

PEOPLE OF THE PHILIPPINES AND CONGRESSWOMAN VIDA ESPINOSA, PETITIONERS, VS. GOVERNOR ANTONIO KHO AND ARNEL QUIDATO, RESPONDENTS.

G.R. No. 139381. April 20, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal by way of petition for review on certiorari of the Decision of the Court of Appeals, dated May 10, 1999, and of its Resolution of July 16, 1999 in CA-GR-SP No. 48170 "entitled Antonio Kho and Arnel Quidato versus Hon. Lucas P. Bersamin as Judge of the RTC of Quezon City, Branch 96; People of the Philippines and Vida Espinosa." The well-written decision penned by Justice Romeo A. Brawner, set aside the Orders, dated January 8, 1998 and May 19, 1998 of Judge Lucas P. Bersamin. The Court of Appeals held that the order of Judge Bersamin inhibiting himself from the case was rendered in excess of jurisdiction. The court ordered the said judge to proceed with the trial of the criminal case until the termination thereof, unless and/or until other legal obstacles other than his voluntary inhibition exists or may in the future exist and prevent further proceedings.[1]

The facts material to the resolution of this aspect of the case are well established.

An information for Murder was filed before the Regional Trial Court of Quezon City, Branch 88, presided by Judge Bersamin, against Blas Rosario, respondents Antonio Kho, Arnel Quidato, Rogelio Soriano, Jacinto Ramos, and one Jun Doe, for the ambush-slaying of the late Congressman Tito Espinosa.

The case was first raffled to the sala of Judge Tirso Velasco but because of the prosecution's move to disqualify Judge Velasco, the case was re-raffled to the sala of Judge Bersamin.[2]

Accused applied for bail and a hearing therefor was commenced on September 25, 1998. On said hearing, the prosecution presented witnesses to oppose the application for provisional liberty. The prosecution's witnesses included eyewitness Rudy de Leon, who identified the alleged assassin, accused Blas Rosario. Other witnesses were presented by the prosecution to prove that several of the accused met and conspired to undertake the gruesome killing. Included in the prosecution's formal offer of evidence in opposition to the bail application are the extra-judicial confessions of Blas Rosario, Arnel Quidato and Roberto Pidlaon implicating the others in the conspiracy. The defense did not present evidence and submitted the bail application for resolution.

An Order dated April 15, 1996 denied the application for bail and held that:

xxx in reference to Kho and Quidato, enough grounds exist to hold that the Prosecution's evidence against them is strong and may even be adequate to overcome the presumption of their innocence.[3]

A second motion for bail was filed by Kho and Quidato, dated May 10, 1996. Again, this was denied by the court because of the "absence of any new matter or fact which warrants a different view." [4]

Trial on the merits of the case ensued. After the prosecution rested its case and while the defense was still presenting evidence, respondents Kho and Quidato filed a third application for bail. On November 18, 1997, Judge Bersamin issued an order reversing the two previous denials of bail application. Said judge ordered the immediate release of Kho and Quidato after posting bail in the amount of P200,000.00 and P50,000.00, respectively.

The reversal was justified by the trial court on the ground that the prosecution could not establish any linkage between Kho and Quidato, on the one hand, and the alleged gunman, Rosario, on the other, except by means of the extra-judicial statements of Rosario and Pidlaon. The court ruled that the evidence against Kho and Quidato is not strong. As to Kho, the trial court reasoned that his connection to the murder is entirely dependent on the validity of the extra-judicial confession of Rosario and Pidlaon. However, by reason of the rule of *res inter alios acta*, said extra-judicial statements do not apply to Kho. Quidato's liability, on the other hand, hinged on mere association because of his being the bodyguard and having been seen in the company of Kho.

The trial court ruled that the extra-judicial statement of Rosario, while incompetent as against respondents, may be considered as corroborating evidence of conspiracy if repeated in court or if other competent proof of conspiracy exists independent of the confessions or admissions. Since the confession of Rosario was not repeated in court, but was in fact repudiated by him, and since the prosecution failed to furnish independent proof of the conspiracy, the trial court concluded that the evidence of guilt against Kho and Quidato was "other than strong."^[5]

As a result of the order granting bail, the prosecution on November 26, 1997, orally moved for inhibition of Judge Bersamin from the case. This was reiterated in a written motion, dated December 1, 1997^[6] citing as reasons for the inhibition the judge's bias and partiality and prejudgment of the case in favor of the acquittal of the accused. It is worthy to note that the private prosecutor's motion for inhibition was characterized by language that is unrestrained and intemperate,^[7] which merited admonition from the Court of Appeals.

Judge Bersamin issued an Order, dated January 8, 1998, inhibiting himself from further hearing the case. In said order, the judge, while noting that the motion for inhibition is based on flimsy and imaginary insinuations, resolved to disqualify himself in order to dispel any suspicion about his objectivity.^[8] The judge went on to put into record observations justifying the order to grant bail and his other actuations so that any future inquiry will have the "benefit of his own explanation before it is too late!"^[9]

The Court of Appeals, in the questioned decision,^[10] ruled that the voluntary inhibition by Judge Bersamin was not in the exercise of sound discretion and that there was no just and valid reasons for inhibition because the mere suspicion of bias and partiality is not sufficient. The respondent court, likewise, cited the following reasons for reversing the trial judge's order of inhibition:

- Motion for Inhibition came late in the day, after the prosecution had finished presenting its evidence in chief;
- It is the second time that Judge in the case was sought to be inhibited, the first being Judge Velasco;
- Allowing forum-shopping for a more friendly judge may set a mischievous precedent;
- The danger of a new judge deciding without benefit of observing witnesses, hearing testimonies, and noting their demeanor.

The Court of Appeals granted the petition, thus:

WHEREFORE, in the light of all the foregoing, the Petition is hereby GRANTED and the writ of certiorari issued as against the assailed Orders. The questioned Orders dated 08 January 1998 and 19 May 1998, are

hereby ANNULLED and SET ASIDE for having been rendered in excess of jurisdiction. The Executive Judge of the Regional Trial Court in Quezon City is hereby ORDERED to return the entire records of Criminal Case No. Q-95-61675 to the respondent judge for His Honor to continue with the proceedings thereof. The respondent judge is further ORDERED to proceed with the trial of the said Criminal Case until the termination thereof, unless and/or until other legal obstacles other than his voluntary inhibition exists or may in the future exist to prevent further proceedings.[11]

A motion for reconsideration was denied by respondent court. Hence, this petition, raising the following issues:

I. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL JUDGE DID NOT EXERCISE SOUND DISCRETION WHEN HE INHIBITED HIMSELF FROM FURTHER SITTING IN CRIMINAL CASE NO. Q-95-6175.

II. THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE INHIBITION WAS NOT FOR JUST OR VALID CAUSE.[12]

The petition has no merit.

Rule 137, of the Revised Rules of Court provides:

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 the 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.

The rules contemplate two kinds of inhibition: compulsory and voluntary. In the first paragraph, compulsory disqualification conclusively presumes that a judge cannot actively or impartially sit on a case. In the case of the second paragraph, which embodies voluntary inhibition, the Rules leave to the judge's discretion whether he should desist from sitting in a case for other just and valid reasons with only his conscience to guide him:

A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of law who forestalls the miscarriage of justice.[13]

The second paragraph of Section 1, Rule 137 does not give the judge the unfettered discretion to decide whether

or not he will desist from hearing a case. The inhibition must be for just and valid causes. The mere imputation of bias or partiality is not enough grounds for a judge to inhibit, especially when the same is without any basis.

There is no basis for the imputation of bias and partiality on respondent judge. In a litany of cases decided by this Court, it was held that while bias and prejudice, have been recognized as ground for disqualification, the well-established rule is that mere suspicion is not enough. Bare allegations of bias are not enough in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor.[14]

In this case, the suspicion that respondent Judge will acquit the accused for the same reasons cited in the grant of bail will not suffice to establish the allegation of bias and partiality. For one, the Order dated November 18, 1997 granting bail to the accused constitutes a scholarly and well-written piece containing a careful examination of evidence and discussion of applicable legal principles and jurisprudence. Surely, Judge Bersamin could not be accused of issuing an order bereft of legal basis or obviously slanted to favor a personal bias. Secondly, even assuming that the order to grant bail is erroneous, an issue not proper in this case of inhibition, such error does not constitute sufficient evidence of bias.[15] Divergence of opinion as to applicable laws and jurisprudence between counsel and the judge is not a proper ground for disqualification.[16] Opinions framed 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 bias or prejudice. Repeated rulings against a litigant no matter how erroneous are not bases for disqualification.[17] In fact, the parties could have appealed the order granting bail if they doubted the legality thereof. Such appeal constitutes adequate remedy in law.

By the issuance of the order granting bail, the judge cannot be said to have crossed the line that divides neutrality and impartiality. He has not thus far tilted the scales of justice in favor of one party. That the judge in this case had previously ruled in favor of the complaining party only proves that said judge is not biased.

Moreover, in the exercise of said discretion the judge must also take into consideration whether the case could be heard by another judge and no appreciable prejudice would be occasioned to others involved therein. At this stage of trial, the prosecution has already rested its case. Having heard the testimonies of the witnesses for the prosecution, his role in seeing the case to its just and fair conclusion cannot be underscored. As this Court has often pronounced, the determination of the credibility of witnesses is a task lodged with the trial judge who had the opportunity to observe the demeanor of the witnesses on the stand. To replace Judge Bersamin at this stage of trial, where no valid grounds exist, would surely be prejudicial to the accused.

We see no reason for Judge Bersamin to disqualify himself from the case simply because of baseless accusations from the prosecution of bias and impartiality. Hence, it is a matter of official duty for him to proceed with the trial and decision of the case. He cannot shirk the responsibility without the risk of being called upon to account for his dereliction.[18] To allow Judge Bersamin to recuse himself from this case will amount to a condonation of the actuations of the prosecution and set a mischievous precedent and open the floodgates to forum-shopping for a friendly judge.

WHEREFORE, the petition is DENIED. Respondent judge is ordered to proceed with the long delayed proceedings with dispatch.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

- [1] Rollo, p. 60.
- [2] Id., at 58.
- [3] Id., at 94.
- [4] Order dated July 8, 1996, Rollo, p. 100.
- [5] Rollo, p. 121.
- [6] Id., at 130.
- [7] Id., at 13.
- [8] Id., at 132.
- [9] Id., at 137.
- [10] Id., at 8-16.
- [11] Id., at 60.
- [12] Id., at 34.
- [13] Pimentel v. Salonga, 21 SCRA 160 (1967). Emphasis supplied.
- [14] Go v. Court of Appeals, 221 SCRA 397 (1993), Abad v. Belen 240 SCRA 733 (1995); People v. Tabarno, 242 SCRA 456 (1995); Webb v. People, 276 SCRA 243 (1997); People v. Court of Appeals and Pacificador, 309 SCRA 705 (1999).
- [15] People v. Court of Appeals and Pacificador, supra.
- [16] Gandionco v. Peñaranda, 155 SCRA 725 (1989).
- [17] See note 13, supra.
- [18] People vs. Moreno 83 Phil 286 (1949)

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