

**HON. GREGORIO N. GARCIA, JUDGE OF THE CITY COURT OF
MANILA, AND FRANCISCO LORENZANA, PETITIONERS, VS. HON.
FELIX DOMINGO, JUDGE OF THE COURT OF FIRST INSTANCE OF
MANILA, EDGARDO...**

G.R. No. L-30104. July 25, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

The pivotal question in this petition for certiorari and prohibition, one which thus far has remained unresolved, is the meaning to be accorded the constitutional right to public trial.[1] More specifically, did respondent Judge commit a grave abuse of discretion in stigmatizing as violative of such a guarantee the holding of the trial of the other respondents[2] inside the chambers of city court Judge Gregorio Garcia named as petitioner.[3] That was done in the order now impugned in this suit, although such a procedure had been agreed to beforehand by the other respondents as defendants, the hear-ings have been thus conducted on fourteen separate occasions without objection on their part, and without an iota of evidence offered to substantiate any claim as to any other person so minded being excluded from the premises. It is thus evident that what took place in the chambers of the city court judge was devoid of haste or intentional secrecy. For reasons to be more fully explained in the light of the facts ascertained - the unique aspect of this case having arisen from what turned out to be an unseemly altercation, force likewise being employed, due to the mode in which the arrest of private petitioner for a traffic violation was sought to be effected by the two respondent policemen thus resulting in charges and counter-charges with eight criminal cases being tried jointly by city court Judge in the above manner - we rule that there was no transgression of the right to a public trial, and grant the petition.

It was alleged and admitted in the petition: "In Branch I of the City Court of Manila presided over by petitioner Judge, there were commenced, by appropriate informations all dated January 16, 1968, eight (8) criminal actions against respondents Edgardo Calo, and Simeon Carbonnel and Petitioner Francisco Lorenzana, as follows: a. Against Edgardo Calo (on complaint of Francisco Lorenzana) (1) Criminal Case No. F-109191, for slight physical injuries; (2) Criminal Case No. F-109192, also for slight physical injuries; and (3) Criminal Case No. F-109193, for maltreatment; b. Against Simeon Carbonnel (id.) (1) Criminal Case No. F-109197, for maltreatment; (2) Criminal Case No. F-109196, for slight physical injuries; and (3) Criminal Case No. F-109198, for light threats; (c) Against Francisco Lorenzana (on complaint of Calo and Carbonnel) (1) Criminal Case No. F-109201, for violation of Sec. 887 of the Revised Ordinances of Manila (resisting an officer); and (2) Criminal Case No. F-109200, for slander." [4] The above was followed by this recital: "The trial of the aforementioned cases was jointly held on March 4, 1968, March 18, 1968, March 23, 1968, March 30, 1968, April 17, 1968, April 20, 1968, May 4, 1968, May 11, 1968, June 1, 1968, June 15, 1968, June 22, 1968, June 29, 1968, August 3, 1968 and August 10, 1968. All the fourteen (14) trial dates - except March 4 and 18, and April 17, 1968 - fell on a Saturday. This was arranged by the parties and the Court upon the insistence of respondents Cabo and Carbonnel who, as police officers under suspension because of the cases, desired the same to be terminated as soon as possible and as

there were many cases scheduled for trial on the usual criminal trial days (Monday, Wednesday and Friday), Saturday was agreed upon as the invariable trial day for said eight (8) criminal cases." [5] Also this: "The trial of the cases in question was held, with the conformity of the accused and their counsel, in the chambers of Judge Garcia." [6] Then came these allegations in the petition: "During all the fourteen (14) days of trial, spanning a period of several months (from March to August, 1968), the accused were at all times represented by their respective counsel, who acted not only in defense of their clients, but as prosecutors of the accusations filed at their clients' instance. There was only one (1) day when Atty. Consengco, representing respondent Cabo and Carbonnel, was absent. This was on April 20, 1968. But at the insistence of Pat. Carbonnel, the trial proceeded, and said respondent cross-examined one of the witnesses presented by the adverse party. In any case, no pretense has been made by the respondents that this constituted an irregularity correctible on certiorari. At the conclusion of the hearings the accused, thru counsel, asked for and were granted time to submit memoranda. Respondents Calo and Carbonnel, thru counsel, Atty. Rafael Consengco, submitted a 14-page memorandum with not less than 35 citations of relevant portions of the transcript of stenographic notes in support of their prayer for exoneration, and for the conviction of petitioner Lorenzana in respect of their counter-charges against the latter. It is worthy of note that up to this late date, said respondents Calo and Carbonnel had not objected to - or pointed out - any supposed irregularity in the proceedings thus far; the memorandum submitted in their behalf is confined to a discussion of the evidence adduced in, and the merits of the cases." [7] It was stated next in the petition: "The promulgation of judgment was first scheduled on September 23, 1968. This was postponed to September 28, 1968, at the instance of Atty. Rafael Consengco, as counsel for respondents Calo and Carbonnel, and again to October 1, 1968 at 11 o'clock in the morning, this time at the instance of Atty. Consengco and Atty. Francisco Koh who had, in the meantime, also entered his appearance as counsel for respondents Calo and Carbonnel. The applications for postponement were not grounded upon any supposed defect or irregularity of the proceedings." [8]

Mention was then made of when a petition for certiorari was filed with respondent Judge: "Early in the morning of October 1, 1968, Edgardo Calo and Simeon Carbonnel, thru their counsel, Atty. Rafael S. Consengco, filed with the Court of First Instance a petition for certiorari and prohibition, with application for preliminary prohibitory and mandatory injunction * * * [alleging jurisdictional defects]." [9] Respondent Judge acting on such petition forthwith issued a restraining order thus causing the deferment of the promulgation of the judgment. After proceedings duly had, there was an order from him "declaring that 'the constitutional and statutory rights of the accused' had been violated, adversely affecting their 'right to a free and impartial trial' [noting] 'that the trial of these cases lasting several weeks were held exclusively in chambers and not in the court room open to the public';" and ordering the city court Judge, now petitioner, "'to desist from reading or causing to be read or promulgated the decisions he may have rendered already in the criminal cases (in question) * * * pending in his Court, until further orders of this Court.'" [10]

A motion for reconsideration proving unavailing, petitioners on January 28, 1969, elevated the matter to this Tribunal by means of the present suit for certiorari and prohibition. In its resolution of February 3, 1969, respondents were required to answer, with a preliminary injunction likewise being issued. As was to be expected the answer filed by respondent Judge on March 11, 1969 and that by the other respondents on March 19, 1969 did attempt to justify the validity of the finding that there was a failure to respect the right to a public trial of accused persons. Neither in such pleadings nor in the memorandum filed, although the diligence displayed by counsel was quite evident, was there any persuasive showing of a violation of the constitutional guarantee of a public trial, the basic issue to be resolved. Rather it was the mode of approach followed by counsel Andres R. Narvasa for petitioners that did manifest a deeper understanding of its implications and ramifications. Accordingly, as previously stated, it is for us to grant the writs prayed for.

- The 1935 Constitution which was in force at the time of the antecedents of this petition, as set forth at the

outset, explicitly enumerated the right to a public trial to which an accused was entitled. So it is, as likewise made clear, under the present dispensation. As a matter of fact, that was one constitutional provision that needed only a single, terse summation from the Chairman of the Committee on the Bill of Rights, Delegate, later Justice, Jose P. Laurel, to gain acceptance. As was stressed by him: "Trial should also be public in order to offset any danger of conducting it in an illegal and unjust manner."^[11] It would have been surprising if its proposed inclusion in the Bill of Rights had provoked any discussion, much less a debate. It was merely a reiteration of what appeared in the Philippine Autonomy Act of 1916, popularly known as the Jones Law. ^[12] Earlier, such a right found expression in the Philippine Bill of 1902, likewise an organic act of the then government of this country as an unincorporated territory of the United States.^[13] Historically, as was pointed out by Justice Black, speaking for the United States Supreme Court in the leading case of *In re Oliver*:^[14] "This nation's accepted practice of guaranteeing a public trial to an accused has its roots in [the] English common law heritage."^[15] He then observed that the exact date of its origin is obscure, "but it likely evolved long before the settlement of [the United States] as an accompaniment of the ancient institution of jury trial."^[16] It was then noted by him that there, "the guarantee to an accused of the right to a public trial first appeared in a state constitution in 1776."^[17] Later it was embodied in the Sixth Amendment of the Federal Constitution ratified in 1791.^[18] He could conclude his historical survey thus: "Today almost without exception every state by constitution, statute, or judicial decision, requires that all criminal trials be open to the public."^[19] Such is the venerable, historical lineage of the right to a public trial.

- The crucial question of the meaning to be attached this provision remains. The Constitution guarantees an accused the right to a public trial. What does it signify? Offhand it does seem fairly obvious that here is an instance where language is to be given a literal application. There is no ambiguity in the words employed. The trial must be public. It possesses that character when anyone interested in observing the manner a judge conducts the proceedings in his courtroom may do so. There is to be no ban on such attendance. His being a stranger to the litigants is of no moment. No relationship to the parties need be shown. The thought that lies behind this safeguard is the belief that thereby the accused is afforded further protection, that his trial is likely to be conducted with regularity and not tainted with any impropriety. It is not amiss to recall that Delegate Laurel in his terse summation of the importance of this right singled out its being a deterrence to arbitrariness. It is thus understandable why such a right is deemed embraced in procedural due process.^[20] Where a trial takes place, as is quite usual, in the courtroom and a calendar of what cases are to be heard is posted, no problem arises. It is the usual course of events that individuals desirous of being present are free to do so. There is the well recognized exception though that warrants the exclusion of the public where the evidence may be characterized as "offensive to decency or public morals."^[21]

What did occasion difficulty in this suit was that for the convenience of the parties, and of the city court Judge, it was in the latter's air-conditioned chambers that the trial was held. Did that suffice to vitiate the proceedings as violative of this right? The answer must be in the negative. There is no showing that the public was thereby excluded. It is to be admitted that the size of the room allotted the Judge would reduce the number of those who could be present. Such a fact though is not indicative of any transgression of this right. Courtrooms are not of uniform dimensions. Some are smaller than others. Moreover, as admitted by Justice Black in his masterly *In re Oliver* opinion, it suffices to satisfy the requirement of a trial being public if the accused could "have his friends, relatives and counsel present, no matter with what offense he may be charged."^[22]

Then, too, reference may also be made to the undisputed fact that at least fourteen hearings had been held in chambers of the city court Judge, without objection on the part of respondent policemen. What was said by former Chief Justice Moran should erase any doubt as to the weight to be accorded, more appropriately the lack of weight, to any such objection now raised. Thus: "In one case, the trial of the accused was held in Bilibid prison. The accused, invoking his right to a public trial, assigned the procedure thus taken as error. The Supreme Court held that as it affirmatively appears on the record that the accused offered no objection to the trial of his case in the place where it was held, his right is deemed waived."^[23] The decision referred to, *United States v.*

Mercado,[24] was handed down sixty-eight years ago in 1905.

It does seem that the challenged order of respondent is far from being invulnerable.

- That is all that need be said as to the obvious merit of this petition. One other objection to the conduct of the proceedings by the city court Judge may be briefly disposed of. Respondent Judge would seek to lend support to an order at war with the obvious meaning of a constitutional provision by harping on the alleged abdication by an assistant fiscal of his control over the prosecution. Again here there was a failure to abide by settled law. If any party could complain at all, it is the People of the Philippines for whom a fiscal speaks and acts. The accused cannot in law be termed an offended party for such an alleged failure to comply with official duty. Moreover, even assuming that respondent policemen could be heard to raise such a grievance, respondent Judge ought to have been aware that thereby no jurisdictional defect was incurred by the city court Judge. As was so emphatically declared by Justice J. B. L. Reyes in *Cariaga v. Justo-Guerrero*:^[25] "The case below was commenced and prosecuted without the intervention, mediation or participation of the fiscal or any of his deputies. This, notwithstanding, the jurisdiction of the court was not affected * * * but the court should have cited the public prosecutor to intervene * * *."^[26]

- There is much to be said of course for the concern displayed by respondent Judge to assure the reality as against the mere possibility of a trial being truly public. If it were otherwise, such a right could be reduced to a barren form of words. To the extent then that the conclusion reached by him was motivated by an apprehension that there was an evasion of a constitutional command, he certainly lived up to what is expected of a man of the robe. Further reflection ought to have convinced him though that such a fear was unjustified. An objective appraisal of conditions in municipal or city courts would have gone far in dispelling such misgivings. The crowded daily calendar, the nature of the cases handled, civil as well as criminal, the relaxed attitude on procedural rules not being strictly adhered to all make for a less tense atmosphere. As a result the attendance of the general public is much more in evidence; nor is its presence unwelcome. When it is remembered further that the occupants of such courts are not chosen primarily for their legal acumen, but taken from that portion of the bar more considerably attuned to the pulse of public life, it is not to be rationally expected that an accused would be denied whatever solace and comfort may come from the knowledge that a judge, with the eyes of the persons in court alert to his demeanor and his rulings, would run the risk of being unjust, unfair, or arbitrary. Nor does it change matters, just because, as did happen here, it was in the air-conditioned chambers of a city court judge rather than in the usual place that the trial took place.

WHEREFORE, the writ of certiorari prayed for is granted nullifying, setting aside, and declaring bereft of any legal force or effect the order of respondent Judge Felix Domingo, dated November 29, 1968 for being issued with grave abuse of discretion. The writ of prohibition sought by petitioner is likewise granted, commanding respondent Judge or any one acting in his place to desist from any further action in Civil Case No. 74830 of the Court of First Instance of Manila, except that of dismissing the same. The preliminary writ of injunction issued by this Court in its resolution of February 26, 1969 against the actuation of respondent Judge is made permanent. With costs against respondent policemen, Edgardo Calo and Simeon Carbonnel.

Makalintal, (Acting. C.J.), Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Ruiz Castro, J., no part.

Zaldivar and Barredo, JJ., are on leave.

[1] According to the 1935 Constitution: "In all criminal prosecutions, the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right * * * to have a speedy and public trial, * * *." Art. III, Sec. 1, par. 17. The present Constitution, in its Art. IV, speaks of an accused in all criminal prosecutions enjoying the right "to have a speedy, impartial and public trial * * *." Sec. 19.

- [2] The other respondents are Edgardo Calo and Simeon Carbonnel of the City of Manila police force.
- [3] The real petitioner is Francisco Lorenzana.
- [4] Petition, paragraph 3.
- [5] Ibid, paragraph 5.
- [6] Ibid, paragraph 7.
- [7] Ibid, paragraphs 8-9.
- [8] Ibid.
- [9] Ibid, paragraph 11.
- [10] Ibid, paragraph 20.
- [11] III S. Laurel, ed., Proceedings of the Philippine Constitutional Convention [of 1934-1935] 665-666 (1966).
- [12] Section 3.
- [13] Section 5. There was an express mention thereof in President McKinley's Instructions to the Second Philippine Commission of April 7, 1900.
- [14] 333 US 257 (1948). Cf. *Singer v. United States*, 380 US 24 (1965) and *Estes v. Texas*, 381 US 532 (1966).
- [15] Ibid, 266.
- [16] Ibid.
- [17] Ibid, 266-267. The State referred to is Pennsylvania.
- [18] Ibid, 267.
- [19] Ibid, 267-268.
- [20] Cf. *Duncan v. Louisiana*, 391 US 145 (1968).
- [21] According to Rule 119, Sec. 14 of the Rules of Court: "The court may upon its own motion exclude the public from the court-room if the evidence to be produced during the trial is of such a character as to be offensive to decency or public morals." Cf. *Reagan v. United States*, 202 Fed. 488 (1918).
- [22] *In re Oliver*, 333 US 257, 272.
- [23] 4 Moran, Comments on the Rules of Court, 1970 ed., 207-208
- [24] 4 Phil. 304.
- [25] G.R. No. L-24494, June 22, 1968, 23 SCRA 1061.
- [26] Ibid, 1065-1066.

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