

CRESENCIO MARTINEZ, petitioner, vs. LEOPOLDO B. GIRONELLA, as Judge of the Court of First Instance of Abra, Branch II, respondent.

G.R. No. L-37635. July 22, 1975

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

In Criminal Case No. 21 of the Court of First Instance of Abra, Branch II, Cresencio Martinez, as principal, and Viernes Duclan and Arnold Bayongan, as accessories after the fact, were charged with the murder of one Alfredo Batoon. As the first two were not apprehended, trial proceeded with respect to the third, Arnold Bayongan. Thereafter, decision was rendered, the pertinent and dispositive portions of which are as follows –

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"It is worthy to state, however, that the offense of murder was clearly established and was committed by Cresencio Martinez, from the evidence on record, there is no showing that Arnold Bayongan is an accessory after the fact. The evidence as a whole, however, tends to allude Gregorio Banawa, the then incumbent Mayor of Sallapadan to have knowledge of the perpetrator and commission of the crime but did not take any action. It is further informed that Gregorio Banawa to date is hiding the principal accused Cresencio Martinez.

"In view of the foregoing consideration, the Court hereby dismisses the charge against Arnold Bayongan and is therefore ordered ACQUITTED.

"The Provincial Fiscal is hereby directed to investigate this case further to avoid miscarriage of justice and the possibility of including Gregorio Banawa and for the prompt apprehension of the principal accused Cresencio Martinez." (pp. 10-11, rollo).

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Subsequent to the acquittal of Arnold Bayongan, Cresencio Martinez surrendered to the Philippine Constabulary and later was arraigned before Branch II of the same Court of First Instance. After having pleaded "not guilty" to the charge, and before the prosecution started to present its evidence, counsel for accused Cresencio Martinez moved that the trial Judge inhibit himself from hearing the case on its merits on the grounds "(1) that the respondent had the chance to pass upon the issue and has formed an opinion as to who committed the crime of murder; (2) that it would not be fair that he would sit, hear and pass judgment; and (3) that the respondent is no longer impartial," and prayed that the case be transferred to Branch I of the same Court.

Respondent denied the oral motion. Petitioner did not move for a reconsideration of the denial of the motion so the trial proceeded. When the trial was already in the rebuttal stage for the government, this Petition for Prohibition was filed. In his petition, Cresencio Martinez asks for a writ of prohibition commanding respondent Judge to desist from hearing and deciding Criminal Case No. 21 of the Court of First Instance of Abra; declaring the hearing heretofore had as a mistrial; and ordering that said criminal case be heard anew by the presiding Judge of Branch I of the said Court or any other Court within the Judicial District.

On being required to comment, the Solicitor General did so, and, citing the cases of *Dais vs. Torres, et al.*, 57 Phil.

897, 903; Luque vs. Kayanan, 29 SCRA 165; and Geotina vs. Gonzales, 41 SCRA 66, opined "that it would be in the best interest of justice and in keeping with the clear intendment and pronouncements of the Honorable Court that the case should be tried anew by another judge and that the respondent Judge should desist from further taking cognizance of the case."

On the other hand, respondent Judge maintains that the trial was fair, impartial and liberal to the herein accused-petitioner as can be gleaned from the records of Criminal Case No. 21. Respondent explains that the statement that the "crime was committed by Cresencio Martinez" appearing in the decision acquitting Arnold Bayongan after a separate trial "was based merely on the prosecution evidence where petitioner was not on trial, therefore did not confront witnesses, did not submit his defense evidence and surely will not in any way affect or apply to him. The decision to be rendered shall be based upon the evidence adduced and submitted by both parties."

The trial of the case has already been terminated and the case submitted for decision.

Two issues are presented before us – first, whether or not to order a new trial for petitioner; and second, whether or not respondent judge should be allowed to decide petitioner's case.

It cannot be denied that elementary due process requires that a case be heard by a tribunal that is impartial and disinterested. And if an accused has been the victim of an unfair and partial trial, this court will certainly not hesitate to order a new trial in the interest of justice.[1] In asking that the case be tried by another Judge, petitioner alleges in general that respondent would not be impartial as contemplated in the New constitution. No specific resolution, order, or ruling of respondent is cited in particular as one of partiality. It should be noted that after petitioner was arraigned and pleaded not guilty, and after respondent had denied petitioner's motion for the former to inhibit himself from trying the case, petitioner did not move for a reconsideration of the denial of the motion. Instead the trial proceeded. Petitioner took no further action towards the disqualification of respondent until the trial was already in the rebuttal stage for the government at which time the present Petition for Prohibition was filed. The only conclusion we can draw from these circumstances is that the trial was fair and impartial. We are, therefore, not inclined to order a new trial for petitioner.

As to the second issue: A judge has the duty not only to render a just and impartial decision, but also render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and also as to the judge's integrity.[2] While we grant respondent's capacity to render a just and impartial decision, his statement in the decision acquitting Arnold Bayongan to the effect that the "crime was committed by Cresencio Martinez" renders it impossible for respondent to be free from the suspicion that in deciding petitioner's case, respondent will be biased and prejudiced. We therefore hold that under these circumstances petitioner has the right to have his case decided by another Judge.

WHEREFORE, the petition for prohibition is granted Respondent is ordered to transmit the records of Criminal Case No. 21 of the Court of First Instance of Abra to Branch IV of the Court of First Instance of Ilocos Sur, and the Judge presiding the said court will decide the same. Without pronouncement as to cost.

SO ORDERED.

Antonio and Aquino, JJ., concur.

Fernando (Chairman), and Barredo, JJ., concurs in a separate opinion.

[1] Geotina vs. Gonzales 41 SCRA 66

[2] Idem.

CONCURRING OPINION

FERNANDO, J.:

The merit, both in the main opinion by Justice Concepcion and in the concurrence of Justice Barredo, is readily discernible even from a cursory perusal. They manifest the most careful and painstaking appraisal of the interests that must be balanced, that of the State in pursuance of its grave responsibility to assure that a crime does not go unpunished and to conduct a prosecution with dispatch to avoid the danger of witnesses being unable to remember with accuracy what transpired that could ensue if the new trial sought were granted consequent upon further delay, and that of the accused being entitled to nothing less "than the cold neutrality of an impartial judge." [1] Moreover, as pointed out in the opinion of Justice Barredo, this doctrine has received the imprimatur of the present Constitution. [2] The conclusion reached, no new hearing being required but respondent Judge Leopoldo B. Gironella being precluded from deciding the case, has then much to recommend it. My vote is thus cast with the rest of my brethren. Candor compels the admission that at first I would have gone along with the recommendation of the Solicitor-General to have a new trial. Further reflection persuades me that the result reached by us manifests fealty to the constitutional commands of due process and impartiality, considering that no unfairness tainted the proceedings. Hence my conformity with the decision. As, however, there are certain points which to my mind possess relevance, I add these few words.

1. The difficulty this case presented could have been obviated had respondent Judge granted the motion that he disqualify himself in view of his having previously come to the conclusion in acquitting Arnold Bayongan that it is petitioner Cresencio Martinez who committed the offense. He was led to do so, as he pointed out, in view of evidence presented at the previous trial, where petitioner had no participation. Necessarily, he was unable to confront the witnesses or to submit evidence on his behalf. Respondent Judge entertains no doubt that in the present case with petitioner as the accused, who could thus offer proof to exculpate himself, he could decide the case fairly, uninfluenced by his previous explicit declaration attributing the offense to him. Would that he were less certain of his objectivity? There is, of course, that lofty conception of the men on the bench, standing aloof on chill and distant heights, to paraphrase Cardozo, above and beyond the sweep of perturbing and deflecting forces arising from inherited instincts, traditional beliefs, acquired convictions, and most specifically, bias arising from circumstances as those herein disclosed. [3] It would be no reflection on respondent Judge had he been more sympathetic to the plea for disqualification. He appeared to have been heedless of the oft-reiterated admonition addressed to trial judges to avoid even the impression of the guilt or innocence of an accused being dependent on prejudice or prejudgment. Only last January, in *Castillo vs. Juan*, [4] such an approach was restated in this manner: "In every litigation, perhaps much more so in criminal cases, the manner and attitude of a trial judge are crucial to everyone concerned, the offended party, no less than the accused. It is not for him to indulge or even to give the appearance of catering to the at times human failing of yielding to first impressions. He is to refrain from reaching hasty conclusions or prejudging matters. It would be deplorable if he lays himself open to the suspicion of reacting to feelings rather than to facts, of being imprisoned in the net of his own sympathies and predilections. It must be obvious to the parties as well as the public that he follows the traditional mode of adjudication requiring that he hear both sides with patience and understanding to keep the risk of reaching an unjust decision at a minimum. It is not necessary that he should possess marked proficiency in law, but it is essential that he is to hold the balance true. What is equally important is that he should avoid any conduct that casts doubt on his impartiality. What has been said is not merely a matter of judicial ethics. It is impressed with constitutional significance." [5] Nor is it a matter solely of a judge being possessed of the highly sought-after trait of objectivity.

It is equally important that such an impression finds acceptance. It does not admit of doubt that it is not so much the confidence he feels in his impartiality but the feeling in the heart of an accused that the one to decide his case has not as yet made up his mind as to his guilt that the law takes into account. Not only that, the reaction of the general public cannot be ignored. That explains why in *Palang vs. Zosa*,^[6] this Court was appreciative when respondent Judge acceded to a plea for disqualification. Thus: "This voluntary inhibition by respondent Judge is to be commended. He has lived up to what is expected of occupants of the bench. The public faith in the impartial administration of justice is thus reinforced. It is not enough that they decide cases without bias and favoritism. It does not suffice that they in fact rid themselves of prepossessions. Their actuation must inspire that belief. This is an instance where appearance is just as important as the reality. Like Caesar's wife, a judge must not only be pure but beyond suspicion. At least, that is an ideal worth striving for. What is more, there is deference to the due process mandate."^[7]

2. To repeat, respondent Judge had less qualms about his objectivity. He turned down the motion for inhibition and proceeded with the trial. He ought not have done so, but he indulged in conduct that certainly could not merit approbation if deference be paid to previous controlling doctrines, repeated time and time again. That is why, it does appear, a new trial would seem to be indicated. That was how, as noted, I looked upon the matter on first reading the pleadings. If now I join my brethren, it is because, as duly set forth in both opinions, respondent Judge conducted a trial free from any procedural infirmity and marked by no evidence of unfairness. The Court is then confronted not with what could be but with what had been. It is a reality rather than a hypothetical state of facts that confronts us. A pragmatic approach then is not to be rejected outright. What petitioner could get in a new trial, he had failed to show that he was deprived of in the previous prosecution. It could therefore be a clear case of requiring the superfluous if once again both the state and the petitioner would be called upon to go through the process of a hearing, to the complete disregard of what had gone before. The apprehended evil is that notwithstanding the opportunity of petitioner to disprove evidence offered at the trial where he was not a party, the conviction formed by respondent Judge that he was the perpetrator of the offense would persist. If so, then the fairness of the trial would count for naught. With the decision reached by us that another judge could on a careful study of the records decide the case, such a fear is minimized, if not altogether eradicated. It is in the light of the above considerations, reinforced by the clear and cogent reasoning found in both opinions, that I would, in this case at least, allow a relaxation of the *Gutierrez* doctrine that assures a litigant that he is entitled to nothing less than the cold neutrality of an impartial judge.

[1] *Gutierrez vs. Santos*, L-15824, May 30, 1961, 2 SCRA 249.

[2] According to Article IV, Section 19: "In all criminal prosecutions, the accused shall . . . enjoy the right . . . to have a speedy, impartial and public trial. . . ."

[3] Cf. Cardozo. *Nature of the Judicial Process*, 12-13, 167-168 (1921).

[4] L-39516, January 28, 1975, 62 SCRA 124.

[5] *Ibid*, 127. Cf. *Del Castillo vs. Javelona*, L-16742, Sept. 29, 1962, 6 SCRA 146; *People vs. Gomez*, L-22345, May 29, 1967, 20 SCRA 293; *Austria vs. Masaquel*, L--22536, Aug. 31, 1967, 20 SCRA 1247; *Pimentel vs. Salanga*, L-27934, Sept. 18, 1967, 21 SCRA 160; *Zaldivar vs. Estenzo*, L-26065, May 3, 1968, 23 SCRA 533; *Luque vs. Kayanan*, L-26826, Aug. 29, 1969, 29 SCRA 165; *Paredes vs. Gopengco*, L-23710; Sept. 30, 1969, 29 SCRA 688; *Geotina vs. Gonzalez*, L-26310, Sept. 30, 1971, 41 SCRA 66; *Tobias vs. Ericta*, Adm. Case No. 242-J, July 29, 1972, 46 SCRA 83; *Mateo Jr. vs. Villaluz*, L-34756, March 31, 1973, 50 SCRA 18; *Umale vs. Villaluz*, L-33508, May 25, 1973, 51 SCRA 84; *Palang vs. Zosa*, L-38229, Aug. 30, 1974, 58 SCRA 776; *People*

vs. Ancheta, L-39993, May 19, 1975.

[6] L-38228, August 30, 1974, 58 SCRA 776.

[7] Ibid, 778.

CONCURRING OPINION

BARREDO, J.:

I concur, but I feel it may not be inappropriate to add a few words to the able main opinion penned by Mr. Justice Concepcion Jr.

In addition to the facts already stated in the main opinion, it is perhaps better to point out, as explained by respondent judge, that the instant petition was filed by a new counsel of petitioner. The former defense counsel was another lawyer who alone attended the trial from the very beginning until he had to withdraw because he was suspended from the practice of law by the Supreme Court. That lawyer was in fact the one who made the oral motion for inhibition of respondent judge before the People could present its evidence. That motion which was never reduced to writing was denied. Apparently seeing nothing wrong with such denial, counsel took no step to question it. Instead, the trial proceeded without any unusual incident until the withdrawal of the former defense counsel. At that time, September 6, 1973, even the defense had already rested and the prosecution had finished presenting one rebuttal witness. As a matter of fact, evidently because We have not issued any restraining order, after the present petition was filed on October 17, 1973, the trial has already been completed and the case was considered submitted for decision on December 29, 1973.

To my mind, these details I have mentioned provide additional ground to support the holding in the main opinion that petitioner is not entitled to a new trial. From these facts, it is quite clear that petitioner had agreed to be tried by respondent judge. It is only in the cases of disqualification specifically mentioned in Section 1 of Rule 137 that judges are supposed to inhibit themselves *motu proprio* without being asked to do so by the parties in interest, considering the injunction of the rule is addressed to the judge himself. Where the cause for inhibition is supposed bias or prejudice or possible prejudgment deduced from actuations of the judge in the course of the proceedings, it is but logical that the initiative to stop him from further acting should come from the party that might be aggrieved by his continuing to act. Withal, the challenge must be serious and persistent. In other words, such ground for disqualification is subject to waiver and may not be invoked for the first time after the trial has already been terminated, unless, of course, the bias or prejudice complained of has actually materialized and manifested itself and can thus be properly demonstrated, in which event the trial may be annulled and set aside.

In the case at bar, nowhere in the record does it appear that petitioner has in any manner alleged, much less proven, that respondent judge ever acted with partiality, bias or prejudice at any stage of his trial. Indeed, the charge against respondent is that he has already prejudged the guilt of petitioner. That does not necessarily mean the trial would be unfair. And there is here no pretense nor showing that it has been so. Under these circumstances, to grant a new trial now and require the parties to begin all over again would not only be a vain superfluity but could entail unpredictable consequences detrimental to the interests of justice. For one thing, it would not be a simple matter for the prosecution and, for that matter, the defense to reproduce its evidence as they were in their original form and content. There is even the risk that the witnesses may no longer be available or willing to testify. Besides, it does not seem fair nor proper that after submitting himself for and actually undergoing trial before respondent judge, petitioner, thru new counsel, should be permitted to have another chance, after having studied all the evidence and found the same to be discouraging, to say the least, to improve

his position to the prejudice of the state.

For obvious reasons, a new trial may be resorted to only as a last alternative when the paramount interests of justice can no longer be satisfied otherwise. The records of this case do not present such a situation as would warrant the great inconvenience of having petitioner's trial repeated. The allegations of the petition do not furnish sufficient justification for Us to doubt the actual impartiality and fairness of that trial. Accordingly, the petition for new trial should be denied.

All these do not mean, however, that I am in favor of allowing respondent judge to decide petitioner's case. That is entirely a different matter. I am convinced from a scrutiny of the record that respondent judge means well and has been trying his level best to comply with his sworn duty to do justice to petitioner. But with his previous solemn finding in his decision acquitting the accused Arnold Bayongan that "the offense of Murder was clearly established and was committed by Cresencio Martinez", herein petitioner, it would be too much to expect that the new and additional evidence before him will not be unwittingly viewed by him in the light of his previous finding that it was the petitioner who committed the crime charged in the information. Moreover, and more importantly, even if it be a fact that respondent judge would be so mentally equipped as to be impervious to the influence of his previous ratiocination, nothing he can say can sufficiently dispel from petitioner and his neighbors and the public at large the possible suspicion that the truth is otherwise. It is indeed in the peculiar circumstances of this case that I would say, paraphrasing Justice Sanchez, that it is equally important to being truly impartial that a judge should not give reasonable cause to any, of the parties to entertain any doubt about his impartiality. (Luque vs. Kayanan, 20 SCRA 165, 178.) This dictum is even more compelling when it comes to criminal cases like that of petitioner, as an indispensable element not only of due process in a general sense but of the right of the accused to have "an impartial and public trial" under Section 19 of the Bill of Rights of the Philippine Constitution of 1973.

In this respect, therefore, my vote is to order respondent judge not to decide petitioner's case and to let the records be submitted for decision to another judge as directed in the main opinion. And in answer to the possible argument that the judge who will be newly assigned to decide the case will not have the benefit of having seen the witnesses and observed their demeanor, suffice it to say that this is nothing unusual, for it has happened and will still happen in numberless times when judges either retire, resign, die or are transferred or removed, without being able to decide cases fully tried by them, in which eventuality, their respective successors perform the task of making the decision without holding a new trial. None of the decisions rendered under such circumstances has ever been questioned, much less set aside. As a matter of fact, there are provisions in the Judiciary Act permitting implicitly that it be done, albeit in cases of transfers, the law prefers that the decision be made by the judge who heard the case. (Sec. 51.)

To be absolutely fair, however, I would add that if in the course of his study of the records, the new judge should feel that there are matters which ought to be clarified or rectified, he may take such action as he may deem suitable, including the recalling of witnesses for further questioning. This procedure would enable the new judge to clear the record from any possible taint of partiality or prejudgment of respondent judge that might have unwittingly crept into the proceedings before him.

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