

BIANITO ALEJANDRO, PETITIONER, VS. HON. GERARDO M. S. PEPITO, PRESIDING JUDGE, BRANCH III, COURT OF FIRST INSTANCE OF AKLAN, RESPONDENT.

G.R. No. 52090, February 21, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Upon petitioner's arraignment and plea of not guilty to the crime of Homicide before the Court of First Instance of Aklan, Branch III, presided by respondent Judge, the latter issued an Order, dated July 6, 1979, of the following tenor:

"Upon petition of the accused with the conformity of the prosecution, transfer the initial hearing of this case to AUGUST 7, 1979, at 8:30 o'clock in the morning.

"Let it be made of re-cord, in black and white, that the accused in this case admits in open court that he killed the deceased but that he acted in self-defense. For this reason, the Court requires the de-fense counsel, first to prove evidence in self-defense and the prosecution to present its evidence to disprove the same." [1]

Petitioner moved for reconsideration, reiterated in an Amended Motion, of the aforementioned Order con-tending that the Court action was violative of Section 3, Rule 119 of the Rules of Court, which establishes the sequence in the presentation of evidence by the parties in criminal cases, first by the prosecution and then by the defense, and not vice versa. Additionally, petitioner claimed that the procedure adopted by respondent Judge is prejudicial to the substantial rights of the accused in the sense that the same would give rise to the presumption that the prosecution had already established the guilt of the accused beyond reasonable doubt when what is only on record is the accused's admission that he had killed the victim in self defense.

On the other hand, the prosecution maintained that section 3, Rule 119 is not mandatory, relying on the ruling in *U.S. vs. Gaoiran*, 17 Phil. 404 (1910) to the effect that a departure from the order of trial, when rights of the defendant are not prejudiced, does not constitute a reversible error; that the admission by the accused of having killed in self-defense did not give rise to the presumption of his guilt beyond reason-able doubt but, rather, would result in his acquittal, if self-defense is proved; and finally, citing *People vs. Besana*, 64 SCRA 84 (1975), that having pleaded self-defense, petitioner admitted having stabbed and killed the deceased so that the burden is shifted on him to establish that he was justified in doing so.

Respondent Judge denied reconsideration in an Order dated October 9, 1979, reading in part:

"For resolution is an amended motion dated August 13, 1979 for reconsideration of the order of this court dated July 6, 1979, requiring the counsel for the accused in the above-entitled case to first present his evidence on self-defense ahead of the prosecution -- the herein accused himself having ad-mitted in open court the killing but that he acted in self-defense.

"The prosecuting Fiscal interposed an opposition which was filed on August 30, 1979, citing the case of *U.S.*

vs. Gaoiran, 17 Phil. 404 in which it was held among others that the substantial rights of the accused were in no way pre-judged by the change in the order of presentation of evidence.

"The court is pretty aware of the sequence in the presentation of the evidence of the parties indicated in Sec. 3, Rule 119 of the Rules of Court to be generally followed in criminal cases. While Sec. 3 of Rule 119 of the Rules of Court generally establishes a procedure to secure an orderly conduct in judicial proceedings in criminal cases, the Court, however, in an effort to find ways and means to speedily dispose of the cases to de-clog its docket has altered the sequence above referred to without in any way prejudicing the substantial rights of the accused herein.

"The accused is still presumed innocent, only that he was ordered to first present his evidence on self-defense as the killing has been admitted but that he acted in self-defense. It will indeed save time by dispensing with proof of death and injuries causing death -- a matter admitted by the accused in open court before actual trial on the merits.

"WHEREFORE, finding the foregoing motion for reconsideration without merit, the Court DENIES the same." [2]

Hence, this Petition for Certiorari, with petitioner alleging that respondent Judge acted without or in excess of his jurisdiction and with grave abuse of discretion in requiring defense counsel to present first its evidence of self-defense and the prosecution to present its evidence to disprove the same; that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law available to him and that unless respondent Judge is properly restrained, petitioner will suffer irreparable damage and prejudice.

We issued the Restraining Order prayed for on December 12, 1979 enjoining respondent Judge from proceeding with the hearing of the case below.

Required to comment, the Solicitor General candidly admits that there is proper ground for Certiorari and recommends that the Orders of July 6, 1979 and October 9, 1979 be annulled and the trial of the case held in accordance with law and jurisprudence on the matter.

We find the recommendation well taken.

Enshrined in our Constitution as a protection to accused persons in criminal cases is the requirement that no person shall be held to answer for a criminal offense without due process of law.[3] That requirement simply requires that the procedure established by law shall be followed.[4] Section 3 of Rule 119 prescribes the order of trial in criminal cases, to wit:

"SEC. 3. Order of Trial. -- The plea of not guilty having been entered, the trial must proceed in the following order:

(a) The fiscal, on behalf of the People of the Philippines, must offer evidence in support of the charges.

(b) The defendant or his attorney may offer evidence in support of the defense.

(c) The parties may then respectively offer rebutting evidence only, unless the court, in furtherance of justice, permit them to offer new additional evidence bearing upon the main issue in question.

(d) When the introduction of evidence shall have been concluded, unless the case is submitted to the court without argument, the fiscal must open the argument, the attorney for the defense must follow, and the fiscal may conclude the same. The argument by either attorney may be oral or written, or partly written, but only the written arguments, or such portions of the same as may be in writing, shall be preserved in the record of the case."

It behooved respondent Judge to have followed the sequence of trial set forth. That procedure observes, in the words of Chief Justice Fernando, the "mandate of reason and the guarantee of fairness with which due process is identified".[5] The procedure outlined safeguards and protects the fundamental right of the accused to be presumed innocent until the contrary is proved. That right is founded on the principle of justice and is intended not to protect the guilty but to prevent as far as human agencies can, the conviction of an innocent person.[6] Indeed, the form of a trial is also a matter of public order and interest;[7] the orderly course of procedure requires that the prosecution shall go forward and present all of its proof in the first instance.[8] The following excerpt from *People vs. Balicasan*, 17 SCRA 1119 (1966) shows fidelity to that procedure:

"In view of the assertion of self-defense in the testimony of the accused, the court should have taken anew defendant's plea and then proceeded with the trial of the case, in the order set forth in Section 3 of Rule 119 of the Rules of Court. In deciding the case upon the merits with-out the requisite trial, the court not only erred in procedure but also de-prived the prosecution of its day in court and right to be heard."

It is noteworthy also that the Information filed herein alleges that the heirs of the deceased suffered damages in the amount of P20,000.00. The prosecution should prove this first before the defense presents its evidence.

It is true that in the case of *U.S. vs. Gaoiran*, 17 Phil. 404 (1910), relied upon by the prosecution and the trial Court, the defense had produced its proofs before the prosecution presented its case, and it was held that no substantial rights of the accused were prejudiced. There is one radical difference, however, since in that case, no objection was entered in the Court below to the procedure followed in the present-ation of proof. In this case, the change in order of trial made by respondent Judge was promptly and timely objected to by the defense.

Respondent Judge's desire to abbreviate the trial and unclog his docket is commendable but it must yield to the paramount objective of safeguarding the rights of an accused at all stages of criminal proceedings, and to the interest of orderly procedure adopted for the public good.

WHEREFORE, granting the Writ prayed for, the Orders issued by respondent Judge on July 6, 1979 and October 9, 1979, respectively, are hereby annulled and set aside, the Restraining Order heretofore issued is lifted, and respondent Judge hereby directed to proceed with the trial in accordance with section 3, Rule 119 of the Rules of Court.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] Annex B, Petition.

[2] Pp. 31-32, Rollo.

[3] Art. IV, sec. 17.

[4] *U.S. vs. Ocampo*, 18 Phil. 1, 41 (1910).

[5] Philippine Constitution, Second Edition, pp. 668-669.

[6] *Malcolm & Laurel*, Phil. Constitutional Law, 471.

[7] *Arzadon vs. Arzadon*, 15 Phil. 77, 79-80 (1910).

[8] U.S. vs. Alviar, 36 Phil. 804, 805-806.

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