

**HUBERT WEBB, ANTONIO LEJANO, HOSPICIO FERNANDEZ, MIGUEL RODRIGUEZ, PETER ESTRADA AND MICHAEL GATCHALIAN
PETITIONER, VS. PEOPLE OF THE PHILIPPINES, THE HONORABLE
AMELITA G. TOLEN...**

G.R. No. 127262. July 24, 1997

Ponente: PUNO, J.

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PUNO, J.:

Petitioners Hubert Webb, Antonio Lejano, Hospicio Fernandez, Miguel Rodriguez, Peter Estrada and Michael Gatchalian[1] assail the decision of the Court of Appeals dated June 21, 1996 in C.A. G.R. SP No. 39839[2] and C.A. G.R. SP No. 39840,[3] as well as its resolution dated November 15, 1996 insofar as it denied the petition for the inhibition of respondent Judge Amelita G. Tolentino in Criminal Case No. 95-404[4] pending before Branch 274 of the Regional Trial Court of Parañaque.[5]

The antecedent facts show that on August 8, 1995, petitioners were charged with the crime of rape with homicide for allegedly raping Carmela Vizconde and on the occasion thereof, killing Carmela herself and her mother, Estrellita, and her sister, Jennifer. The crime was committed in the evening of June 29 up to the early morning of June 30, 1991 at the Vizconde residence in BF Homes, Parañaque.[6]

The case, docketed as Criminal Case No. 95-404, was raffled to Branch 274 of the Regional Trial Court of Parañaque presided by respondent judge.

Prior to their arraignment, petitioner Webb and his co-accused, Gerardo Biong, had sought the disqualification of respondent judge in Criminal Case No. 95-404. In his motion of August 21, 1995, petitioner Webb relied on the ground that respondent judge allegedly told the media that "failure of the accused to surrender following the issuance of the warrant of arrest is an indication of guilt." Respondent judge denied the motion. Two days later, on August 23, 1995, petitioner Webb filed a second motion to disqualify respondent judge as the latter allegedly told the media that the accused "should not expect the comforts of home," pending the resolution of his motion to be committed to the custody of the Philippine National Police at Camp Ricardo Papa, Bicutan, Parañaque. Respondent judge again denied the motion to inhibit. On September 4, 1995, Gerardo Biong filed another motion to disqualify respondent judge on the ground of bias and partiality. This was likewise denied by respondent judge.

The petitioners were arraigned on September 4, 1995. They then filed separate petitions for bail.

On September 21, 1995, petitioner Webb filed an Urgent Motion for Hospitalization. He alleged that he was sick of dermatitis or asthma of the skin which aggravated due to his continuous commitment at the Parañaque Municipal Jail. The motion was denied by respondent judge on October 16, 1995.

On October 9, 1995, the hearing on petitioners' petitions for bail commenced. The prosecution presented its "star witness," Jessica Alfaro, who identified petitioners as the perpetrators of the crime. During the cross-examination, the defense counsel tried to impeach Alfaro's credibility by asking her questions regarding the contents of an

affidavit she executed at the National Bureau of Investigation (NBI) on April 28, 1995. The defense tried to show that some of her statements in said affidavit are inconsistent with her statements in a subsequent affidavit executed on May 21, 1995 and with her testimony in court. The prosecution objected and moved that all questions relating to the contents of Alfaro's April 28 affidavit be expunged from the records for being inadmissible in evidence under Article III Section 12(1) and (3) of the 1987 Constitution.[7] Respondent judge sustained the objection and on October 30, 1995, she issued an order holding that Alfaro cannot be cross examined on the contents of her April 28 affidavit because said affidavit was inadmissible in evidence as it was not executed in the presence of a counsel.[8]

The defense also tried to prove Alfaro's motive in testifying against petitioners. She was questioned about her brother, Patrick Alfaro, and her uncle, Roberto Alfaro. Jessica Alfaro allegedly admitted that her brother, Patrick, was a drug addict and was arrested once by the NBI for illegal possession of drugs and that he is presently in the United States. When defense counsel inquired about the circumstances of Patrick's departure for the United States, the prosecution objected to the questions on the ground of irrelevancy. Respondent judge sustained the objection.

The defense also cross-examined Alfaro on her educational attainment to show that she lied in her direct testimony. The defense presented her transcript of records to prove that she only enrolled for a year and earned nine (9) academic units, contrary to her claim that she finished second year college. The prosecution again objected on the ground that Alfaro's educational attainment was irrelevant. Respondent judge sustained the objection.

On November 9, 1995, petitioners filed a motion to disqualify or inhibit respondent judge due to bias and prejudice. Respondent judge denied the motion for lack of merit on November 28, 1995.[9]

On November 15, 1995, petitioners filed two separate petitions with this Court. Petitioners Webb, Lejano, Fernandez, together with their co-accused, Gerardo Biong, filed a petition for certiorari seeking to set aside (1) the order of respondent judge dated October 16, 1995 denying petitioner Webb's motion for hospitalization and (2) the order of respondent judge dated October 30, 1995 disallowing the defense to cross-examine Alfaro on the contents of her April 28 affidavit.[10] Petitioners Gatchalian and Estrada filed a petition for certiorari, prohibition and mandamus assailing respondent judge's order prohibiting the cross-examination of Alfaro on the contents of her April 28 affidavit.[11]

On December 8, 1995, petitioners filed with this Court a supplemental petition to set aside the November 28, 1995 order of respondent judge denying their motion for inhibition.

In a resolution dated January 22, 1996, we referred both petitions and the supplemental petition to the Court of Appeals for proper disposition.

In the meantime, the hearing on petitioners' petitions for bail continued. The prosecution presented Mila Gaviola, a former maid at the Webb residence, who testified that she saw petitioner Webb in their house in the early morning of June 30, 1991. On December 5, 1995, respondent judge, over the objection of the petitioners, ordered an ocular inspection of the former Webb residence in BF Homes, Parañaque to verify Gaviola's testimony about a secret door through which she peeped to see petitioner Webb.

On January 12, 1996, petitioner Webb filed a motion for deposition of witnesses residing in the United States who shall testify on his presence in the United States on the date of the commission of the crime.[12] On February 6, 1996, respondent judge denied the motion for the reason that petitioner Webb failed to allege that the witnesses do not have the means to go to the place of the trial.[13] Hence, on January 12, 1996, petitioner Webb filed another supplemental petition to the Court of Appeals challenging the said order.

Petitioners made their Formal Offer of Evidence upon conclusion of the hearings on the petitions for bail. On September 25, 1995, the prosecution filed its Comment/Objection to the Formal Offer of Evidence. On October 1, 1996, respondent judge ruled on petitioner's formal offer of evidence. She admitted only ten (10) out of the one hundred forty two (142) exhibits offered by petitioner.[14]

On October 11, 1996, respondent judge denied petitioners' petitions for bail.[15]

On June 21, 1996, the Court of Appeals rendered its Decision on the various petitions and supplemental petitions. It reversed respondent judge's ruling refusing to admit Alfaro's April 28 affidavit but denied all the other reliefs prayed for by petitioners.[16] It also denied petitioners' motion for reconsideration in a resolution dated November 15, 1996.[17]

On December 12, 1996, petitioners filed the present petition contending:

I

The Court of Appeals erred in declaring that no sufficient ground exists for the disqualification of the respondent judge.

A. Respondent judge has consistently and repeatedly shown bias and hostility against petitioners.

B. The rejection of the 132 of 142 exhibits not only paved the way for the denial of bail but also sets irreversibly the eventual conviction of all the accused.

C. The reported trip to the Vizconde residence by the respondent judge exposes her propensity to consort with the complainant on the pending issues.

II

The Court of Appeals erred in not honoring that the right to a fair trial requires that the case be tried by an impartial judge.

On February 5, 1997, petitioners filed a supplemental petition. It alleged, among others, that during the trial on the merits, respondent judge allowed prosecution witness Atty. Pedro Rivera to testify on the character of the accused although the defense had not put his character in issue; that respondent judge disallowed the defense to impeach the credibility of Atty. Rivera by the presentation of an earlier statement executed by him because such statement was immaterial; and that respondent judge struck off from the record the proffer of oral evidence made by defense counsel Atty. Vitaliano Aguirre after ruling that the proffer was improper on cross-examination.[18]

The core issue is whether respondent judge should inhibit herself from hearing Criminal Case No. 95-404 on the ground of bias and prejudice.

We rule in the negative.

The Bill of Rights guarantees that "(n)o person shall be held to answer for a criminal offense without due process of law." [19] A critical component of due process is a hearing before an impartial and disinterested tribunal. We have ingrained the jurisprudence that every litigant is entitled to nothing less than the cold neutrality of an impartial judge for all the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge. [20] Hence, the Rules of Court allows a judge to voluntarily inhibit himself from hearing a case for "just or valid reasons" other than those referring to his pecuniary interest, relation, previous connection, or previous rulings or decisions. Section 1 Rule 137 of the Revised Rules of Court states:

SECTION 1. Disqualification of judges. -- 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.

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.

Under the second paragraph, a party has the right to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case. This right must be weighed with the duty of a judge to decide cases without fear of repression. Hence, to disqualify a judge on the ground of bias and prejudice the movant must prove the same by clear and convincing evidence. This is a heavy burden and petitioners failed to discharge their burden of proof.

To prove bias and prejudice on the part of respondent judge, petitioners harp on the alleged adverse and erroneous rulings of respondent judge on their various motions. By themselves, however, they do not sufficiently prove bias and prejudice to disqualify respondent judge. To be disqualifying, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge.[21] As a general rule, repeated rulings against a litigant, no matter how erroneous and vigorously and consistently expressed, are not a basis for disqualification of a judge on grounds of bias and prejudice.[22] Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error which may be inferred from the decision or order itself. Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge.[23] The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.

A perusal of the records will reveal that petitioners failed to adduce any extrinsic evidence to prove that respondent judge was motivated by malice or bad faith in issuing the assailed rulings. Petitioners simply lean on the alleged series of adverse rulings of the respondent judge which they characterized as palpable errors. This is not enough. We note that respondent judge's rulings resolving the various motions filed by petitioners were all made after considering the arguments raised by all the parties. It is true that the respondent judge erred in some of her rulings such as her rejection of petitioners' one hundred thirty two (132) pieces of evidence. It appears, however, that respondent judge reversed this erroneous ruling and already admitted these 132 pieces of evidence after finding that "the defects in (their) admissibility have been cured through the introduction of additional evidence during the trial on the merits." [24] This correction diminishes the strength of petitioners' charge that respondent judge is hopelessly biased against them. To be sure, the respondent judge did not score a complete ciphers in her rulings against the petitioners. Just last June 11, 1997, the Third Division of this Court dismissed an administrative complaint against the respondent judge on the ground that "x x x it is within the respondent judge's right to conduct an ocular inspection since it is an exercise of her judicial prerogative x x x." [25] There is still another reason why we should observe caution in disqualifying respondent judge. The trial of the petitioners is about to end and to assign a new judge to determine the guilt or innocence of petitioners will not be for the best interest of justice. The records of the case at bar run into volumes. These voluminous records cannot capture in print the complete credibility of witnesses when they testified in court. As the respondent judge observed the demeanor of witnesses while in the witness chair, she is in the best position to calibrate their credibility. The task of evaluating the credibility of witnesses includes interpreting their body language and their meaningful nuances

are not expressed in the transcripts of their testimonies.

We hasten to stress that a party aggrieved by erroneous interlocutory rulings in the course of a trial is not without remedy. The range of remedy is provided in our Rules of Court and we need not make an elongated discourse on the subject. But certainly, the remedy for erroneous rulings, absent any extrinsic evidence of malice or bad faith, is not the outright disqualification of the judge. For there is yet to come a judge with the omniscience to issue rulings that are always infallible. The courts will close shop if we disqualify judges who err for we all err.

We again remind respondent judge of our counsel in the first Webb case[26] "x x x that our ability to dispense impartial justice is an issue in every trial, and in every criminal prosecution, the judiciary always stands as a silent accused. More than convicting the guilty and acquitting the innocent, the business of the judiciary is to assure fulfillment of the promise that justice shall be done and is done - and that is the only way for the judiciary to get an acquittal from the bar of public opinion."

IN VIEW WHEREOF, the petition is dismissed for lack of merit. No costs.
SO ORDERED.

Regalado, (Chairman), Romero, and Mendoza, JJ., concur.
Torres, Jr., J., on official leave.

[1] The Original Petition filed with this Court included Gerardo Biong as one of the petitioners, but on December 19, 1996, petitioners filed a Manifestation of Partial Withdrawal dropping Gerardo Biong from the petition as the latter is independently pursuing a separate remedy for the same cause of action (Rollo, pp. 259-260).

[2] Entitled Hubert J.P. Webb, et al. v. The Honorable Amelita G. Tolentino, Presiding Judge, RTC-Paranaque Branch 274 and the People of the Philippines.

[3] Entitled Michael A. Gatchalian and Peter Estrada v. The Honorable Amelita G. Tolentino, Presiding Judge, RTC-Paranaque and the People of the Philippines.

[4] Entitled People of the Philippines v. Hubert Webb, et al.

[5] The Decision and the Resolution were penned by Justice Ricardo P. Galvez with the concurrence of Justice Antonio M. Martinez and Justice Hilarion L. Aquino.

[6] Information, Annex "D" to the Petition, Rollo, pp.138-140.

[7] SEC. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

x x x

(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him.

[8] Annex "E" to the Petition, Rollo, pp. 142-150.

[9] Annex "F" to the Petition, Rollo, pp. 151-161.

[10] Docketed as G.R. No. 122488.

[11] Docketed as G.R. No. 122504.

[12] Annex "G" to the Petition, Rollo, pp. 162-171.

[13] Annex "H" to the Petition, Rollo, pp. 172-176.

[14] Annex "J" to the Petition, Rollo, pp. 190-196.

[15] Annex "K" to the Petition, Rollo, pp. 197-199.

[16] Annex "A" to the Petition, Rollo, pp. 51-68.

[17] Annex "C" to the Petition, Rollo, pp. 82-89.

[18] Rollo, pp. 263-271.

[19] Section 14(1) Article III of the 1987 Constitution.

[20] Tan, Jr. v. Gallardo, 73 SCRA 306 (1976); Castillo v. Juan, 62 SCRA 124 (1975); Mateo v. Villaluz, 50 SCRA 18 (1973); Garcia v. Executive Secretary, 6 SCRA 1 (1962).

[21] People v. Massarella, 400 N.E. 2d 436; United States v. International Business Machine, 475 F. Supp. 1372 (1979); Smith v. Danyo, 441 F. Supp. 171 (1977); King v. United States, 434 F. Supp. 1141 (1977).

[22] United States v. International Business Machines, 475 F. Supp. 1372 (1979); People v. Massarella, 400 N.E. 2d 436; United States v. Gallagher, 576 F. 2d 1028 (1978); Miller v. Richardson, 623 P. 2d 1317 (1981).

[23] Annotation: Scope of the Constitutional Independence of Judges, 240 SCRA 163 (1995).

[24] See Order dated June 18, 1997 in Crim. Case No. 95-404, People vs. Webb, et al, RTC, NCR, Parañaque, Metro Manila, Br. 274.

[25] Resolution dated June 11, 1997 of the Third Division in Adm. Matter OCA I.P.I. No. 97-293-RTC, Singson, et al. vs. Judge Tolentino, etc.

[26] 247 SCRA 692-693.

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