

GERARDO M. ALFONSO, RECURRENTE, CONTRA NICASIO YATCO, JUEZ DEL JUZGADO DE PRIMERA INSTANCIA DE LAGUNA, RECURRIDO.

G.R. No. L-1128. February 28, 1948

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PABLO, M.:

En la Causa Civil No. 7996 del Juzgado de Primera Instancia de Laguna, el recurrente en nombre del abogado Sr. Estanislao A. Fernandez, Jr. presento una mocion pidiendo, por las razones en ella expuestas, la posposicion de la vista señalada para el 9 de Agosto de 1946. Accediendo a esta peticion, el juez pospuso la vista para el 20 de Agosto con caracter intransferible.

Cuando se llamo a vista el expediente en el dia señalado, el recurrente dio explicaciones de su demora en la llegada y el juzgado las encontro satisfactorias. Acto seguido, el recurrente reprodujo oralmente la peticion contenida en la motion del abogado Sr. Fernandez que se extravió, de retirar su representacion como abogado de los demandados. El juzgado le advirtio que ya que estaba presente podia el representar a los demandados y proseguir con la vista para no obstaculizar el despacho de los asuntos y no perjudicar a la otra parte que vino con sus testigos. El recurrente alego que no ha hecho ninguna comparecencia formal en el expediente; que no estaba preparado para entrar en vista porque desconocia los detalles del asunto; que ni siquiera conferencio con los demandados ni con sus testigos; que no podia leer el expediente porque sus gafas se habian extraviado. Y pidio tiempo razonable para estar preparado para entrar en vista. Cuando se reanudo esta a eso de las 11:20 de la mañana de aquel dia y el juez le advirtio que era funcionario del juzgado, que no debia abandonar la sala, el recurrente entro en vista representando a los demandados. Por la tarde, el recurrente presento su mocion (Annex B) en que pedia permiso para retirar su representacion como abogado de los demandados. Como llevaba la conformidad de estos, el juzgado accedio a la peticion y continuo la vista sin tener representacion los demandados. En aquella misma tarde el juez dicto sentencia condenando a los demandados.

El 2 de Septiembre de 1946 el recurrente presento una mocion pidiendo el descarte de dos parrafos de la decision que censuraban su actuacion como abogado, y fue denegada en 9 del mismo mes.

El recurrente acude hoy a este Tribunal en una solicitud de certiorari y, alegando que el juez recurrido actuó sin jurisdiccion o con grave abuso de su discrecion y porque, ademas, no tiene otro remedio facil, expedito y adecuado, pide la revocacion de la orden del juzgado de 9 de Septiembre de 1946 y que se ordene el descarte de los dos parrafos ya referidos de la decision de 20 de Agosto de 1946.

El remedio disponible para el recurrente en el curso ordinario de los procedimientos es la apelacion y no el recurso especial de certiorari. La decision en que se le censura es definitiva y no meramente interlocutoria, como el alega. En la causa de Omaña y otro contra Gatulayao y otros, Victorio Javier y otros que no eran partes originariamente en la causa decidida sino simples mocionantes, apelaron contra la orden del Hon. Juez Rovira que desestimo su mocion y anulo toda la actuacion habida sobre dicha mocion. En apelacion, este Tribunal revoco la orden de dicho juez y ordeno que se reciban las pruebas de los mocion antes-apelantes para que se pueda

determinar la naturaleza de su posesion. (40 Off. Gaz., 2277.) En Pueblo contra Abellera (40 Off. Gaz., 7th Suppl., 70), este Tribunal, en apelacion, ordeno el descarte de los parrafos que reprendian al acusado. Y en el asunto de Pueblo contra Meneses, 2 Off. Gaz., 681, el acusado apelo contra la decision para pedir el descarte de la censura hecha a el a pesar de haber sido absuelto. La razon es sencilla. En el expediente mismo de los dos casos ultimos se puede decidir si estaba justificada o no la censura. En ninguna de estas tres causas se utilizo el certiorari, sino la apelacion. Y es porque en una larga serie de decisiones, este Tribunal sento la doctrina de que no se expedira mandamiento

"* * * de certiorari a menos que resulte de una manera clara que el juez contra el cual se dirige procedio sin jurisdiccion o se excedio en el la o abuso gravemente en el ejercicio de su discrecion; no se expedira para subsanar errores de procedimiento o enmendar conclusiones de hecho o de derecho erroneas. Si el juez tiene jurisdiccion sobre la materia litigiosa y sobre las partes, todo cuanto decida sobre las cuestiones pertinentes a la causa son resoluciones que estan dentro de su jurisdiccion y por irregulares o erroneas que sean no pueden corregirse mediante certiorari. (Herrera contra Barreto y otro, 25 Jur. Fil., 253; Gala contra Cui y Rodriguez, 25 Jur. Fil., 540; Provincia de Tarlac contra Gale, 26 Jur. Fil., 356; Napa contra Weissenhagen, 29 Jur. Fil., 188; Gobierno de las Islas Filipinas contra Juez de Primera Instancia de Iloilo y Bantillo, 34 Jur. Fil., 166; Ello contra Juez de Primera Instancia de Antique y otro, 49 Jur. Fil., 160; Santos contra Juzgado de Primera Instancia de Cavite y otros, 49 Jur. Fil., 416; Regala contra Juez del Juzgado de Primera Instancia de Bataan, Decision, Vol. 3, No. 2, p. 88, February, 1947.)" Ong Sit contra Piccio, L-1287, promulgada en Julio 30, 1947, 44 Off. Gaz., 4915.

Pero, para evitar subsiguientes litigios, el Tribunal declara que la solicitud no tiene meritos. El solicitante alega que era un mero auxiliar en la oficina del abogado Estanislao Fernandez, Jr.; que este en realidad era el abogado de los demandados; que el 18 de Agosto de 1946, el abogado Fernandez preparo una mocion en la que retiraba su comparecencia por los demandados, por la razon de que estaba ocupado en el Congreso, y pidio al solicitante que compareciera por dichos demandados, a lo que el solicitante asintio si tuviera tiempo para prepararse antes de la vista; que en la noche del 19 de Agosto, el solicitante fue victima de un robo en el que perdio sus gafas y la mocion de retirada firmada por el abogado Fernandez; que tambien el "jeep" donde se iba a embarcar en su viaje para Laguna dejo de funcionar a ultima hora por un defecto del motor, asi que el solicitante tuvo que tomar un "truck" que hacia viajes regulares a Laguna a donde llego el 20 de Agosto; que el solicitante comparecio ante el Juez recurrido y le relato todos los hechos que se acaban de mencionar, especialmente la perdida de la mocion del abogado Fernandez en la que retiraba su comparecencia; que el Juez recurrido advirtio al solicitante que debiera continuar con la vista del asunto para no demorar los intereses de justicia; que el solicitante entonces manifesto al Juez que no habia hecho constar todavia su comparecencia en el asunto, pero el Juez le dijo que continuara con la vista; que el solicitante se conformo en continuar con la vista porque entonces creyo que podria hacerlo aun en ausencia de los demandados; que hacia la tarde los demandados llegaron y concedieron al abogado Alfonso su consentimiento para retirarse del asunto, por lo que el Juez no tuvo mas remedio que aprobar la retirada, pero censurando al abogado.

Indudablemente, la actitud del Juez recurrido se debio a que no creia en las alegaciones del solicitante. Debe tenerse en cuenta que el 9 de Agosto de 1946, al abogado Fernandez pidio la transferencia de la vista por conducto del abogado Gerardo Alfonso, y este comparecio entonces ante el juzgado en nombre del abogado Fernandez, indudablemente con el consentimiento de los clientes. El Juez concedio la tranferencia de la vista pero con la advertencia de que el asunto se veria el 20 de Agosto del mismo año con caracter intransferible. El solicitante Gerardo Alfonso sabia todo esto, y como funcionario del juzgado era su deber cooperar con que se llevara a cumplido efecto la orden del Tribunal. Su actitud, sin embargo, era lo contrario, asi que merecia la censura del Tribunal.

No estamos decidiendo ahora si la actitud del Juez recurrido de obligar a los demandados a entrar en vista sin abogado, es o no correcta. La retirada del abogado Alfonso fue autorizada por los demandados y permitida por tal razon por el juez, y la cuestion de si los demandados necesitaban de mas tiempo o no para contratar los servicios de UD abogado, no la decidimos hoy, porque corresponde al asunto principal. Estamos tratando en este asunto solamente de la actitud del abogado Gerardo Alfonso que fue censurada pov el Tribunal. Y declaramos "que no hay nada en los autos ante Nos que demuestre que la censura no esta justificada."

Se deniega la solicitud, con costas contra el recurrente.

Moran, Pres., Paras, Feria, Bengzon, Briones, Padilla, y Tuason, MM., estan conformes.

DISSENTING OPINION

HILADO, J.:

It is unquestionable that petitioner, Atty. Gerardo M. Alfonso, was not, and never was, the counsel of defendants' own choice in the main case. This clearly appears from Annex B, which bears the conformity and signature of defendant Leon Gutierrez, for himself and on behalf of his codefendants, wherein it was alleged that the attorney for said defendants was Mr. Estanislao A. Fernandez. The fact that petitioner was an assistant in Atty. Fernandez's law office most assuredly could not, *ex proprio vigore*, make the former also counsel for said defendants regardless of their will and consent. That was not either a case calling for a *de officio* counsel where the court need not count with the party's conformity.

Due process of law demands, among other things, "the right to a fair and adequate hearing in which one has the right to defend his interests before an impartial court" (16 C.J.S., p. 1265, sec. 622). Article III, section 1 (1), of our Constitution covers all kinds of judicial proceedings, civil and criminal—it makes no distinction. It negatively ordains that "No person shall be deprived of * * * property without due process of law * * *." In *Powell vs. Alabama* (287 U.S., 45; 77 Law. ed., 158, 170-171), it was held that:

"If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense." (See also *Roberta vs. Anderson*, 66 Fed., 2d, 874, 876; 16 C.J.S., 1267.)

In the case at bar when the main case, No. 7996 of the lower court, was called for hearing petitioner manifested to the court that he was not the lawyer of the defendants and that if he had made any appearance in the case it was simply to ask for the postponement of the hearing in the name of defendants' attorney of record Mr. Fernandez. As already stated, in Annex B there appears the conformity and signature of defendant Leon Gutierrez for himself and on behalf of his co-defendants, to the allegations and prayer of the said petition. Among these allegations was the one appearing in the first and second paragraphs of said petition to the effect that the attorney for said defendants was Estanislao Fernandez, Jr., and that the latter had requested petitioner to ask of the court that he, Mr. Fernandez, be allowed to withdraw his appearance as counsel for the defendants, for the reason that the case had been set for the morning of August 20, 1946, "with an intransferable character", and he could not possibly attend to the same because he had to be present at the session of the Congress (Mr. Fernandez was a Congressman) on the afternoon of the same day for the discussion of the Reorganization Bill, and the distance between Santa Cruz, Laguna, and Manila made it physically impossible for him to reach Congress at 3 p.m., the time for commencement of the session. Paragraph 3 of the same petition contains the other statement that since the court considered that he had formally appeared as counsel for the defendants when he signed a petition for

postponement, petitioner was praying to be allowed to withdraw whatever appearance he might have filed in the case, not only because of what he had already stated to show that he was not the attorney of said defendants but also because he did not even have the papers of the case, which were then in the hands of Attorney Nestor Alampay, and that his (Atty. Alfonso's) eyeglasses had been stolen together with the petition for postponement that he had prepared in the name of Atty. Fernandez when the polo shirt in whose pocket they were placed was stolen at his boarding house.

It seems very clear, to say the least, that those defendants had not employed petitioner as their counsel in the case. They were not to blame for Atty. Fernandez's withdrawal from their case. There is absolutely nothing in the record to show that they had any advance knowledge—that is, prior to the very morning of the hearing—of Atty. Fernandez's inability to appear for them on that day. I find no adequate justification for compelling those defendants to enter into trial that morning represented by a lawyer they never employed, and to be left without counsel during the remainder of the proceedings until the case was decided against the defendants in the afternoon of the same day. The circumstances to me plainly appear to fall far short of affording said defendants a reasonable opportunity to be represented by counsel of their own choice. In fact, when they were forced to go to trial with the petitioner as counsel, not of their choice but by direction of the court, said attorney did not even have their papers in the case. In a word, as I read the record, it reveals a failure to afford these parties that "due process of law" which the Bill of Rights requires before any person may be deprived of "life, liberty, or property."

The doctrine that due process includes the right to be represented by counsel is indeed a sound one, and becomes all the more essential when the party is not himself a lawyer, as the above mentioned defendants evidently were not. The party plaintiff was represented by counsel from beginning to end. In such circumstances it is easy to conceive how unequal and unfair the contest must have been between said counsel and Leon Gutierrez, the lone defendant who was present during the trial (court's decision Annex "C", 3rd par.), with the former presumed to be well posted in, and the latter ignorant of, the intricacies of the law, substantive and adjective.

"Where a judgment or any part thereof clearly violates the plain provisions of the constitution or statutes, such judgment or the part thereof that is in direct conflict with the constitution or statutes is to that extent void and cannot be enforced". (City of Norman vs. Van Camp, 209 P., 925; 87 Okl., 182; 49 C.J.S., p. 878, sec. 449.)

In view of the foregoing, I am of opinion that: (1) No law can validly confer upon a court jurisdiction to deprive any person of life, liberty, or property without due process of law; (2) because of such lack of due process in the main case the court was devoid of jurisdiction to "deprive" said defendants of whatever rights, title and interests they might have in "the property in question" of which it declared the plaintiffs to be the "exclusive owners" in its decision (Annex C), the judgment thus rendered openly conflicting with the constitution; (3) the judgment thus rendered was null and void because violative of the constitution, and because no one, of the government and the governed, is above the supreme law; and (4) having no jurisdiction to render the judgment, the court lacked authority to make the pronouncements therein contained, including those complained of by petitioner.

PERFECTO, J.:

We concur fully in this opinion of Mr. Justice Hilado.

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