

DANILO B. PARADA, COMPLAINANT, VS. JUDGE LORENZO B. VENERACION, REGIONAL TRIAL COURT, BRANCH 47, MANILA, RESPONDENT.

A.M. No. RTJ-96-1353. March 11, 1997

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

The case before us stems from a verified complaint filed by Danilo B. Parada against respondent Judge Lorenzo B. Veneracion for gross ignorance of the law, abuse of authority and rendering unjust and erroneous interlocutory orders and judgment in connection with Criminal Cases Nos. 93-121385 to 88, entitled *People vs. Danilo Parada*, which led to complainant Parada's "premature incarceration" at the Makati City Jail and Muntinlupa National Penitentiary.

The undisputed facts of the case as found by the Office of the Court Administrator are as follows :

"Complainant herein is the accused in the aforementioned case for four (4) counts of estafa which were initially raffled to Branch 30, RTC, Manila presided by Judge Senecio Ortile. Complainant is also duly bonded with the Eastern Assurance and Surety Corporation (EASCO). On October 23, 1993 complainant notified said court formally thru counsel of his change of address from 219 Cityland Condominium, Buendia Extension, Makati, Metro Manila to 2412 Nobel St., Bo. San Isidro, Makati, Metro Manila. On October 27, 1993 he also notified the Manager of the bonding company of his change of address. On February 8, 1994, Judge Ortile inhibited himself from trying the said case and thus, the case was re-raffled to the sala of respondent Judge Lorenzo Veneracion, and per order of April 26, 1994, the hearing of the case was set for June 3, 6, 7 and 8, 1994. Apparently, the notice of hearing dated April 27, 1994 was sent to complainant's former address and that for failure of accused-complainant to appear on June 3, 1994, respondent ordered the arrest of herein accused-complainant, ordering the confiscation of the bond and a trial in absentia was conducted. Respondent Judge likewise assigned a counsel de officio, Atty. Jesse Tiburan of the Public Attorney's Office (PAO) as counsel for the accused.

xxx Furthermore, a warrant of arrest was issued on June 3, 1994 with 'no bail recommended'.

On June 6, 7 and 8, 1994, respondent court issued orders noting the failure of the petitioner to appear and proceeded with the trial in absentia. On the hearing of June 8, 1994, the motion of counsel de officio of accused-complainant that defense be allowed to present evidence upon petitioner's arrest, was denied and further held that the 'failure of the accused to appear is a waiver of his right to adduce evidence'.

xxx. On November 25, 1994, a decision was rendered convicting herein accused-appellant of the crime and the decision was promulgated despite his absence. Accused-complainant was arrested and brought to the Makati City Jail.

Accused-complainant filed a Petition for Habeas Corpus, Certiorari and Annulment of Judgment with prayer for immediate relief with the Court of Appeals and was docketed as CA-G.R. SP No. 37340 entitled '*Danilo Parada vs. Judge Lorenzo B. Veneracion, et. al.*'.

On August 18, 1995, the Court of Appeals promulgated a decision declaring the decision dated November 25, 1995 of respondent court null and void and further ordering the case to be remanded to respondent for further proceeding in order to afford accused-complainant the opportunity to rebut the testimonies of the prosecution witnesses and documentary evidence against him as well as present his evidence.”[1]

Subsequently, Parada filed with this Court the instant complaint dated March 11, 1996 against the respondent Judge Veneracion in connection with the decision and interlocutory orders rendered by the latter in Criminal Cases Nos. 93-121385 to 88. He alleged, inter alia, that the respondent Judge is guilty of ignorance of the law when he did not follow the legal requirements of a valid trial in absentia which led to his conviction and premature incarceration, that the order of his arrest with no recommendation for bail was erroneous, and that respondent Judge abused his authority when he issued the June 8, 1994 order denying the motion of Parada’s counsel de oficio to allow him to present his evidence upon his arrest. Parada thus prayed for the dismissal from service of the respondent Judge and that the latter be barred from railroading the subject Criminal Cases Nos. 93-121385 to 88.

On June 4, 1996, the Office of the Court Administrator received the respondent Judge’s comment to Parada’s complaint, the pertinent portion of which reads:

1. That the herein complaint is purely and plainly a ‘harassment suit’ arising from the Decision rendered in the case of People vs. Danilo Parada for estafa;
2. That the charges therein are denied because they are not based on the facts and of the records of the case, the herein Judge merely acted with compassion upon receipt of the records of these cases from another sala, after having been informed that the private complainants merely borrowed from ‘loan sharks’ the money given to the accused Danilo Parada and that they are only interested in compelling said accused to return their money, not in sending said accused to jail;
3. That the herein Judge acted in good faith in the trial of the said cases.”[2]

Unfazed by the foregoing assertions of the respondent Judge, the Office of the Court Administrator on the contrary held that:

Respondent’s general denial of the allegations imputed to him does not belie any of the facts which lead to the incarceration of the complainant. Thus, his failure to deny each and every specific allegations can be construed as admission on his part.

Moreover, trial in absentia may proceed only if the accused failed to appear at the trial without justification despite due notice. In this case, complainant was never notified of any hearing from the time he changed his address up to the promulgation of the decision despite the fact that he notified the court and his bonding company.

Respondent issued a warrant for the arrest of the accused-complainant with no ‘bail recommended’ despite the fact that the crime charged was bailable and denied the motion of his counsel for the accused to adduce evidence upon accused’s arrest. Clearly, respondent denied complainant his right to due process.”[3]

On the basis of these observations, the Office of the Court Administrator recommended that respondent Judge Veneracion be fined in the amount of P10,000.00 with a warning that a commission of the same or similar infraction shall be dealt with more severely.

We agree with the findings of the Office of the Court Administrator.

Section 14 (2), Article 3 of the Constitution provides, inter alia, that trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. The

requisites then of a valid trial in absentia are: (1) the accused has already been arraigned; (2) he has been duly notified of the trial; and (3) his failure to appear is unjustifiable.[4]

In the subject criminal cases, requisite numbers two (2) and three (3) of a valid trial in absentia are clearly wanting. Parada had not been duly notified of the trial because the notice of hearing dated April 27, 1994 was sent to the former address of Parada's counsel despite the fact that the latter formally notified the court of his change of address. His failure to appear therefore in the June 3, 6, 7 and 8, 1994 hearings is justified by the absence of a valid service of notice of hearing to him.

As a rule, where a party appears by attorney in an action or proceeding in a court of record, all notices required to be given therein must be given to the attorney of record.[5] Accordingly, notices to counsel should be properly sent to his address of record and unless the counsel files a notice of change of address, his official address remains to be that of his address of record.[6]

It is undisputed that Parada's counsel filed a notice of change of address on October 23, 1993. As such, the respondent judge should have already taken cognizance of the new address when it sent the notice of hearing dated April 27, 1994. It is thus unwarranted for the respondent judge to still send the notice of hearing to the old address of Parada's counsel because it is not his official address nor his address of record. Concomitantly, the sending of notice of hearing to his former address is an invalid service and cannot in any way bind Parada.

It is worthy to stress that due process of law in judicial proceedings requires that the accused must be given an opportunity to be heard. He has the right to be present and defend in person at every stage of the proceedings. Incidentally, the right to a hearing carries with it the right to be notified of every incident of the proceedings in court. Notice to a party is essential to enable him to adduce his own evidence and to meet and refute the evidence submitted by the other party.[7] No less than the Constitution provides that no person shall be held to answer for a criminal offense without due process of law. A violation therefore of any of the rights accorded the accused constitutes a denial of due process of law. The circumstantial setting of the instant case as weighed by the basic standards of fair play impels us to so hold that the trial in absentia of Parada and his subsequent conviction are tainted with the vice of nullity, for evidently Parada was denied due process of law.

Judges, by the very delicate nature of their functions in dispensing justice, should be more circumspect in the performance of their duties.[8] In resolving matters in litigation, they should endeavor assiduously to ascertain the facts and the applicable laws. Had respondent judge carefully and diligently studied the records of the case, he would have surely noticed the change of address, and his questioned orders, which eventually led to Parada's unwarranted deprivation of liberty, could not have been precipitately issued.

Likewise, the warrant of arrest with no recommendation for bail that was issued by respondent Judge on June 3, 1994 is a downright violation of Parada's constitutional right to bail. The rule is clear that unless charged with offenses punishable by reclusion perpetua and the evidence of guilt is strong, all persons detained, arrested or otherwise under the custody of the law are entitled to bail as a matter of right. It should be noted that the crime with which Parada was charged is estafa[9] which is undoubtedly a bailable offense. This circumstance could not have escaped the attention of the respondent judge when he issued on June 3, 1994 the order of arrest of Parada with no recommendation for his bail. In so doing, respondent judge exhibited that degree of ignorance so gross which the Court can not countenance. Judges are required by Canon 3, Rule 3.01 of the Code of Judicial Conduct to be faithful to the law and maintain professional competence.[10] They are called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles.[11]

WHEREFORE, respondent Judge Lorenzo B. Veneracion is FINED P10,000.00 for disregarding Parada's right to

procedural due process and for showing gross ignorance of the law, with a STERN WARNING that a repetition of a similar act in the future will be dealt with more severely.

SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] Memorandum for Chief Justice Andres R. Narvasa signed by Senior Deputy Court Administrator Reynaldo L. Suarez, pp.1-2.

[2] Second Indorsement dated May 31, 1996 signed by Judge Lorenzo B. Veneracion.

[3] Supra, p. 3.

[4] People vs. Salas, No. L-66469, July 29, 1986, 143 SCRA 163.

[5] Gundayao, et. al., vs. Court of Appeals, et. al., G.R. No. 77459, May 21, 1990, 185 SCRA 606.

[6] Sy, Sr. vs. IAC, et. al., No. L-66741, June 16, 1988, 162 SCRA 130.

[7] Cruz, I., Constitutional Law, 1995 ed., p. 108.

[8] Galvez vs. Eduardo, A. M. No. MTJ- 94-984, January 30, 1996, 252 SCRA 572.

[9] Punishable by imprisonment ranging from arresto mayor to reclusion temporal depending upon the amount of fraud; see Article 315 of the Revised Penal Code.

[10] Cui vs. Madayag, A.M. No. RTJ-94-1150, June 5, 1995, 245 SCRA 1.

[11] De los Santos-Reyes vs. Montesa, Jr., A.M. No. RTJ-93-983, August 7, 1995, 247 SCRA 85.

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