

EDNA MARIS SOCORRO C. BRUAN, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 149428. June 04, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, as amended, of the Decision[1] of the Court of Appeals which affirmed the Regional Trial Court of Manila, Branch 37, finding the herein petitioner guilty of indirect contempt, and sentencing her to imprisonment of six months and to pay a fine of P30,000.

The antecedents are as follows:

The herein petitioner, Edna Maris Socorro Bruan married Walter Andreas B. Bruan in Lindenberg, Germany, on December 1, 1989. They have one child, Kimberly Ann Bruan, who was born on August 21, 1993 in Talisay, Batangas.

However, the marriage failed. On December 19, 1995, the petitioner left the conjugal abode in Talisay, Batangas, bringing Kimberly Ann with her. She filed a petition with the Regional Trial Court of Manila against Walter for the declaration of the nullity of their marriage, docketed as Special Proceedings No. 95-76402 raffled to Branch 37 of the court. On May 24, 1996, the parties entered into an agreement concerning Walter's visitation rights, wherein the latter shall fetch Kimberly Ann from Edna's house every Tuesday at 8:00 p.m. and return her to Edna every Friday at 8:00 p.m. The parties also agreed that any failure of the parties to abide by the agreement will hold him/her liable for contempt of court.

On February 4, 1997, Walter filed a Motion to Allow Him to Travel with Kimberly Ann to Germany for a "study vacation" for a period of four months, or until July 1997. On motion of Walter, the trial court conducted an ocular inspection of the conjugal house of the parties in Talisay, Batangas. Thereafter, Walter presented testimonial evidence, including the testimony of their househelper Esterlina Tonog and the social worker of the Department of Social Welfare and Development (DSWD) in the Batangas City Field Office. On March 7, 1997, the court issued an order directing Edna to bring Kimberly Ann to the court on March 14, 1997. The petitioner failed to comply with said order. Instead, she filed on March 17, 1997 a Notice of Withdrawal of Appearance of Counsel with Motion to Dismiss the Case. On March 18, 1997, Walter filed an ex parte motion to order the sheriff and/or the NBI to take custody of Kimberly Ann and to deliver her to Walter.

On March 21, 1997, Walter filed his comment on the petitioner's motion to dismiss the case. He also filed an ex parte motion to break open the conjugal abode and for the pick-up of Kimberly Ann. On the same day, the trial court issued an order granting the motion of Walter to bring Kimberly Ann to Germany upon a bond in the amount of P100,000. The court issued a separate order directing the sheriff of the court, the NBI or any government agency to pick up Kimberly Ann and deliver her to the respondent, and authorizing them to break open any building or enclosure to ensure the enforcement of the order.

On April 1, 1997, Walter filed a Motion to Order the Petitioner and Her Counsel, Atty. Orlando B. Medrano to Explain Why They Should Not Be Cited in Contempt of Court for their failure to comply with the Orders of the court dated March 7 and 21, 1997. On April 4, 1997, the trial court granted the motion. On April 14, 1997, the court issued an order directing the service of its April 4, 1997 Order on the petitioner at No. 41 Guyabano Street, Project 2, Quezon City. However, the petitioner failed to comply with the order of the court directing her to explain why she should not be cited for contempt for her failure to comply with its March 7 and 21, 1997 Orders. On April 22, 1997, Walter filed a Motion to Cite the Petitioner in Contempt of Court.

Walter filed a motion to set the case for hearing, serving a copy thereof on the petitioner. The court granted the motion, and set the hearing on April 28, 1997, but was later reset to May 5, 1997, as the petitioner and her counsel were not notified of said hearing. The sheriff tried to serve a copy of the Order of the court dated April 28, 1997 on the petitioner through Carlo Bruan, Walter's brother, but Carlo refused to receive said order for the petitioner upon the prompting of his brother and sister not to receive any papers regarding the case as they did not know the petitioner's whereabouts. The case was then submitted for the decision of the court upon the filing of the parties' respective memorandum.

On August 4, 1997, Walter filed a petition with the RTC of Manila to cite the petitioner in contempt of court entitled as Walter Bruan v. Edna Maris Socorro C. Bruan, docketed as Civil Case No. 97-84420. The case was raffled to Branch 47 of the court. Walter alleged in his petition that despite orders of the court in Special Proceedings No. 95-76402, the petitioner failed and refused to deliver Kimberly Ann to him. The court granted Walter's motion for the consolidation of the case with Special Proceedings No. 95-76402 pending in Branch 37 of the court. The court, thereafter, issued summons on the petitioner, directing her to file her comment on or answer to the petition within a period of fifteen days from service thereof. The sheriff tried to serve the summons and the petition on Edna on August 26 and 28, 1997. As per the sheriff's return on the service of summons and the petition on the petitioner, it states:

THIS IS TO CERTIFY that on August 26 and 28, 1997, the undersigned caused the service of Summons together with a copy of Petition upon defendant Ms. Edna Maris Socorro C. Bruan at No. 41 Guayabano (sic) St., Project 2, Quezon City thru her sister Ms. Gigi Bruan, a person residing thereat, of sufficient age and discretion to receive such court process who signed to acknowledge receipt thereof.

That efforts to serve the said Summons personally upon defendant Ms. Edna Maris Socorro C. Bruan were made on August 26 and 28, 1997, but the same were ineffectual and unavailing for the following reasons, that as per given information by her sister Gigi, respondent is always out of the house at the time Summons was attempted to be serve (sic), thus, substituted service was made in accordance with Sec. 8, Rule 14 of the Revised Rules of Court.

The original copy of the Summons is, therefore, respectfully returned DULY SERVED.[2]

The sheriff, likewise, served a copy of the petition on the petitioner through counsel, Atty. Elizabeth A. Andres, as borne by the sheriff's return, viz:

THIS IS TO CERTIFY that on August 28, 1997, the undersigned caused the service of Summons together with a Copy of Petition and its annexes for the defendant Ms. Edna Maris Socorro C. Bruan, c/o Atty. Elizabeth A. Andreas (sic) at G/F, EAA Building No. 6, Rd. 3, Project 6, Quezon City, thru Miss Jessica Carpio, secretary/receiving clerk, after instructions from Atty. Elizabeth A. Andreas (sic) to have it received and she affixed her signature on the surface of the Original Summons to acknowledge receipt thereof.

Therefore, the Original copy of the Summons is, respectfully, returned DULY SERVED.[3]

On August 29, 1997, Walter filed an Urgent Motion to Set the Petition for Indirect Contempt for Hearing at 9:00

a.m. on September 1, 1997 for the issuance of a warrant of arrest against the petitioner. The motion was set for hearing on the same day (August 29, 1997) at 2:00 p.m. However, a copy thereof was only served on the petitioner's counsel on that day at 2:10 p.m. During the hearing on September 1, 1997, there was no appearance for the petitioner. The trial court issued an order denying the motion of Walter to set case for hearing, on its finding that a copy of the petition and summons had not yet been served on the petitioner per return of the sheriff.[4]

On September 18, 1997, Walter filed a Motion for An Issuance of a Warrant of Arrest against the petitioner as provided for in Section 6, Rule 71 of the Rules of Court, as amended. Walter alleged that the petitioner violated their compromise agreement and defied the order of the court when she failed/refused to deliver their daughter Kimberly Ann to him. He prayed that the petitioner be declared in contempt of court under Section 9, Rule 71 of the Rules of Court. The motion was set for hearing at 2:00 p.m. on September 26, 1997. A copy of the motion was sent to the petitioner by registered mail at No. 41 Guyabano Street, Proj. 2, Quezon City, on September 18, 1997.

On October 1, 1997, the trial court issued an order citing the petitioner in indirect contempt of court and sentenced her to suffer imprisonment of six months and to pay a fine of P30,000. The court also issued a warrant for her arrest. The clerk of court issued a certificate of finality of the order on February 20, 1998. On motion of Walter, the court issued an Alias Warrant of Arrest on July 8, 1998.

The petitioner was arrested after a year, or on August 6, 1999. On August 12, 1999, the court promulgated its Order declaring the petitioner in contempt of court. The petitioner, thereafter, filed a motion informing the court that Kimberly Ann had already been turned over to Walter and praying that she be released on recognizance of her counsel, which motion the court granted. The petitioner later appealed the August 12, 1999 Order of the court citing her in contempt.

Before the appellate court, the petitioner posited that in finding her guilty of indirect contempt, the trial court violated her right to due process. She argued that per return of the sheriff and of the Order of the court dated September 1, 1997, she was not served with the formal charge for contempt and the summons. Despite this, she was found guilty of indirect contempt.

On August 9, 2001, the Court of Appeals rendered judgment affirming the decision of the RTC in toto.

In the instant petition, the petitioner avers that the trial court's order adjudging her guilty of indirect contempt is illegal because it was issued in violation of her constitutional right to due process. She contends that the trial court's Order of September 1, 1997 specifically states that she was not served with summons and the petition for indirect contempt. She notes that there was no hearing conducted before the trial court issued its order finding her guilty of indirect contempt.

We do not agree with the petitioner.

Section 3, Rule 71 of the Rules of Court specifically outlines the procedural requisites before the accused may be punished for indirect contempt: (1) a complaint in writing which may either be a motion for contempt filed by a party or an order issued by the court requiring a person to appear and explain his conduct; and (2) an opportunity for the person charged to appear and explain his conduct.[5] All that the law requires is that there be a charge in writing duly filed in court and an opportunity given to the person charged to be heard by himself or counsel. What is most essential is that the alleged contemner be granted an opportunity to meet the charges against him and to be heard in his defenses.[6] This is due process which must be observed at all times. Criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.[7]

In *Mutuc v. Court of Appeals*,^[8] the Court explained what due process means in contempt proceedings, to wit:

There is no question that the “essence of due process is a hearing before conviction and before an impartial and disinterested tribunal” (Rollo, p. 173) but due process as a constitutional precept does not always, and in all situations, require a trial-type proceeding (Zaldivar vs. Gonzales, 166 SCRA 316 [1988] citing the ruling in Torres vs. Gonzales, 152 SCRA 272 [1987]). The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one’s defense (Tajonera vs. Lamaroza, 110 SCRA 438 [1981] and Richards vs. Asoy, 152 SCRA 45 [1987]). “To be heard” does not only mean verbal arguments in court; or may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process (Juanita Yap Say vs. IAC, G.R. No. 73451, March 28, 1988.)

It bears stressing that indirect contempt proceedings partake of the nature of a criminal prosecution. Thus, strict rules that govern criminal prosecutions also apply to a prosecution for criminal contempt; the accused is to be afforded many of the protections provided in regular criminal cases; and proceedings under statutes governing them are to be strictly construed.[9]

A respondent in a contempt charge must be served with a copy of the motion/petition. Unlike in civil actions, the Court does not issue summons on the respondent. While the respondent is not required to file a formal answer similar to that in ordinary civil actions, the court must set the contempt charge for hearing on a fixed date and time on which the respondent must make his appearance to answer the charge. On the date and time of the hearing, the court shall proceed to investigate the charges and consider such answer or testimony as the respondent may make or offer. The mode of procedure and rules of evidence therein are assimilated to criminal prosecutions.[10] If he fails to appear on that date after due notice without justifiable reason, the court may order his arrest, just like the accused in a criminal case who fails to appear when so required. The court does not declare the respondent in a contempt charge in default.[11]

In this case, the petitioner, through her sister Gigi Bruan, and through her counsel, was served with copies of Walter’s petition for indirect contempt. She was notified, through her counsel, of the hearing of the petition on September 1, 1997, but she and her counsel failed to appear for the said hearing. She was, likewise, notified of the hearing set on September 26, 1997 by registered mail, and still failed to appear before the trial court. The petitioner cannot, thus, claim that she was denied her right to due process. We agree with the following disquisition of the Court of Appeals:

From the facts of the case, it is apparent that appellant failed to comply with the Court’s Order relative to the terms and conditions of the Compromise Agreement. On several hearings, appellant failed to appear in court despite service of notice upon her. Thus, on April 4, 1997, on motion of the respondent, the Court directed appellant and her counsel to explain why they should not be cited in contempt of court for their failure to comply with the Orders dated March 7 and 21, 1997. Again, appellant did not submit any responsive pleading relative thereto.

Thus, respondent had no other recourse but to charge appellant in writing by filing a separate Petition for Indirect Contempt pursuant to Sec. 3, Rule 71 of the Rules of Court. Records show that appellant was given the opportunity to comment thereon when Summons was served upon her by substituted service, thru her counsel, Atty. Elizabeth Andres, and appellant’s sister, Gigi Bruan. The return made by the Process Server of said Court dated August 29, 1997 states that “efforts to serve the said Summons personally upon defendant Ms. Edna Maris Socorro C. Bruan were made on August 26 and 28, 1997, but the same were ineffectual and unavailing for the following reasons, that as per given information by her sister, Gigi, respondent is always out of the house at the time Summons was attempted to be serve (sic), thus, substituted service was made in accordance with Sec. 7, Rule 14 of the Revised Rules of Court.” Hence, there is no question that appellant was duly served with summons by substituted service, and this is essential in order for the court to acquire jurisdiction over her person.

In the contempt case, respondent filed an “Urgent Motion to Set Case for Hearing” dated August 29, 1997 for the issuance of a warrant of arrest against respondent, which was, however, denied by the Court in an Order dated September 1, 1997, on the ground that summons has not been served on appellant. On September 18, 1997, respondent filed a “Motion for Issuance of Warrant of Arrest” alleging, among other things, that respondent was duly served with summons by substituted service in accordance with Sec. 7 of Rule 14 of the Rules of Court, and since appellant has been in hiding with the minor child and a hearing cannot be had, a warrant of arrest should be issued against her. Finding the same to be meritorious, the lower court issued the assailed Order dated October 1, 1997.

Indeed, it is apparent that the questioned Order of the lower court dated October 1, 1997 citing appellant in contempt of court was not issued without the observance of procedural due process. On the contrary, appellant was afforded all the opportunity to appear and explain her conduct. Hence, appellant’s claim that her right to a hearing was violated is unavailing considering that by her failure to appear in court since 1997 and explain her side, she is deemed to have waived her right to adduce evidence to controvert complainant’s claim.

Clearly, appellant was given all the opportunity to defend herself against the charge of Indirect Contempt filed against her. If she failed to do so, the fault lies on her and not upon the court. Her actions clearly show defiance and clear disregard of the law. As correctly found by the trial court:

“xxx Despite the lapse of almost half a year, she had refused to share custody of their lone child with her husband, despite the finality of the Order dated August 23, 1996, in relation to the Order (sic) May 24, 1996. While it would seem that she initially complied with the same, she has refused obedience thereto since March 1997. It is noteworthy that the wife began throwing to the winds obedience to the Order when her husband sought permission to bring with him their lone child to Germany for a study vacation. A review of the testimony of the witnesses presented by her husband, especially Esterlina Tong (sic), would bear out the obstinate character of the respondent in this case. However, this obstinacy cannot be countenanced by this Court, as it cannot allow one party litigant to frustrate the ends of justice.”

By and large, appellant’s willful disregard and disobedience to the Court’s Orders constitute an affront to the authority and dignity of the Court. Such conduct of appellant tends to bring the authority of the court and the administration of law into disrepute and, likewise, impedes the due administration of justice.[12]

As to the penalty imposed on the petitioner, we find the same too severe under the factual milieu of this case. The respondent (Walter) was compelled to institute the action for indirect contempt against the petitioner for not allowing him to see their minor child on several occasions, and to produce the child in court as required by the latter. As keenly observed by the trial court, the petitioner’s obstinate conduct started when the husband sought permission to bring their minor child to Germany for a “study vacation.” Understandably, the petitioner, as a mother, was overtaken by an instinctive fear that her daughter would be taken away and would never be returned to her. In a Motion filed on August 18, 1999, the petitioner stated that the minor child was already with Walter. Under such circumstance, we find that a fine of P5,000 is just and reasonable.

WHEREFORE, the petition is PARTIALLY GRANTED. The decision of the Court of Appeals is AFFIRMED WITH MODIFICATION. The petitioner is ORDERED to pay a fine of Five Thousand Pesos (P5,000) for being guilty of indirect contempt.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Delilah Vidallon-Magtolis and Teodoro P. Regino concurring.

[2] CA Rollo, p. 103.

[3] Id. at 104.

[4] Id. at 107.

[5] Pacuribot v. Lim, Jr., 275 SCRA 543 (1997).

[6] Remman Enterprises, Inc. v. Court of Appeals, 268 SCRA 688 (1997).

[7] People v. Godoy, 243 SCRA 64 (1995).

[8] 190 SCRA 43 (1990).

[9] Vide, note 4.

[10] Paredes-Garcia v. Court of Appeals, 261 SCRA 693 (1996).

[11] Regalado, Remedial Law Compendium, Civil Procedure, Vol. 1, Seventh Edition.

[12] CA Rollo, pp. 163-165.

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