

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. GREGORIO D. MONTEJO, JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBOANGA CITY, AND FELIX WEE SIT, RESPONDENTS. D E C I S I O N**

*G.R. No. L-24154. October 31, 1967*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

In this petition for certiorari and mandamus with preliminary injunction, the novel question presented is whether respondent Judge, in denying a motion for the arrest of a material witness, in a criminal case, or in the alternative, to cite him for contempt, relying on Section 9 of Rule 23 of the Rules of Court to the effect that a witness is not bound to attend as such before any court, judge or other officer out of the province in which he resides unless the distance be less than 50 kilometers from his place of residence the place of trial by the usual course, acted with grave abuse of discretion.

In a petition dated February 4, 1965, it was alleged by the City Fiscal of Zamboanga, as counsel for the People of the Philippines, that on September 23, 1963, Criminal Case No. 3225 was filed in the Court of First Instance of Zamboanga City against a certain Felix Wee Sit for double homicide and serious physical injuries thru reckless imprudence, the trial of the case having commenced on November 7, 1963, and thereafter continued subsequently.[1] After which, it was stated that a certain Ernesto Uaje y Salvador, "a permanent resident of Montalban, Rizal, then a patrolman in the Montalban Police Department," as a material and important witness in the case" his affidavit having served as the basis for filing the information as he happened to be an eye-witness during the traffic incident wherein a Private Jeep bearing Plate No. J-6172 driven recklessly by the accused Felix Wee Sit on August 15, 1963, turned turtle in the public highway in Zamboanga City causing the death of two (2) prominent young girls and serious physical injuries to four (4) equally prominent young girls, who are all students of a local religious institution." [2]

It was then alleged that at the time the case against the accused was called for trial in the Court of First Instance of Zamboanga City, then presided by respondent Judge, the witness had returned to Montalban, Rizal; that pursuant to a formal request of the City Fiscal, respondent Judge issued a subpoena to patrolman Uaje addressed at his known address at Montalban, Rizal, for him to appear at the trial of the case set for continuation on February 1, 1965; that such sub-poena was served on Uaje, the return showing that he had received it on January 19, 1965, at Montalban, Rizal; that when the case was called for continuation on February 1, 1965, he did not appear "and forthwith the undersigned City Fiscal formally moved for an order of arrest" or in the alternative "to cite him for contempt for willful failure to appear at the trial of the case as a material witness, \* \* \*." [3] Such a motion was formally presented on February 3, 1965 and denied on the same day by the respondent Judge in the Order sought to be annulled in this petition. Then came a motion for reconsideration which was likewise denied for not being "well-founded". In addition to the plea to declare void such order refusing to have the witness either arrested or cited for contempt, there was the further prayer that respondent Judge be required to grant the aforesaid motion.

The petition was given due course with preliminary injunction issued. Respondent Judge and the other respondent, the accused in Criminal Case No. 3225, were required to answer. In their answer filed on March 4, 1965, there was a denial of the allegation that Uaje was "a material, much less an important, witness," such denial being based on the very affidavit executed by him which as noted in the answer admitted "that the said witness did not see how the accident had occurred " and was, therefore not an eye-witness \* \* \*." There was an admission that respondent Judge was "poised to order the immediate, continuation of the trial of the case upon the insistence of the accused who relies upon his constitutional right to a speedy trial but denied that the prosecution is entitled to compulsory process" for under the Rules of Court it is the defendant, not the prosecute that is conferred such a right, alleging further that the issuance of compulsory process is under the Constitution, a right granted to the accused 'only and exclusively' no corresponding provision being made for the prosecution. As a First and Special Affirmative Defense, they relied on the aforesaid Section 9 of Rule 23 contending that if a witness was not bound by a subpoena since his residence was admittedly not less than 50 kilometers from the place of trial, the failure to obey the same or to comply with it could not in any manner whatsoever constitute contempt of court. Respondent Judge therefore did not commit any error; nor did he abuse his discretion in refusing to issue an order of arrest or to cite said witness for contempt. There are other special and affirmative defenses but they are not decisive of the question presented. The prayer was for the lifting of the preliminary injunction and the denial of the petition.

Thus was the issue joined. Instead of relying on an oral argument, the parties preferred to file memoranda, and the petition was submitted for decision.

That the question is novel admits of no doubt. It is true in two (2) cases, *Cruz v. Sison*,<sup>[4]</sup> and *Cruz v. Rabanera*,<sup>[5]</sup> decided jointly, one of the errors assigned was that the lower court erred in holding that the above provision of the Rules of Court applies to both civil and criminal cases. This Court however, speaking through Justice Makalintal, did not deem it necessary to pass on the above question as "the petitions for contempt were prematurely filed and hence their dismissal was in order." Moreover, this Court further noted "that the subpoenas were issued so that they could give evidence in Criminal Case No. 47152. 'People of the Philippines v. Secretary of Jaime Hernandez,' which was then already pending trial before a branch of the Court of First Instance of Manila. The power of the City Fiscal of Manila to issue subpoenas extends to cases pending investigation before him, but not where the complaint or information has been filed in court, in which case it is the court that should issue the necessary processes. (*Concepcion v. Gonzales*, L-15638, April 26, 1962).

How did petitioner sustain its stand that respondent Judge was called upon to compel the attendance of witness living in Montalban, Rizal, to testify at a trial in Zamboanga City, or in the alternative to cite him for contempt? Its counsel, the City Fiscal of Zamboanga City, cited, without incorporating the terms thereof, the following legal provisions: Section 1687 of the Revised Administrative Code and Republic Act No. 1799, Section 19(g) of Commonwealth Act No. 39, the City Charter of Zamboanga, and Section 3, Rule 135 of the Rules of Court. A perusal of each of the above legal prescriptions yields no support for petitioner's theory.

Section 1687 of the Revised Administrative Code as amended by Republic Act No. 1799,<sup>[6]</sup> which was approved and took effect on June 21, 1957, speaks of the authority of Provincial Fiscal and Assistant fiscal and Special Counsel to conduct investigation in criminal matters. All that the City Charter of Zamboanga<sup>[7]</sup> provides is that its Fiscal "may conduct investigations in respect to crimes, misdemeanors and violations of ordinances by taking oral evidence of repu-table witnesses, and for this purpose one may, by subpoena, summon witnesses to appear and testify under oath before him, and the attendance of an absent or recalcitrant witness may be enforced by application to the Municipal Court or the Court of First Instance of the Province of Zamboanga." The particular rule cited provides process issued from a superior court "in which a case is pending to bring in a defendant, or for the arrest of any accused person, or to execute any order or judgment of the court, may be enforced in any part of

the Philippines.”[8] It is obvious then that the argument of counsel for the City Zamboanga based on the above legal provision is, to put it at its mildest, far from persuasive.

Counsel for respondent, Atty. Rosauro Alvarez, did in his thorough and exhaustive memorandum, stress anew that the first and decisive question is whether a Court of First Instance possesses authority in a criminal case "to compel by subpoena the attendance of the witness who, as in this case, resides hundreds of miles away from the place of trial." According to him, "an examination of the placement of Section 9 of Rule 23 discloses to us, that it is found under topic Procedure in Courts of First Instance which unquestionably would include both criminal and civil cases. It will be noted further that the provision of Section 9, Rule 23 above quoted makes no distinction between a criminal or civil case and it is a fundamental rule or statutory construction that where the law makes no distinction it is not proper for the interpreter to make any such distinction." After which counsel invoked the Constitution as well as the Rules of Court,[9] particularly the provisions contained therein granting to the accused in a criminal case the right to have compulsory process issued to secure the attendance of witnesses in his behalf, which right was not conferred on the prosecution. Thus, he would sustain the actuations of respondent Judge not only as free from error but as correct and proper.

While not lacking in plausibility, this contention of respondent failed to enlist the assent of a majority of the Court. It is loathe to clip what undoubtedly is the inherent power of the Court to compel the attendance of persons to testify in a case pending therein.[10] Section 9 of Rule 29 is thus interpreted to apply solely to civil cases. A recognition of such power in a court of first instance conducting the trial of an Accused may be gleaned from principle that justifies it when satisfied "by proof or oath, that there is reason to believe that a material witness, for the prosecution will not appear and testify when required, to order that he given bail in as such sum as [it] may deem proper for such appearances. Upon refusal to give bail, the court must commit him to prison until he complies or is legally discharged." [11]

Under the circumstances, in view of the serious handicap to which the prosecution would thus be subjected in proving its case, the order of respondent judge denying the motion for an order of arrest or a citation for contempt in the alternative, based on a clear misapprehension of the Rules of Court, could be viewed as amounting to grave abuse of discretion. It would follow then that respondent Judge should decide said motion without taking into consideration Section 9 of Rule 23.

WHEREFORE, the preliminary injunction is lifted, the orders of February 3, 1961 set aside, and respondent Judge ordered to pass upon the aforesaid motion of petitioner. Without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Bengzon, J.P., Zaldivar, Sanchez, Castro, and Angeles, concur.

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[1] Par. 1, Petition.

[2] Par. 2, Petition.

[3] Par. 2, Petition.

[4] L-15902, December 23, 1964.

[5] L-15903, December 23, 1964.

[6] "SEC. 1687. Authority of fiscal, assistant fiscal and special counsel to conduct investigation in criminal matter. - A provincial fiscal, an assistant provincial fiscal and a special counsel appointed under section 1686 of this Code shall have authority, to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same.

If the offense charged falls within the original jurisdiction of the Court of First Instance, the defendant shall not be entitled as a matter of right to preliminary investigation in any case where the provincial fiscal himself, or an assistant provincial fiscal, or a special counsel, after due investigation of the facts made in the presence of the accused if the latter so requested, shall have presented an information against him in proper form and certified under oath by the said provincial fiscal or assistant provincial fiscal or special counsel that he conducted a proper preliminary investigation. To this end, who may, with due notice to the accused, summon reputed witnesses and require them to appear, before him and testify and be cross-examined under oath by the accused upon the latter's request. The attendance or evidence of absent or recalcitrant witnesses who may be summoned or whose testimony may be required by the provincial fiscal, or assistant provincial fiscal, or special counsel under the authority herein conferred shall be enforced by proper process upon application to be made by the provincial fiscal, or assistant provincial fiscal, or special counsel to any Judge of First Instance of the Judicial District. But no witness summoned to testify under this section shall be compelled to give testimony to incriminate himself.

[7] Section 19, (g) Commonwealth Act No. 39 (1936).

[8] Section 3, Rule 135 of the Rules of Court.

[9] Section 1, sub-paragraph (g) Rule 115.

[10] 10 According to Section 5 of Rule 135: "Every Court shall have power:

(e) To compel the attendance of persons to testify in a case pending herein; \* \* \*.

[11] Section 6, Rule 119.

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