

**ELISEO ALIMPOOS, CIRIACA ALIMPOOS, SGT. MILLARDO M. PATES,
PEDRO BACLAY, CATALINO YAMILO, RAFAEL CAPANGPANGAN,
DALMACIO YGOT AND EUFROCINA ESTORES, PETITIONERS, VS. THE
HONORABL...**

G.R. No. L-27331. July 30, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Petitioner-spouses, Eliseo Alimpoos and Ciriaca Alimpoos, shall hereinafter be called the Offended Parties. Petitioners Pedro Baclay, Catalino Yamilo, Rafael Capangpangan, Dalmacio Ygot, Eufrocina Estores and Sgt. Millardo M. Pates may hereinafter be referred to as the Witnesses.

Respondent Reynaldo Mosquito will hereinafter be called the Accused. Respondent Matilde A. Mosquito is the Accused's wife. Respondent Court of Appeals will be termed the Appellate Tribunal; respondent Judge Montano A. Ortiz, as respondent Trial Judge, and the Municipal Judge, as such.

In this Petition for Certiorari, the Offended Parties and the Witnesses seek the reversal of the Decision of the Appellate Tribunal, upholding the disallowance of the Offended Parties' appeal by the Court of First Instance of Agusan (the Trial Court, for short) in Civil Case No. 1088, entitled "Reynaldo Mosquito, et al., vs. Eliseo Alimpoos, et al", wherein respondent Trial Judge granted the Accused's petition for Habeas Corpus and declared his detention illegal. He also enjoined the prosecution of Criminal Case No. 458 of the Municipal Court of Bayugan, Agusan (hereinafter called Criminal Case) where the Accused had been arrested.

The Accused was detained by the Chief of Police of Bayugan, Agusan, by virtue of a Warrant of Arrest issued by the Municipal Judge in the Criminal Case, which was a prosecution for Robbery with Less Serious Physical Injuries. The place allegedly robbed belonged to the Offended Parties. Contending that the Warrant was issued without the observance of the legal requirements for the issuance thereof, the Accused, then detained, and his wife instituted the Habeas Corpus case before the Trial Court. Named as defendants in the original complaint were the Offended parties and the Witnesses (as witnesses for the prosecution) all of whom are residents of Agusan. In an amended complaint, the two arresting policemen, the Chief of Police, and the Municipal Judge were added as co-defendants.

The Complaint of the Accused was premised on the alleged violation of Article 32 (4), (8), (15), (16), (17) and (19) of the Civil Code, and Article 269 of the Revised Penal Code, by defendants therein who were said to have been instrumental in causing the detention and arrest of the Accused. It prayed for the Accused's release from detention, as well as for the issuance of a Writ of Preliminary Injunction to enjoin the Offended Parties and the Witnesses, and the Municipal Judge and/or their representatives, from proceeding with the Criminal Case. Actual, moral and exemplary damages, attorney's fees, and costs were also prayed for.

The Offended Parties and the Witnesses, except Sgt. Pates, were represented by the law firm of Seno, Mendoza

and Associates, with offices located in Cebu City. They contended that they had nothing to do with the Accused's detention and arrest. The Municipal Judge, the Chief of Police, and Patrolmen Libres and Galimba, who were represented by the Acting Provincial Fiscal of Butuan City, alleged that the Warrant of Arrest was validly issued. Sgt. Pates was represented by Capt. Igualdad Cunanan, and reiterated substantially the same defense.

After due hearing in the Habeas Corpus case, respondent Trial Judge issued the appealed Order (the ORDER, for short), dated March 26, 1966, declaring the detention of the Accused illegal and granting the Writ of Habeas Corpus as well as the Preliminary Injunction prayed for upon the filing of the required bond. The dispositive portion of the ORDER reads:

"WHEREFORE, judgment is hereby rendered declaring illegal the detention of plaintiff Reynaldo Mosquito by virtue of a warrant of arrest issued without the observance of the fundamental legal requirements prior to the issuance of said Writ. The petition for habeas corpus is therefore granted and it is hereby ordered that said detention prisoner be forthwith released from custody, and set at liberty and that upon the filing of the bond in the amount of P1,000.00 a writ of preliminary injunction issue restraining the Municipal Judge of Bayugan, Agusan, defendant Vicente Galicia and the rest of the defendants, their attorneys, agents or representatives from proceeding with Criminal Case No. 458 entitled 'The People of the Philippines versus Reynaldo Mosquito et als.', for the crime of Robbery with Less Serious Physical Injuries, with costs against the defendants in these habeas corpus and preliminary injunction proceedings.

SO ORDERED."[1]

The Acting Provincial Fiscal of Agusan received copy of said ORDER on March 31, 1966, and on April 1, 1966, moved for extension of time within which to appeal, but eventually desisted from doing so.

On April 4, 1966, counsel for the Offended Parties and the Witnesses mailed from Cebu City a Notice of Appeal to the Court of Appeals stating that:

"Undersigned counsel received a copy of the order only today (April 4, 1966) which copy was handed to him by defendant (petitioner) Eliseo Alimpoos."

The appeal was opposed by the Accused on the ground that it was filed beyond the 48-hour reglementary period within which to perfect an appeal in Habeas Corpus proceedings.

On April 23, 1966, over the Offended Parties' objections, respondent Trial Judge dismissed their appeal thus:

"The notice of appeal of the Provincial Fiscal or of Atty. Seno for the defendants, having been filed out of time the Order of March 26, 1966 granting the habeas corpus is now final and executory. The urgent ex-parte motion to grant extension to file notice of appeal does not interrupt the running of the period fixed by law for filing an appeal which is forty-eight hours from receipt of the order"[2]

No reconsideration was prayed for by the Provincial Fiscal.

The Offended Parties, however, resorted to a Mandamus proceeding before the Court of Appeals seeking to compel respondent Trial Judge to give due course to said appeal.

On January 11, 1967, the Appellate Tribunal,[3] in CA-G.R. No. 37781-R, denied Mandamus stating in part:

"As the records show that copy of the questioned Order was received by counsel on March 30, 1966, the notice of appeal was not filed within the 48-hour limit. Petitioners' appeal was therefore filed out of time and the judgment has become final.

"In view of the foregoing, this petition is hereby denied. Costs against petitioners."

Hence, this Petition for Certiorari, filed on March 13, 1967, praying that the Decision of the Appellate Tribunal be set aside and the appeal inter-posed by the Offended Parties in the Habeas Corpus case be allowed.

We gave due course to the Petition on March 31, 1967, and after the filing of the respective Briefs, the case was considered submitted for decision on April 19, 1968.

The Offended Parties and the Witnesses pose the following Assignments of Error:

"I

The Honorable Court of Appeals erred in finding that 'counsel,' however, has not presented a shred of proof to bolster his claim of actual receipt of the order, Annex 'B' on April 4, 1966, save of his own self-serving assertions, which cannot prevail over the court record, (Annex 1 of Answer) certified to by the Clerk of Court, bearing the true actual date when the parties and counsel herein received their corresponding copies. The same certified true copy of the order shows that the law office of herein counsel received its copy on March 30, 1966 not on April 4, 1966;

II

The Honorable Court of Appeals erred in holding that 'respondent Judge was fully justified in relying on its own record to determine the date on which petitioners' counsel received copy of the order, without any proof thereof, because courts will take judicial notice of its records and of the facts which the same records establish and which are known to judges by reason of their judicial functions.'

III

The Honorable Court of Appeals erred in finding that 'as the records show that copy of the questioned order was received by counsel on March 30, 1966, the notice of appeal was not filed within the 48-hour limit.'

IV

The Honorable Court of Appeals erred in finding that 'petitioners' appeal was, therefore, filed out of time and the judgment has become final.'

V

The Honorable Court of Appeals erred in denying the Motion for Reconsideration without requiring the adverse party to answer the said Motion for Reconsideration.

VI

The Honorable Court of Appeals erred in failing to pass upon the issues raised in the lower court and in the Court of Appeals."

The technical issue of timeliness of the appeal will first be considered. Counsel for the Offended Parties alleges that he received a copy of the ORDER only on April 4, 1966 from the Offended Party, Eliseo Alimpoos, who handed him the copy in Cebu City. The latter had received it on March 31, 1966. Counsel contends that the reglementary period to appeal can not be reckoned from the latter date because, under the Rules, when a party is represented by counsel, notice should be sent, not to the party, but to his counsel of record. Counsel for the Offended Parties and the Witnesses further maintains that the period from which to reckon the period of appeal should actually be April 14, 1966 when he actually received, through the mails, his copy of the ORDER, as shown by the rubber stamp of his office appearing on the upper right hand corner of a duplicate copy of the ORDER.[4]

Respondent Trial Judge and the Appellate Tribunal alike found the foregoing assertion self-serving and relied instead on the last page of the ORDER,[5] purportedly showing that the law office of counsel for the Offended Parties and the Witnesses received its copy on March 30, 1966 and not on April 4, 1966, hence the disallowance of the appeal by respondent Trial Judge, and its affirmance by the Appellate Court.

The crucial last page is reproduced hereunder exactly as it appears:

"CIVIL CASE NO. 1088

ORDER

- 5 -

and preliminary injunction proceedings.

SO ORDERED.

Done this 26th day of March, 1966 at the City of Butuan.

(SGD) MONTANO A. ORTIZ

J u d g e

MAO-bb.

Recd

31/3/66 (initial)

Received:

(Sgd) Illegible (Sgd) Illegible 3/30/66 7:00

Mun. Judge evening

3/31/66 (Sgd) B. Galimba 3/30/00 700

(Sgd) Eliseo Alimpoos

Received copy March 31, 1966 8:00 A.M.

Ciriaco Alimpoos

Pedro Baklay

Catalino Yamilo

Rafael Capampangan

Dalmacio Egot

Euerecina Estores

By: (Sgd.) Eliseo Alimpoos

March 31, 1966

(Sgd) Illegible (Sgd.) Illegible

For the Chief of 3-30-66

Police

TO ATTYS. SENO, MENDOZA, RUIZ

& ASS. & CAPT. CUNANAN BY REG.

MAIL #11633 & #11634.

A certified true copy:

(s) MACARIO C. CONDE

(t) MACARIO C. CONDE Clerk of Court"[6] (Underlined capitals supplied)

Obviously, copies of the ORDER intended for "Attys. Seno, Mendoza, Ruiz & Ass. & Capt. Cunanan" were sent by registered mail with Receipts Nos. 11633 and 11634. Receipt No. 11633 is the registry number corresponding to the copy for the law office, and Receipt No. 11634 that for Capt. Cunanan. This is borne out by the envelope[7] from the "Office of the Clerk of Court Butuan City" addressed to "Seno, Mendoza, Ruiz and Associates, Cor. Magallanes D Jakosalem Sts., Aboitiz Bldg., Cebu City" with the following markings:

On the face of the envelope lower left hand corner:

"REGISTERED

CITY OF BUTUAN

Philippines

March 31, 1966

Superimposed on it in ink is "No. 11633"

On the back of the envelope appears a big diagonal stamp "FOR OFFICIAL USE ONLY" and two post office stamp marks:

"REGISTERED

CITY OF BUTUAN

Philippines

March 31, 1966

"CEBU CITY

Received

April 11, 1966

Philippines

Since the registered mail was received in Cebu City only on April 11, 1966, it is not unlikely that the law office addressee, as alleged by it, received the mail only three days after, or on April 14, 1966.

The notation;

"(Sgd.) Illegible

3-30-66"

appearing above the following note:

"To Attys. Seno, Mendoza, Ruiz & Ass. & Capt. Cunanan by reg. mail #11633 & #11634"

can not refer to personal receipt by the said law office for the obvious reason that its office being at Cebu City, personal service would not have been possible in Agusan.

It is apparent then that both respondent Trial Judge and the Appellate Tribunal committed error in holding that the Offended Parties' appeal was interposed beyond the reglementary period. Service on the Offended Party, Eliseo Alimpoos, on March 31, 1966 cannot be deemed as notice in law to his counsel.[8] Under the circumstances, therefore, reliance may be placed on the assertion of counsel that the Offended Party, Eliseo Alimpoos, had given him a copy of the ORDER only on April 4, 1966, which must be deemed as the date of notice to said counsel of the ORDER. Counsel lost no time in mailing his Notice of Appeal on the same day, April 4, 1966, from Cebu.[9] Procedurally, the appeal was seasonably filed.

Although the Appellate Tribunal had committed error in its appreciation of the date when the lawyers of the Offended Parties were served notice of the ORDER, we believe it would not be justifiable to reverse and to direct respondent Trial Judge to allow the Offended Parties to appeal. Instead, we are opting to render a practical judgment.

1. The original and amended complaints filed by the Offended Parties with the Trial Court contained three causes of action, principally for Habeas Corpus and for damages. However, the proceedings were conducted purely as a Habeas Corpus case. The original complaint was filed on February 22, 1966, and resolved on March 26, 1966, in keeping with the "speedy and effectual" character of Habeas Corpus proceedings.[10]

The ORDER treated the case as exclusively a Habeas Corpus proceeding, ignoring the Accused's prayer for damages. The lawyers of the Offended Parties attempted to appeal from the ORDER in accordance with Section 19 of Rule 41, captioned "who may appeal in Habeas Corpus cases". The Appellate Tribunal resolved the mandamus case as relating to a Habeas Corpus case.

2. Because the proceedings before the trial Court was a Habeas Corpus case, the complaint filed was obviously defective. A Habeas Corpus proceeding is not a suit between parties.

"Not a suit between the parties. - While the issuance of the writ is to all intents and purposes the commencement of a civil action, a suit, yet technically the proceedings by Habeas Corpus is in no sense a suit between private parties. It is an inquisition by the government, at the suggestion and instance of an individual, most probably, but still in the name and capacity of the sovereign. It may be analogized to a proceeding in rem and instituted for the sole purpose of fixing the status of a person. The person restrained is the central figure in the transaction. The proceeding is instituted solely for his benefit. As it is not designed to obtain redress against anybody, and as no judgment can be entered against anybody, and as there is no real plaintiff and defendant, there can be no suit in the technical sense." (Extraordinary Legal Remedies, Forrest G. Ferris & Forrest G. Ferris, Jr., p. 28)

The Accused, therefore, should have limited his complaint against the Chief of Police of Bayugan, the person having him in alleged illegal custody. That is the clear implication in the following provisions of Section 3, Rule 102, which enumerates what should be set forth in a petition for Habeas Corpus:

"SEC. 3. Requisites of application therefor. - Application for the writ shall be by petition signed and verified either by the party for whose relief it is intended, or by some person on his behalf, and shall set forth:

(a) That the person in whose behalf the application is made is imprisoned or restrained of his liberty;

(b) The officer or name of the person by whom he is so imprisoned or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation, and the person who is served with the writ shall be deemed the person intended;

(c) The place where he is so imprisoned or restrained, if known;

(d) A copy of the commitment or cause of detention of such person, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or restraint is without any legal authority, such fact shall appear."

The Accused's allegation as to, and prayer for, damages was out of place. In Habeas Corpus cases, the judgment in favor of the applicant cannot contain a provision for damages. It has to be confined to what is provided for in Section 15, Rule 102, which reads:

"SEC. 15. When prisoner discharged if no appeal. - When the court or judge has examined into the cause of caption and restraint of the prisoner, and is satisfied that he is unlawfully imprisoned or restrained, he shall forthwith order his discharge from confinement, but such discharge shall not be effective until a copy of the order has been served on the officer or person detaining the prisoner. If the officer or person detaining the prisoner does not desire to appeal, the prisoner shall be forthwith released."

It will be observed that there is no provision for serving copy of the discharge on any other private party defendant, nor for an award of damages.

As it has been held:

"The sole function of the writ is to relieve from unlawful imprisonment, and ordinarily it cannot properly be used for any other purpose. Thus it has been held that the writ cannot properly be used: To enforce a right to service; to determine whether a person has committed a crime; to determine a disputed interstate boundary line; to punish respondent, or to afford the injured person redress, for the illegal detention; to recover damages or other money award; x x x " (italics ours) (Vt – *In re St. Onge*, 108 A203,93 Vt. 373; NY - *People vs. Prior*, 182 NYS 577, 112 Misc. 208 [39 C.J.S. 430]).

3. The Accused has challenged the personality of the Offended Parties to interpose the appeal, premised on Section 19 of Rule 41 of the Rules of Court, which provides:

SEC. 19. Who may appeal in habeas corpus cases. - The appeal in habeas corpus cases may be taken in the name of the person detained or of the officer or person detain-ing him. But if the detention is by reason of civil proceedings the party in interest or the person who caused the detention shall be entitled to control the appeal; and if, by virtue of criminal proceedings, the provincial fiscal or the city fiscal as the case may be, is entitled to control the appeal on behalf of the government, subject to the right of the Solicitor General to intervene" (Rule 41)

It is indisputable that the Habeas Corpus case arose by virtue of criminal proceedings in the Criminal Case. Pursuant to the aforequoted provision, therefore, it was the Provincial Fiscal who was entitled to control the appeal on behalf of the Government. In this case, although the Provincial Fiscal of Agusan, filed a "Motion for Extension of Time to Perfect Appeal" on April 1, 1966, he had nevertheless abandoned the same. Neither did he take steps for the reconsideration of respondent Trial Judge's Order of April 23, 1966 dismissing the appeal. The inaction of the Fiscal may be deemed to have been an admission on his part of the unmeritoriousness of an appeal. As in criminal proceedings, his sound discretion on the matter should be deemed controlling, and it has to be held that the Offended Parties were bereft of person-ality to prosecute the appeal.

Noteworthy is the fact that in the instant case, the Offended Parties had alleged in their Answer[11] that they were not detaining the Accused and had nothing to do with the Warrant of Arrest issued against him. With all the more

reason then that they had no personality to interpose an appeal from a judicial Order granting the Writ of Habeas Corpus and ordering the release of a person detained.

4. It has been noted that the ORDER contains a provision enjoining the prosecution of the Accused in the Criminal Case. That is error. If the Accused was illegally detained because he was arrested without a preliminary examination, what should have been done was to set aside the warrant of arrest and order the discharge of the Accused, but without enjoining the Municipal Judge from conducting a preliminary examination and afterwards properly issuing a warrant of arrest. Habeas Corpus proceedings are not meant to determine criminal responsibility. This principle was enunciated in *Lee Ching v. Collector of Customs*, 33 Phil. 329 (1916) where it was said:

"Proceedings in habeas corpus are separate and distinct from the main case from which the proceedings spring. They rarely, if ever, touch the merits of the case and require no pronouncement with respect thereto."

When a preliminary investigation is not held, or is improperly held, the procedure is not to dismiss the case, or enjoin its prosecution, but to have the pre-liminary investigation conducted. As stated in *People v. Figueroa*, 27 SCRA, 1239, 1247 (1969):

"Assuming that the trial court felt that the accused should have been given more 'ample chance and opportunity to be heard in the preliminary investigation', then what it could properly have done, since in its own Order it recognized that Fiscal Abaca had conducted a preliminary investigation although 'hurriedly' in its opinion, was not to dismiss the information but to hold the case in abeyance and conduct its own investigation or require the fiscal to hold a reinvestigation. This Court, speaking through now Mr. Chief Justice Concepcion in *People vs. Casiano*, had stressed this as the proper procedure, pointing out that 'the absence of such investigation did not impair the validity of the information or otherwise render it defective. Much less did it affect the jurisdiction of the Court of First Instance over the present case.'"

5. As a matter of fact, Habeas Corpus was not the proper remedy for the Accused. In a case where a warrant of arrest was assailed for an alleged improper pre-liminary examination, this Court, in *Luna v. Plaza*, 26 SCRA, 310, 323 (1968), said:

"At any rate, we believe that, if at all, the remedy available to the petitioner herein, under the circumstances stated in this opinion, is not a petition for a writ of habeas corpus but a petition to quash the warrant of arrest or a petition for a reinvestigation of the case by the respondent Municipal Judge or by the Provincial Fiscal."

It is the general rule that Habeas Corpus should not be resorted to when there is another remedy available.

"As a general rule, a writ of habeas corpus will not be granted where relief may be had or could have been procured by resort to another general remedy, such as appeal or writ of error. But the existence of another remedy does not necessarily preclude a resort to the writ of habeas corpus to obtain relief from illegal detention, especially where the other remedy is deemed not to be as effective as that of habeas corpus." [12]

Time and again, it has been explained that Habeas Corpus cannot function as a writ of error. [13]

6. It has further been noted that respondent Trial Judge erred in adjudging "costs" against defendants in the Habeas Corpus case. "When a person confined under color of proceedings in a criminal case is discharged, the costs shall be taxed against the Republic" [14]

7. The Accused was charged with Robbery with Less Serious Physical Injuries in early 1966. Through the error of the Municipal Judge in issuing the warrant of arrest without conducting a preliminary examination, the Accused was able to institute the Habeas Corpus case which has pended to this date, or for fifteen years. The error of the Municipal Judge has considerably retarded the turning of the wheels of justice. It should be meet to reiterate the

following admonition made in the aforesaid Luna-Plaza case:

"We wish to stress, however, that what has been stated in this opinion is certainly not intended to sanction the return to the former practice of municipal judges of simply relying upon affidavits or sworn statements that are made to accompany the complaints that are filed before them, in determining whether there is a probable cause for the issuance of a warrant of arrest. That practice is precisely what is sought to be voided by the amendment of Section 87 (c) of Republic Act 296 (Judiciary Act of 1948) which requires that before a municipal judge issues a warrant of arrest he should first satisfy himself that there is a probable cause by examining the witnesses personally, and that the examination must be under oath and reduced to writing in the form of searching questions and answers. It is obvious that the purpose of this amendment is to prevent the issuance of a warrant of arrest against a person based simply upon affidavits of witnesses who made, and swore to, their statements before a person or persons other than the judge before whom the criminal complaint is filed. We wish to emphasize strict compliance by municipal or city judges of the provision of Section 87 (c) of the Judiciary Act of 1948, as amended by Republic Act 3828, in order to avoid malicious and/or unfounded criminal prosecution of persons."

In view of the foregoing considerations, it should be practical to resolve this case in a manner that will not further protract the matter brought to this instance. It will not do merely to reverse and set aside the appealed decision of the Appellate Tribunal, for it will leave the ORDER of respondent Trial Judge outstanding with its injunction against the further prosecution of the Criminal Case.

WHEREFORE, in the distinct understanding that this Court has not acted in a proper Habeas Corpus proceeding, the Warrant of Arrest issued against Reynaldo Mosquito in Criminal Case No. 458 of the Municipal Court of Bayugan, Agusan, the order of March 26, 1966 issued in Civil Case No. 1088 of the Court of First Instance of Agusan, as well as the Decision of the Court of Appeals in its case CA-G.R. No. 37781-R, are hereby set aside; and the proceedings in the last two cases mentioned are invalidated.

Without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] pp. 106-107, Court of Appeals Rollo.

[2] p. 69, Rollo.

[3] J. Antonio Cañizares, ponente, with JJ. Francisco R. Capistrano and Nicasio A. Yatco, concurring.

[4] p. 171, Court of Appeals Rollo.

[5] Annex I, Answer, p. 107, *ibid*

[6] p.107, *ibid*.

[7] Annex B-1; p. 176, *ibid*.

[8] Sec. 2, Rule 13; *Palad vs. Cui, et al.*, 28 Phil. 45 (1914).

[9] p. 49, Court of Appeals Rollo.

[10] *Villavicencio vs. Lukban*, 39 Phil. 778 (1919).

[11] pp. 23-31, *Ibid*.

[12] 25 Am. Jur. 155-156, cited in V-B Francisco, Rules of Court, Special Proceedings, Footnote at p. 675.

[13] Cuenca vs. Superintendent of the Correctional Institution for Women, 3 SCRA 897 (1961); Sotto vs. Director of Prisons, 5 SCRA 293 (1962); Republic vs. Yatco, 6 SCRA 352 (1962); Culanag vs. Director of Prisons, 17 SCRA 429 (1966).

[14] Sec. 19, Rule 102.

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