

MANUEL MATEO, JR., ROBERTO MARTINEZ ALIAS RUBEN MARTINEZ, ENRIQUE CONCEPCION AND ESMERALDO CRUZ, PETITIONERS, VS. HON. ONOFRE VILLALUZ, AS JUDGE OF THE CIRCUIT CRIMINAL COURT, S...

G.R. Nos. L-34756-59. March 31, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

The novel issue presented in this prohibition proceeding arose from the gnawing fear that the prized ideal of "the cold neutrality of an impartial judge"[1] implicit in the due process guarantee may be set at naught. Petitioners are among those being tried by respondent Judge for the offense of robbery in band with homicide. Thereafter, an extrajudicial statement by one Rolando Reyes, who was later on likewise indicted for the same offense, implicating petitioners, was subscribed before respondent Judge. That was the background of a motion for his disqualification, as the aforesaid Rolando Reyes, when called upon to testify as an additional witness for the prosecution impugned his written declaration stating that it was executed as a result of a threat by a government agent. It is now contended that such a repudiation would not sit well with respondent Judge, who had thus placed himself in a position of being unable to pass on such question with that degree of objectivity required by due process, although admittedly, such a move did not fall squarely within one of the specific grounds to inhibit judges.[2] Respondent Judge turned down this plea for disqualification. Hence this petition, based on the asserted violation of a constitutional right not to be convicted of an offense without due process of law. This Court, after a careful consideration of the matter and in the light of past decisions to be hereafter noted, looks upon such failure of respondent Judge to disqualify himself as a grave abuse of discretion correctible by prohibition. The petition is meritorious.

The facts, in the language of the petition, follow: "On or about June 4, 1971, the American Express Bank at Sangley Point, Cavite, was robbed and an American service-man was killed. In connection with that robbery, and the death of the serviceman, four (4) criminal actions were filed against petitioners and docketed as Criminal Cases Nos. CCC-VII-843 to 846, Cavite, for robbery in band with homicide, all captioned 'People of the Philippines, Plaintiff, vs. Manuel Mateo, et al., Accused'. * * * The Information fell in the sala of the Honorable Respondent Judge because the complaints were filed there; and, in fact, it was the Honorable Respondent Judge who ordered District State Prosecutor Cornelio Melendres (or) Assistant City Fiscal Enrique A. Cube to conduct the preliminary investigation. Petitioners Manuel Mateo, Jr. and Esmeraldo Cruz were arraigned on June 24, 1971 while petitioners Roberto Martinez alias Ruben Martinez filed a Motion to Dismiss on the ground of 'insufficiency of evidence for failure of prosecution (1) to prove the existence of conspiracy, and (2) to identify the accused by competent evidence.' On September 25, 1971, petitioner Roberto Martinez alias Ruben Martinez amplified his motion to dismiss with a Supplemental Motion based on the claim that 'pre-trial identification by prosecution witness Elliot Grey of your accused Roberto Martinez in a police line-up in the absence of defendant's counsel is unconstitutional; and the in-court testimony of said Elliot Grey identifying your accused Roberto

Martinez is inadmissible in evidence and should be stricken out from the records'. The prosecution opposed the motion to dismiss. To date, the motions to dismiss have not been decided by the Honorable Respondent Judge. * * * In the meantime, another suspect in the Sangley Point Robbery one Rolando Reyes was arrested. On October 5, 1971, when petitioner's Motion to Dismiss together with the Opposition thereto were submitted for resolution, the Honor-able Presiding Judge in an Order ruled that 'pursuant to Sec. 6, Rule 135 of the New Rules of Court, let the Motion to Dismiss be resolved until after the prosecution has presented and rested its evidence as against Rolando Reyes. * * * It appears that the said Rolando Reyes had executed an extra-judicial statement on October 1, 1971 and had signed and sworn to its truth before the Honorable Respondent Judge; and, in that statement had implicated petitioners; evidently, the Honorable Respondent Judge was aware of this, and it was for this reason that he had deferred ruling on petitioner Ruben Martinez' motions and supplemental motion to dismiss 'until after the prosecution has presented and rested its evidence as against Rolando Reyes.' Rolando Reyes, however, was tried separately from and in the absence of petitioners; so that the proceedings against him did not constitute evidence against petitioner. So, on November 26, 1971, while petitioner Martinez' Motion and Supplemental Motion to Dismiss remained unresolved, the prosecution filed a 'Motion to Present Additional Evidence.' * * * On December 4, 1971, petitioner Manuel Mateo filed an Opposi-tion to the prosecution's Motion to Present Additional Evidence on the ground that 'to allow the prosecution to present additional evidence in favor of the State after the prosecution has rested, while the accused has a pending motion to dismiss under consideration would be prejudicial to the substantial rights of herein accused because it would effectively deprive him of a fair trial.' * * * On December 24, 1971, respondent Judge granted the prosecution's 'Motion to Present Additional Evidence' ruling that 'it is well settled jurisprudence in this jurisdiction and elsewhere that it is within the sound discretion of the court whether or not to allow the presentation of additional evidence after the parties have rested their case.' * * * On February 3, 1972, the prosecution called Rolando Reyes as an additional witness, and in the course of his testimony, marked an extrajudicial statement purportedly executed by him on October 1, 1971 as Exh. 'P'. * * * Rolando Reyes repudiated it, stated that he had executed it because he had been threatened by a government agent. The statement, Exh. 'P' * * *, purports to have been subscribed and sworn to before the respondent Judge on October 1, 1971. As soon as the foregoing facts were made of record in the case, defendants [petitioners herein] verbally moved to suspend the proceedings to enable them to file a motion to disqualify the Honorable Respond-ent Judge; and the motion for suspension was granted: On February 5, 1971, petitioners filed a Joint Motion for Disqualification of respondent Judge contending that re-spondent Judge 'in the exercise of his sound discretion [should] disqualify himself from sitting in this case under the second paragraph of Section 1 of Rule 137 of the Rules of Court,' because Rolando Reyes had repudiated the statement that he, Reyes, had sworn to before the Honorable Respondent Judge and the latter perforce would have to pass upon that repudiation. * * * On February 11, 1972, the prosecution filed an Opposition to petitioners' Joint Motion for Disqualification. * * * On February 12, 1972, respondent Judge denied petitioners' Joint Motion for Disqualification."[3]

The specific question raised not having been passed upon previously, coupled with the exhaustive petition submitted by counsel for petitioners, Senator Jose W. Diokno, led this Court, in its resolution of February 25, 1972 to require comment from respondent Judge, with a temporary restraining order likewise being issued. The then Solicitor General, now Associate Justice, Felix Antonio, did so in an equally well-researched pleading on March 16, 1972 which, by our resolution of March 22, was considered his answer. Thereafter, with memoranda being submitted by both parties, the case was deemed submitted for decision on August 4 last year. There is, to repeat, a highly persuasive and scholarly quality in the manner in which the plea for petitioners was made. Nonetheless, with due recognition of the imperative character of the safeguard of due process connoting, at the very least, an impartial tribunal, the Court cannot consider the circumstances disclosed as sufficient to call for the disqualification of respondent Judge.

- It is now beyond dispute that due process cannot be satisfied in the absence of that degree of objectivity on the part of a judge sufficient to reassure litigants of his being fair and being just. Thereby there is the legitimate expectation that the decision arrived at would be the application of the law to the facts as found by a judge who does not play favorites. For him, the parties stand on equal footing. In the language of Justice Dizon: "It has been said, in fact, that due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge."^[4] He should, to quote from another decision "at all times manifest depth of commitment and concern to the cause of justice according to legal norms, a cerebral man who deliberately holds in check the tug and pull of purely personal preferences and prejudices which he shares with the rest of his fellow mortals."^[5] A judge then, to quote from the latest decision in point, *Geotina vs. Gonzalez*,^[6] penned by Justice Castro, should strive to be at all times "wholly free, disinterested, impartial and independent. Elementary due process requires a hearing before an impartial and dis-interested tribunal. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity."^[7] Nor is this to imply that prior to *Gutierrez*, there had been no awareness of the due process aspect of an impartial tribunal even if not explicitly referred to. As noted by Justice Street as far back as 1926 in *Government vs. Abella*,^[8] a 1926 decision, if the Supreme Court "were of the opinion that the litigant had not had a fair trial, a new trial could be granted."^[9] There was a reiteration of such a view in a case decided in 1933, *Dais vs. Torres*,^[10] with Justice Vickers as ponente, in these words: "Although a judge may not have been disqualified [according to the Code of Civil Procedure], nevertheless if it appears to this court that the appellant was not given a fair and impartial trial because of the trial judge's bias or prejudice, this court will order a new trial, if it deems necessary, in the interest of justice."^[11]

- Conformably to what was so emphatically asserted in *Gutierrez* as the fundamental requisite of impartiality for due process to be satisfied, the Rules of Court provision on disqualification when revised three years later in 1964 contains this additional paragraph: "A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."^[12] Thereby, it is made clear to the occupants of the bench that outside of pecuniary interest, relationship or previous participation in the matter that calls for adjudication, there may be other causes that could conceivably erode the trait of objectivity, thus calling for inhibition. That is to betray a sense of realism, for the factors that lead to preferences or predilections are many and varied. It is well, therefore, that if any such should make its appearance and prove difficult to resist, the better course for a judge is to disqualify himself. That way, he avoids being misunderstood. His reputation for probity and objectivity is preserved. What is even more important, the ideal of an impartial administration of justice is lived up to. Thus is due process vindicated. There is relevance to what was said by Justice Sanchez in *Pimentel vs. Salanga*,^[13] drawing "attention of all judges to appropriate guidelines in a situation where their capacity to try and decide a case fairly and judiciously comes to the fore by way of challenge from any one of the parties. A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstance reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability, that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decisions to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves

the cause of the law who forestalls miscarriage of justice." [14]

- The imperfections of human institutions being such, what is fit and proper is not always achieved. The invitation to judges to disqualify themselves is not always heeded. For that matter, it is not always desirable that they should do so. It could amount in certain cases to their being recreant to their trust. Justice Perfecto's warning is not to be ignored; "to shirk the responsibility" entails "the risk of being called upon to account for his dereliction." [15] It could be an instrument whereby a party could inhibit a judge in the hope of getting another more amenable to his persuasive skill. With all such considerations in mind, there is still cogency in the approach that would look with favor on the exercise of discretion in favor of disqualification, given the likelihood that bias or prejudice is unavoidable. Even before the amendment of Section 1 of Rule 137, this Court, in at least two decisions, [16] gave its approval to such a move. Then came *People vs. Gomez*, [17] where this Court, the ponente being Justice J. P. Bengzon, held: "Now considering that the Revised Rules of Court, already in effect when respondent Judge filed his answer herein containing the prayer to be disqualified from the case, although not yet in effect when the proceedings at issue were taken in the court below, states in Section 1 of Rule 137 that, 'A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons' other than the usual grounds for disqualification, this Court, after considering all the circumstances of the case, finds as reasonable, respondent Judge's afore-stated request for disqualification from further sitting in the *Richard* case, and We rule that he is thereby deemed, in light of the new Rules, to have inhibited himself from further taking cognizance of the case." [18]

There is even greater deference paid to the due process requirement of impartiality when, in *Luque vs. Kayanan*, [19] decided in 1969, this Court, through Justice Sanchez, could categorically rule: "All suitors, we must say, are entitled to nothing short of the cold neutrality of an independent, wholly-free, disinterested and impartial tribunal. It has been said that 'next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge.' Let it not be said that the administration of justice in this country suffers from too many human imperfections. To our mind, respondent judge should inhibit himself since it has become apparent that his further continuance in Case 4871 would not be in the best interest of justice, which he is bound to serve." [20] There was a reiteration of such a principle in *Paredes vs. Gopengco*, [21] where the following appears in the opinion of Justice Teehankee for the Court: "It is pertinent to state that the restriction provided in the Rule against appeal or stay of the proceedings where the trial judge denies a motion for his disqualification is not an absolute rule even in civil cases, and has not been taken as precluding a resort in appropriate cases to the special civil actions of prohibition and certiorari before the higher courts for determination, ahead of the judgment on the merits, whether the trial judge committed a grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to disqualify himself." [22] There is thus respectable authority for the view that with the possibility of a trial being tainted by partiality, this Court can step in to assure respect for the demands of due process.

- Petitioners can assert then, and rightly so, that we have the power to set aside the order denying the motion for disqualification. While the discretion in the first instance belongs to respondent Judge, its exercise is subject to our corrective authority. Certainly, there can be no question as to its being considered abuse if it can be shown that to refuse inhibition is to cast valid doubts as to a court's impartiality. The specific issue then that must be resolved is whether the circumstance of a party having subscribed before respondent Judge an extra-judicial statement purporting to describe the manner in which an offense was committed, later on repudiated by him as the product of intimidation in the course of his having been asked to testify against petitioners, would suffice to negate that degree of objectivity the Constitution requires? The answer must be in the affirmative. Petitioners are thus entitled to the relief sought. Respondent Judge could not be totally immune to what apparently was asserted before him in such extrajudicial statement. Moreover, it is unlikely that he was not in the slightest bit offended by the affiant's turnabout with his later declaration that there was intimidation by a government agent exerted on him. That was hardly flattering to respondent Judge. It is not only that. His

sense of fairness under the circumstances could easily be blunted. The absence of the requisite due process element is thus noticeable. There is this circumstance even more telling. It was he who attested to its due execution on October 1, 1971 wherein Rolando Reyes admitted his participation in the crime and in addition implicated petitioners. At that time, their motion for dismissal of the charges against them was pending; its resolution was deferred by respondent Judge until after the prosecution had presented and rested its evidence against affiant, who was himself indicted and tried for the same offense, but in a separate proceeding. It cannot be doubted then that respondent Judge in effect ruled that such extra-judicial statement was executed freely. With its repudiation on the ground that it was not so at all, coercion having come into the picture, there is apparent the situation of a judge having to pass on a question that by implication had already been answered by him. Such a fact became rather obvious. For respondent Judge was called upon to review a matter on which he had previously given his opinion. It is this inroad in one's objectivity that is sought to be avoided by the law on disqualification. The misgivings then as to the requirement of due process for "the cold neutrality of an impartial judge" not being met are more than justified. Hence the conclusion reached by us.

- To avoid any further controversies of this nature, lower court judges are well-advised to limit themselves to the task of adjudication and to leave to others the role of notarizing declarations. The less an occupant of the bench fritters away his time and energy in tasks more incumbent on officials of the executive branch, the less the danger of his being a participant in any event that might lend itself to the interpretation that his impartiality has been compromised. There is much to be said for displaying zeal and eagerness in stamping out criminality, but that role is hardly fit for a judge who must bide his time until the case is before him. He must ever be on guard lest what is done by him, even from the best of motives, may be thought of as eroding that objectivity and sobriety which are the hallmarks of judicial conduct. Thus should he attend to the performance of the sacred trust that is his.

WHEREFORE, the petition for prohibition is granted. The restraining order is issued by this Court on February 25, 1972 is made permanent. Without pronouncement as to costs.

Makalintal, Zaldivar, Ruiz Castro, Barredo, Makasiar, and Esguerra, JJ., concur.

Concepcion, C.J., I concur in this and the separate concurring opinion of Mr. Justice Teehankee.

Teehankee, J., concurs in a separate opinion.

Antonio, J., took no part.

[1] Gutierrez vs. Santos, L-15824, May 30, 1961, 2 SCRA 249, 254.

[2] According to Rule 137, sec. 1 of the Rules of Court: "No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record."

[3] Petition, pars. 3.10 to 3.18.

[4] Gutierrez vs. Santos, L-15824, May 30, 1961, 2 SCRA 249. This decision was cited with approval in 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; Zaldivar vs. Estenzo, L-26065, May 3, 1968, 23 SCRA 533; Geotina vs. Gonzales, L-26310, Sept. 30, 1971, 41 SCRA 66. In Luque vs. Kayanan, L-26826, Aug. 29, 1969, 29 SCRA 165 and Tobias vs. Ericta, Ad. Case No. 242-J, July 29, 1972, 46 SCRA 83, there was reference to the need for "the cold neutrality of an impartial judge" without invoking Gutierrez vs. Santos.

- [5] Azucena vs. Muñoz, Adm. Case No. 130-J, June 30, 1970, 33 SCRA 722.
- [6] L-26310, Sept. 30, 1971, 41 SCRA 66.
- [7] Ibid, 73-74.
- [8] 49 Phil 374.
- [9] Ibid, 377. Cf. Tayko vs. Capistrano, 53 Phil. 866 (1928).
- [10] 57 Phil. 897.
- [11] Ibid, 903. Cf. Benusa vs. Torres, 55 Phil. 737 (1931); Alvarez vs. Commonwealth of the Phil., 65 Phil. 302 (1938).
- [12] Rule 137, Section 1, Rules of Court.
- [13] L-27934, September 18, 1967, 21 SCRA 160.
- [14] Ibid. 167-168.
- [15] People vs. Moreno 83 Phil. 286, 294 (1949). Cf. Tayco vs. Capistrano, 53 Phil. 866 (1928); Talisay-Silay Milling Co. vs. Teodoro, 91 Phil. 101 (1952).
- [16] Gutierrez vs. Santos, L-15824, May 30, 1961, 2 SCRA 249 and Del Castillo vs. Javelona, L-16742, September 29, 1962, 6 SCRA 146.
- [17] L-22345, May 29, 1967, 20 SCRA 293.
- [18] Ibid, 299.
- [19] L-26826, August 29, 1969, 29 SCRA 165.
- [20] Ibid, 178. Two years earlier, in Pimental vs. Salanga, this Court, according to Justice Sanchez, under, the facts therein disclosed, was not persuaded "to say that since respondent judge is not legally under obligation to disqualify himself, we may not, on certiorari or prohibition, prevent him from sitting, trying and rendering judgment in the cases herein mentioned."
- [21] L-23710, September 30, 1969, 29 SCRA 688.
- [22] Ibid, 695.

CONCURRING:

TEEHANKEE, J.:

I wish to add the following considerations for my concurrence with the main opinion:

When respondent judge attested to the due execution on October 1, 1971 before him of the extra-judicial confession of Rolando Reyes, another suspect, who therein implicated the very petitioners - resolution of whose pending motion for dismissal of the charges against them for insufficiency of the prosecution's evidence was thereafter ordered deferred by respondent judge per his order of October 5, 1971 until after the prosecution shall have presented and rested its evidence as against Rolando Reyes who was however charged and tried for the same offense in a separate case - he attested and in effect issued a ruling that Reyes' extra-judicial confession was duly and freely given before him.

When after respondent judge had granted the prosecution's motion to reopen its case for the reception of additional evidence, and Reyes as an additional witness on the stand repudiated the very extra-judicial confession subscribed and sworn to by him before respondent judge on the ground that he had been threatened by a government agent to execute it, the self-same attestation of respondent judge as to the due and free execution before him of Reyes' extra-judicial confession and inextricably the truth and correctness of Reyes' claim for his repudiation thereof became vital factual issues in the cases below.

Obviously, no matter how laudable may have been respondent judge's motive in going beyond his judicial functions in attesting to the due execution of Reyes' extra-judicial confession, he is disqualified from sitting in judgment over these factual issues. Rule 137, section 1 of the Rules of Court[1] disqualifies him from in effect reviewing and passing upon his own act of attestation as to the due and free execution before him of Reyes' extra-judicial confession which is now the very subject of contention and review in the cases presided by him.

The accused-petitioners could not rightly expect that respondent judge would uphold Reyes' repudiation (even if substantiated) of his extra-judicial confession implicating them and thereby condemn himself as having somehow been at fault in attesting to the due and free execution of a confession extracted by unlawful threats. If respondent nevertheless sustained Reyes' repudiation, the prosecution would have cause for complaint that respondent judge so acted on facts within his peculiar personal knowledge which were never made of record nor subjected to the test of cross-examination.

Respondent judge's role has perforce been converted from judge to material witness, since in the latter capacity he can properly testify for or against Reyes' claims for repudiating the extra-judicial confession and duly place on the record the facts concerning its execution before him as he knows them.

The main opinion has already pointed up the Court's unanimous view that such undesirable situations should be avoided through trial judges limiting themselves to the task of adjudication and leaving to the law-enforcement officers the role of documenting for purposes of proof and trial the due and free execution of extra-judicial statements and confessions.

I, therefore, vote for the granting of the petition.

[1] Quoted in fn. 2 of the main opinion.

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