by Attorney Alfonso Yatco, Amado Yatco's son.

When, however, on July 29, 1957 the case was called for trial, Alfonso Yatco appeared with accused Pedro Viray on latter's behalf and on behalf of his father, and moved for the postponement of the hearing on the alleged ground that his father had a case in the Court of First Instance of Pasig, Rizal. The trial court reminded Attorney Alfonso Yatco that corresponding formal notice having been served his father as far back as April 16, 1957, there was ample time for the latter to have disengaged himself from other commitments, and prepared for the trial, court adding that it was not satisfied with the reasons for his non-appearance and that it was going to find him guilty of contempt for having, in disregard of the notice served him, accepted other professional engagement.

There was a proposal to have Attorney Alfonso Yatco designated as counsel de oficio for the accused so as to expedite the hearing of that simple case but he demurred stating that it was his father who was defense attorney, so the hearing was postponed for 10:30 that very morning, that is, with two hours allowance for appellant to appear and this was agreed to by Attorney Alfonso Yatco.

It was at this juncture that complainant Agustina Tecson complained in open court of the unnecessary delay already caused by two previous postponements which have prejudiced her considerably in expenses and loss of time for her going to and from San Quintin, Pangasinan to Manila, calling the attention of the trial court to the obvious purpose of defense in annoying her and thus weakening her case, so much so that the court informed accused Viray to return at 10:30 that morning for trial.

But when the time struck, it was only Attorney Alfonso Yatco who appeared stating that the accused had gone to Pasig, Rizal to contact appellant Yatco and this, without the trial court's permission - which said court resented labelling accused's act as highly con-temptuous. However, at about 12:02 p.m. before the presiding judge could leave the rostrum, accused Pedro Viray appeared, still minus his counsel, the appellant. This much delayed appearance the trial court considered as having been purposely done so as to prevent again the trial from proceeding for lack of time, so much so that the court directed the bailiff to have the accused arrested - which was effected.

There and there, forthwith, the trial judge issued an order the dispositive part of which is as follows:

"WHEREFORE, considering that Atty. Amado A. Yatco has no right to accept a professional engagement when this case was set for trial as far back as April, 1957, and it is now 11:00 a.m. and he is not here, and considering that accused failed to appear without giving notice to this Court, this Court hereby declare accused Pedro Viray and Atty. Amado A. Yatco in contempt of court, and pun-ishes said Atty. Amado A. Yatco by imposing upon him a fine of P50.00 which must be paid within two (2) days from receipt of this order, with subsidiary imprisonment in case of insolvency, and accused Pedro Viray by an imprisonment of ten (10) days.

"Let a warrant of arrest issue for accused Pedro Viray."

On July 31, 1957, appellant filed a motion for reconsideration to set aside the aforementioned order of July 29 on the alleged ground that the circumstances leading to the issuance of that order constituted constructive contempt and he was not, therefore, properly charged, even heard, under Section 3, Rule 64, Rules of Court and added that he had satisfactorily explained his failure to appear before the said court on July 29, 1957, and that he had no intention of disobeying the court's order."

We agree with the appellant that the charge against him and of which he was found guilty is one for indirect contempt which, according to Section 3, Rule 64 of the Rules of Court, may be punished only after a written charge has been filed against the contemner and only after the latter has been heard. (Rivera vs. Arellano, 88 Phil. 744, Francisco vs. Enriquez, G.R. No. L-7058, March 20, 1954 and L-10074, April 30, 1959). We are of the opinion, however, that upon the undisputed facts before us there was a written charge for contempt against appellant, in connection with which he had been given full opportunity to purge himself of said charge.

Whatever merit there might be in appellant's contention that the order of Judge Lucero of July 29, 1957 was issued without the benefit of a written charge nor of a hearing has lost its force in view of the fol-lowing: (a) the contents of said order sufficiently apprised appellant of the fact that he was being charged with indirect contempt consisting in his failure to ap-pear on the date set for the trial of the criminal case in which he had appeared as counsel for the accused and in connection with which he had been duly served with notice months before, and (b) after the issuance of said order he filed a motion to have it reconsidered and set aside, in connection with which motion he was given full opportunity to explain why he should not be held in con-tempt of court; (c) it was only after said hearing that Judge Lucero issued another resolution dated August 1, 1957, the dispositive portion of which is as follows:

"FOR THE FOREGOING CONSIDERATIONS, the Court hereby maintains its order of July 29, 1957, finding Atty. Amado A. Yatco guilty of constructive con-tempt and accused Pedro Viray of direct contempt, but reduces the imprisonment of Pedro Viray to five (5) days such that he should be released on August 3, 1957,

but his release cannot be directed now in view of the fact that the bond posted for his provisional liberty has been withdrawn; and fines Atty. Amado A. Yatco P50.00, which should be paid within fifteen (15) days from receipt of this resolution, unless this case is appealed, with subsidiary imprisonment in case of insolvency, and upon his failure to do so and if no appeal is interposed, the Court will issue the corresponding warrant of arrest.

"For purposes of appeal, the bail bond of Atty. Amado A. Yatco is fixed at P50.00." (pp. 12-15, rec.)."

That appellant had ample opportunity to defend himself before being finally convicted of contempt of court is evidenced by the fact that at the hearing held on his motion for reconsideration and/or to set aside the order of July 29, 1957, he personally appeared and argued in support thereof, answering point by point all the questions addressed to him by Judge Lucero concerning his failure to appear or the reasons why he did not appear on the date set for the trial of the criminal case against his client. In our view, there-fore, the requirements of the law have been substantially complied with.

WHEREFORE, the appealed decision is affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

Villamor, J., abstains.

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