PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONCIO SANTOCILDES, JR. Y SIGA-AN, ACCUSED-APPELLANT.

G.R. No. 109149. December 21, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Where an accused was not duly represented by a member of the Philippine Bar during trial, the judgment should be set aside and the case remanded to the trial court for a new trial. A person who misrepresents himself as a lawyer shall be held liable for indirect contempt of court.

Subject of the present appeal is the decision dated October 29, 1992, of the Regional Trial Court of Iloilo City, Branch 33, convicting accused-appellant of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the offended party the amount of P50,000.00 and to pay the costs.

The antecedent facts of the case are as follows:

On February 17, 1992, appellant was charged with the crime of rape[1] of a girl less than nine (9) years old, committed on December 28, 1991, in the town of Barangay San Luis, San Joaquin, Iloilo.

Upon arraignment, appellant entered a plea of not guilty. Trial ensued and the prosecution presented as its witnesses the victim, her mother, her six (6) year-old playmate, and the medico-legal officer who examined the victim.

For the defense, appellant presented one German Toriales and himself. Appellant denied committing the rape and claimed that he merely tried to stop the two girls, the victim and her playmate, from quarreling.

On October 29, 1992, the trial court rendered a decision[2] finding appellant guilty as charged. The dispositive portion of the decision states:

> "WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of rape and sentences him to suffer the penalty of reclusion perpetua together its accessory penalty. The accused is ordered to pay the amount of P50,000.00 to the complainant and another amount for costs, without subsidiary penalty in case of failure to pay the civil liability and the cost.
>
> If qualified under Art. 29 of the Revised Penal Code, as amended by R.A. 6127, as amended, and he has agreed in writing to abide by the same rules imposed upon convicted prisoners, he shall be credited with the full duration of his preventive imprisonment; otherwise, he shall only be credited with 4/5 of the same.
>
> SO ORDERED."

Hence, appellant duly filed a Notice of Appeal.[3] In his brief,[4] appellant made the following assignment of errors:

> I. THE HONORABLE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT THE ACCUSED IS GUILTY OF RAPE INSPITE OF CONFLICTING TESTIMONIES OF THE PRIVATE

> COMPLAINANT AND HER WITNESSES ON MATERIAL POINTS.
>
> II. THAT THE ACCUSED-APPELLANT WAS DEPRIVED THOUGH NO FAULT OF HIS OWN TO BE DEFENDED BY A PERSON AUTHORIZED TO PRACTICE LAW AMOUNTING TO DENIAL OF DUE PROCESS."

Considering the importance of the constitutional right to counsel, we shall now first resolve the issue of proper representation by a member of the bar raised by appellant.

Appellant contends that he was represented during trial by a person named Gualberto C. Ompong, who for all intents and purposes acted as his counsel and even conducted the direct examination and cross-examinations of the witnesses. On appeal, however, appellant secured the services of a new lawyer, Atty. Igmedio S. Prado, Jr., who discovered that Gualberto C. Ompong is actually not a member of the bar. Further verification with the Office of the Bar Confidant confirmed this fact.[5] Appellant therefore argues that his deprivation of the right to counsel should necessarily result in his acquittal of the crime charged.

The Office of the Solicitor General, on the other hand, maintains that notwithstanding the fact that appellant's counsel during trial was not a member of the bar, appellant was afforded due process since he has been given an opportunity to be heard and the records reveal that said person "presented the evidence for the defense with the ability of a seasoned lawyer and in general handled the case of appellant in a professional and skillful manner." However, the right of the accused to be heard by himself and his counsel, in our view, goes much deeper than the question of ability or skill. It lies at the heart of our adversarial system of justice. Where the interplay of basic rights of the individual may collide with the awesome forces of the state, we need a professional learned in the law as well as ethically committed to defend the accused by all means fair and reasonable.

On the matter of proper representation by a member of the bar, we had occasion to resolve a similar issue in the case of Delgado v. Court of Appeals.[6] In Delgado, petitioner and two others were convicted by the trial court of the crime of estafa thru falsification of public and/or official documents. One accused did not appeal. Petitioner Delgado and her remaining co-accused appealed to the Court of Appeals, which affirmed petitioner's conviction but acquitted her co-accused. After entry of judgment, petitioner discovered that her lawyer was not a member of the bar and moved to set aside the entry of judgment. The Court of Appeals denied petitioner's motion, hence, she filed a petition for certiorari with this Court. The Court set aside the assailed judgment and remanded the case to the trial court for a new trial, explaining that -

> "This is so because an accused person is entitled to be represented by a member of the bar in a criminal case filed against her before the Regional Trial Court. Unless she is represented by a lawyer, there is great danger that any defense presented in her behalf will be inadequate considering the legal perquisites and skills needed in the court proceedings. This would certainly be a denial of due process."[7]

Indeed, the right to counsel is of such primordial importance that even if an accused was represented by three successive counsels from the Public Attorney's Office, the Court has ordered the remand of a rape case when it found that accused was given mere perfunctory representation by aforesaid counsels such that appellant was not properly and effectively accorded the right to counsel. In the recent en banc case of People v. Bermas, G.R. No. 120420, April 21, 1999, the Court, speaking through Justice Vitug, admonished three (3) PAO lawyers for failing to genuinely protect the interests of the accused and for having fallen much too short of their responsibility as officers of the court and as members of the Bar. Verily, we can do no less where the accused was not even duly represented by a certified member of the Philippine Bar, no matter how zealous his representation might have been.

The presence and participation of counsel in criminal proceedings should never be taken lightly.[8] Even the most

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intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence.[9] The right of an accused to counsel is guaranteed to minimize the imbalance in the adversarial system where the accused is pitted against the awesome prosecutory machinery of the State.[10] Such a right proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily.[11]

The right to counsel of an accused is enshrined in no less than Article III, Sections 12 and 14 (2) of the 1987 Constitution. This constitutional mandate is reflected in Section 1 of Rule 115 of the 1985 Rules of Criminal Procedure which declares the right of the accused at the trial to be present in person and by counsel at every stage of the proceedings from the arraignment to the promulgation of judgment. In turn, Section 5 of Article VIII of the 1987 Constitution vests the power to promulgate rules concerning the admission to the practice of law to the Supreme Court. Section 1 of Rule 138 of the Rules of Court explicitly states who are entitled to practice law in the Philippines, and Section 2 thereof clearly provides for the requirements for all applicants for admission to the bar. Jurisprudence has also held that "the right to practice law is not a natural or constitutional right but is in the nature of a privilege or franchise. It is limited to persons of good moral character with special qualifications duly ascertained and certified. The right does not only presuppose in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust."[12] Indeed, so strict is the regulation of the practice of law that in Beltran, Jr. v. Abad,[13] a Bar candidate who has already successfully hurdled the Bar examinations but has not yet taken his oath and signed the roll of attorneys, and who was caught in the unauthorized practice of law was held in contempt of court. Under Section 3 (e) of Rule 71 of the Rules of Court, a person who undertakes the unauthorized practice of law is liable for indirect contempt of court for assuming to be an attorney and acting as such without authority.

WHEREFORE, the assailed judgment is SET ASIDE, and the case is hereby REMANDED to the trial court for new trial.

With respect to the unauthorized practice of law by the person named Gualberto C. Ompong in connection with this case, the local Chapter of the Integrated Bar of the Philippines of Iloilo City is DIRECTED to conduct a prompt and thorough investigation regarding this matter and to report its recommendations to the Court within ninety (90) days from notice of this order. Let all concerned parties, including the Office of the Bar Confidant, be each furnished a copy of this Decision for their appropriate action.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Information, Rollo, p. 6.

[2] Rollo, pp. 12-23.

[3] Id. at 24.

[4] Id. at 47.

[5] Certification of the Bar Car Confidant, Rollo, p. 59.

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[6] 145 SCRA 357 (1986).

[7] Id. at 360.

[8] People v. Bermas, G.R. No. 120420, April 21, 1999, p.14; Flores v. Ruiz, 90 SCRA 428 (1979).

[9] Id., citing People v. Holgado, 85 Phil. 752 (1950).

[10] People v. Serzo, Jr., 274 SCRA 553, 562 (1997).

[11] People v. Bermas, G.R. No. 120420, April 21, 1999, p. 15.

[12] In the Matter of the Petition for Authority To Continue use of the Firm Name "Ozaeta, Romulo, etc,." 92 SCRA 1, 10 (1979).

[13] 121 SCRA 217, 220 (1983).

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