

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LIBERATO GAGUI, ET AL., DEFENDANTS. EUSEBIO V. NAVARRO,
RESPONDENT AND APPELLANT.**

G.R. No. 15473. June 30, 1961

Ponente: DE LEON, J.

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DE LEON, J.:

On November 8, 1957, when Criminal Case No. 2193 of the Court of First Instance of Pampanga was called for trial, Atty. Eusebio V. Navarro, counsel of record for one of the accused, failed to appear and forthwith the court issued an order, which is quoted verbatim as follows:

"By virtue of the order dated October 8, 1957, the assignment of this case was set for today, November 8, 1957. Present were Fiscal Pedro S. David and counsel, Mr. Ahmed Garcia, for the accused Arsenio Mañgila.

"Attached to the record is an urgent motion for postponement filed by Mr. Eusebio Navarro, counsel, for the other accused Liberato Gagui, alleging that he cannot attend to this case, as he is engaged in a civil case in the Court of First Instance of Camarines Sur.

"The record clearly shows that when the trial was set for November 8, 1957, it was done in open court and after consultation with Mr. Navarro. As a matter of fact, the court ordered the detail of a Tagalog interpreter. The said interpreter is also present.

"The reasons given by Mr. Navarro are not satisfactory. Mr. Navarro is fully aware of the fact that this case has been pending for a considerable length of time. He should have, therefore, given priority to this case.

In view of the foregoing, the Court hereby imposes a fine of P100.00 upon Mr. Navarro for delaying this criminal case. The court announces in advance that it will not reconsider this order.

"Reset the trial on January 7, 1958, at 9:00 o'clock in the morning.

"Let a copy of this order be served upon the Department of Justice for the detail again of the Tagalog interpreter on the said date."

In another order issued on November 16, 1957, the above quoted order was amended by providing in the dispositive part thereof that "in the event that Mr. Navarro fails to pay the fine of P100.00 he shall suffer a subsidiary imprisonment not to exceed five (5) days." Subsequently, on December 2, 1957, the lower court issued still another order warning Atty. Navarro "that if he fails to pay the said fine on or before December 14, 1957, the Court will order his arrest and confinement."

From the three orders above referred to, Atty. Eusebio V. Navarro has interposed the present appeal.

It would appear that for the absence from court of appellant Atty. Navarro when Criminal Case No. 2193, in which he was counsel of record for one of the accused, was called for trial, the lower court summarily adjudged him guilty of direct contempt and sentenced him to pay a fine under penalty of imprisonment if he fails to do so

within a given period.

In our opinion, the contempt supposed to have been committed by appellant is not a direct contempt so as to be summarily punishable under section 1 of Rule 64, for it is not a misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice. If any contempt occurred by the failure of said appellant to appear for trial under the circumstances mentioned in the order of November 8, 1957 complained of, it would be an indirect contempt, punishable only after written charge and hearing, under section 3 of the same Rule 64, paragraph (b) of which mentions "disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge." As held in the case of *Rivera vs. Arellano* (83 Phil., 744).

"* * * failure or refusal of an accused or of his attorney to appear for trial comes closer to the definition of indirect contempt in paragraph (b) of section 3 (Rule 64) than to a misbehavior in the presence of or near the court contemplated in section 1.

"In *State vs. Winthrop*, 148 Wash., 526, p. 793; 59 A.L.R., 1265, it was held that the unexcused absence of an attorney from the court when a case in which he was attorney of record for one of the parties was called for trial is not a contempt occurring in the presence or view of the court, so as to be summarily punishable, but contempt therein, if any occurred, away from, and out of, the presence of the court and he is not subject to discipline and punishment other than by a charge being first made against him substantially as required by statute. (Footnote, 12 Am. Jur. Sec. 11, p. 396.)

"In *Finnick vs. Peterson*, 6 Phil., 172, this Court said: 'A witness who fails or refuses to comply with a subpoena duces tecum is guilty of contempt. Such contempt is not committed in the presence of the court, even though, upon appearance of the witness, the court should make a verbal order commanding him to comply with the terms of the subpoena. Such a witness can not be punished summarily. He is entitled to the hearing provided for under sections 232-240 of the Code of Procedure in Civil Actions.' (See also *Francisco vs. Enriquez*, 94 Phil., 603.)

It clearly appearing that no charge in writing for contempt has been filed against herein appellant, nor an opportunity given to him to be heard by himself or counsel, we find and so hold that the lower court acted in excess if not in grave abuse, of its jurisdiction in proceeding against and declaring said appellant guilty of contempt.

Sec. 3, Rule 64; *Nava vs. Teodoro, et al.*, G. R. No. L-10074, April 30, 1959.)

Having arrived at the above conclusion, we deem it unnecessary to pass upon the other questions raised by appellant.

Wherefore, the orders complained of are hereby set aside. So ordered without costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Natividad, JJ., concur.

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