

JACINTO TURARAY AND SIMEON TURARAY PETITIONERS VS. THE PEOPLE OF THE PHILIPPINES HON. MANUEL ARRANZ, JUDGE OF THE COURT OF FIRST INSTANCE OF ISABELA, AND BARTOLOMEO BATTUNG, RES...

G.R. No. 10716. September 30, 1957

Ponente: PADILLA, J.

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PADILLA, J.:

This is a paupers' petition for a writ of certiorari. The petitioners plead that they and other co-defendants were charged with trespass, defined and punished under article 281 of the Revised Penal Code, in the Justice of the Peace Court of Santa Maria, Isabela, where, after trial, they were found guilty as charged and sentenced to suffer 11 days of arresto mayor and to pay the proportionate costs; that they appealed to the Court of First Instance of Isabela where the Provincial Fiscal filed the corresponding information; that they were released on bail pending appeal; that on 1 August 1955 in a verified motion they prayed that the Court issue an order: declaring that they expressly waived their right to be present at the trial of the case; that their presence was necessary and they could appear by counsel alone at every of the trial (Annex A); that on 15 August 1955 the motion denied (Annex B), and on 7 March 1956 the motion for resopideration was likewise denied; and that as the Court acted in excess of its jurisdiction and/or with grave abuse of discretion in denying their motions and as there was no appeal nor any plain, speedy and adequate remedy in the ordinary course of law, they pray that a writ issue "declaring that the Orders of the respondent Judge are contrary to law and declaring further that the personal presence of the accused, is not indispensable at all stages of the trial of Criminal Case No. 1622 of the Court of First Instance of Isabela and that they may appear by attorney alone at all stages of the trial of said case;" and ordering the respondent court "to desist from * * * proceeding on the case * * * until further order ,of this Honorable Court,"

The Solicitor General admits "the allegations of fact as well as the conclusions of law set forth in the petition;" concedes that the personal presence of the petitioners either at the arraignment or during the trial proper of their case before the Court of First Instance of Isabela is not necessary and may be waived;" and offers "no objection to the granting of the relief prayed, for."

Section 2, Rule 112, provides:

If the charge is for an offense within the jurisdiction of the Courts of First Instance, the defendant must be personally present at the arraignment, and if for a light offense triable by the justice of the peace or any other inferior courts of similar jurisdiction he may appear by attorney.

Section 3, Rule 114, provides:

A plea of guilty can be put in only by the defendant himself in open court.

For light offenses triable by the justice of the peace any other inferior courts of similar jurisdiction, the defendant need not be present and may appear by attorney at the arraignment if his plea is not guilty. On appeal to the Court

of First Instance, which is a continuation of the proceedings the justice of the peace court or municipal court, although the case is to be tried de novo, the defendant need not also present and may appear by attorney at the arraignment if his plea is not guilty.

The petitioners in the case at bar were charged with and found, guilty of trespass, a light felony, as defined and punished under article 281 of the Revised Penal Code, In their motion filed on appeal in the Court of First Instance of Isabela dated 1 August 1955, they allege —

6. That they have irrevocably decided to enter the plea of "NOT GUILTY" to the charge and desire to do so through their undersigned counsel;
 7. That they desire to waive, as they hereby waive, their right to be present at all the stages of the trial and to only appear through counsel;
 8. That they sincerely believe that their presence in the hearing of the case is not indispensable considering the crime they are charged with and because of the circumstances above stated, * * *.
- (Annex A.)

and pray that the respondent court issue an order declaring,—

- That the accused have expressly waived their right to be present at the hearing of this case;
- That they may appear by counsel alone at all stages of the trial of this case; and
- That their personal presence is not indispensable.

The order of the respondent court assailed in this proceedings is as follows:

Upon consideration, of the motion dated August 1, 1955 as well as that of August 10, 1955 filed by Mr. Ventura V. Perez, counsel for the accused, and finding the reasons alleged therein not to be well founded;

WHEREFORE, said motions should be, as they are hereby, denied.

In view of the failure of the defendants and their counsel to appear today;

The trial, of this case is hereby postponed, until further assignment. (Annex B.)

The waiver by a defendant charged with a light felony to be present at the arraignment in the inferior court or in the Court of First Instance on appeal and a plea of not guilty to charge by counsel need not be approved by the Court for waiver and plea are authorized by the rule. He may lawfully do so without leave of court. Nevertheless, in denying the petitioners motions, the respondent court did not deprive them of the right secured to them by law to waive their presence and enter a plea of not guilty by counsel at the arraignment, nor did it compel them to appear personally for arraignment and trial. The arraignment and trial of the petitioners and their co-defendants were continued for failure of defense counsel to appear. Erroneous as the view of the respondent court may be on the point, of personal appearance of the petitioners and their co-defendants at the arraignment to answer a charge of a light felony, yet the orders of the respondent for court complained of do not call and need no action by this Court in the exercise of its supervisory power.

The petition is denied, without pronouncement as to costs.

Bengzon, Bautista Angelo, Concepcion, Reyes J. B. L., and Endencia, JJ., concur
Paras, C.J., concurs in the result.

CONCURRING
FELIX, JJ. :

I concur in the decision in this case penned by Mr. Justice Sabino Padilla. However, and in so far as the question of defendants' waiver to appear personally at the hearing against them is concerned, it is my opinion that such waiver is permissible provided that their presence in court at the hearing is not needed by the prosecution for identification of the offenders. In other words, defendants' waiver simply acceptance of their identity as the offenders whenever names were so mentioned by the witnesses for the prosecution.

Montemayor and Reyes, A., JJ., concur.

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