

ROLANDO DIMACUHA, PETITIONER, VS. HONORABLE ALFREDO B. CONCEPCION, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF CAVITE, BRANCH IV TAGAYTAY CITY, RESPONDENT.

G.R. No. 60842. September 30, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Petitioner Rolando Dimacuha , who unsuccessfully sought the inhibition of the respondent judge in Criminal Case No. TG-752-81, filed this petition for certiorari with preliminary mandatory injunction on June 22, 1982 to restrain the judge from proceeding with the case and for its transfer to another sala.

Petitioner Dimacuha is the accused in Criminal Case No. TG-752-81 for homicide, pending before the respondent judge in the Court of First Instance of Cavite , Branch IV, at Tagaytay City .

The petitioner alleges:

xxx xxx xxx

"3. That sometime during the month of January, 1982, petitioner had a personal confrontation with the brother of the late Ernesto Omandap and was directly and bluntly told (when they failed to bodily assault him) in this manner in the vernacular ' di bale' tatal yari ka rin sa asunto - bayad na si Judge para umupo ka sa silya elektrika'.

"4. That petitioner wary of the words of the Omandap brothers informed his lawyer about it but the latter merely dismissed the matter as pure nonsense;

"5. That, however, the past actuations of respondent Judge tended to lend truth to the rumor that my lawyer was constrained to file an 'Urgent Motion for Inhibition with Prayer to Transfer Venue' Attached hereto and made integral part hereof as Annex A to A-1, is the said motion;

"6. That on March 25, 1982, respondent issued an order which sarcastically 'denied' my lawyers Motion for Inhibition; Appended hereto as part of this petition is the said order marked as Annex 'B';

"7. That since then, respondent has scheduled the trial of my case giving me no chance and time to confer with my de- parte counsel;

"8. That over and above my protestations and vehement objections, because I have a de- parte counsel who has not withdrawn his appearance, respondent assigned a de Oficio lawyer who despite his unpreparedness is only too willing to go about his 'assigned task' non- chalantly;"

On July 19, 1982, respondent judge submitted an 18 pages Compliance and Comments which denied the charges as baseless and erroneous and which explained in detail that the defense counsel was remiss in entering his appearance and in filing necessary motions, unprepared to conduct cross-examination, wrong in not graciously accepting the court's suggestion to present concrete evidence, and culpable of conduct offensive to the dignity of

the court and of hostility and open defiance to the lawful orders of the court.

The respondent People of the Philippines filed comment through Solicitor General Estelito P. Mendoza, Assistant Solicitor General Eulogio Raquel Santos and Solicitor Teodoro G. Bonifacio on July 28, 1982.

A careful consideration of the records submitted by the petitioner and respondents shows that the most serious charge - that the petitioner was already "finished" as far as the case was concerned and that the judge had been "bought" to sentence the petitioner to the electric chair - is not sustained by the records. In fact, the questions propounded by the judge himself to the prosecution witness seemed to elicit some answers favorable to the accused. We also agree with the Solicitor General that the charges concerning "past actuations" of the respondent judge were not sufficiently demonstrated.

The comments filed by the Solicitor General made this resume of the case:

"3-e. Now, as the entire trial incidents are viewed in retrospect, it is obvious that -

"(1) de parte counsel Atty. Castro and respondent judge had their disagreements as regards how to cross-examine. The start of their dispute occurred here. This was at the hearing of March 17, 1982 (pages 14-15 TSN of this date). Respondent judge was perhaps too frank in saying to petitioner's counsel that the testimony of the prosecution witness was 'made clearer'. And this was made in open court. Thus, perhaps, the professional pride of petitioner's de parte counsel must have been hurt, not to ignore the embarrassment it caused, and he could not do anything about it except, as appears in the TSN, he gave his theory. Still, the respondent judge did not appreciate defense theory. Counsel de parte was no longer present at the next hearing of June 1, 1982. Another counsel de oficio, Atty. Nestor Desacada, undertook cross-examining second prosecution witness Vicente Sanchez, in behalf of petitioner.

"(2) the motion to inhibit and transfer venue appears unresolved, as petitioner's counsel de parte manifested in open court (p. 2, tsn April 29, 1982) and he thereby called the attention of respondent judge thereto. Yet, respondent judge ignored counsel de parte's manifestation to resolve and insouciantly remarked that 'The court has appointed a counsel de oficio in case you do not want to appear.'

"Considering that petitioner stands accused of a serious crime of homicide, that petitioner's de parte counsel has lost rapport and empathy with respondent judge, and considering further that the motion of petitioner to inhibit and transfer venue appears unresolved, a matter obvious from respondent judge's order of March 25, 1982 (Annex 'B', petition), to wit:

"xxx, the undersigned Presiding Judge will not dignify the motion under consideration, much less resolve the same.'

and considering lastly that the motion ought to have been resolved by the respondent judge (Sec. 1, Rule 15, Rules of Court), therefore, in the light of the foregoing circumstances, the administration of justice will be best served by transferring the venue of Criminal Case TG-752-81 to another branch of CFI- Cavite, maybe the branch at Trece Martires City.

"Petitioner must be assured of 'the cold neutrality of an impartial judge'. Thus, the Honorable Supreme Court in the case of *Ignicio vs. Villaluz*, 90 SCRA 16, 19 (1979) aptly held:

"However upright the judge and however free from the slightest inclination to do justice, there is peril of his unconscious bias or prejudice, so that to insure compliance with the demands of due process, to which every accused is entitled, and in order that it may be an impartial administration of justice, the better alternative under the circumstance would be for the respondent judge to inhibit or disqualify himself from further continuing with the trial of said malversation cases, thus assuring petitioner the cold neutrality of an impartial judge.'

"In resume, while the more sinister imputation that respondent judge was 'bought' to convict petitioner appears unsubstantiated by the records, the other imputation that petitioner is denied due process, i.e., under peril of lack of cold neutrality of an impartial judge, is obvious, for which reason, the motion to inhibit and transfer venue ought to be granted."

We agree.

We repeat the exhortation in *Pimentel v. Salanga* (21 SCRA 160) reiterated in *Mateo v. Villaluz* (50 SCRA 18) where We called the "attention of all judges to appropriate guidelines in a situation where their capacity to try and decide a case fairly and judiciously comes to the fore by way of challenge from any one of the parties. 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 a 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 decisions 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 the law who forestalls miscarriage of justice."

Due process requirements cannot be satisfied in the absence of that degree of objectivity on the part of a judge sufficient to reassure litigants of his being fair and just. (*Ignacio v. Villaluz*, 90 SCRA 16; *People v. Gomez*, 20 SCRA 293; *Pimentel v. Salonga*, 21 SCRA 160; *Luque v. Kayanan*, 29 SCRA 165; *Paredes v. Gopengco*, 29 SCRA 688; *Umale v. Villaluz*, 29 SCRA 688; *Paredes v. Abad*, 56 SCRA 522; *Palang v. Zosa*, 58 SCRA 776; *People v. Ancheta*, 64 SCRA 90; *Marcos v. Domingo*, 64 SCRA 206; *Martinez v. Gironella*, 65 SCRA 245; *Balieza v. Astorga*, 60 SCRA 444; *Villapando v. Quitain*, 75 SCRA 24. *Bautista v. Rebuena*, 81 SCRA 535.)

WHEREFORE, the respondent judge is hereby ordered to grant petitioner Rolando Dimacuha's motion for inhibition in Criminal Case No. TG-752-81 for homicide and to transfer the case and all its records to the Honorable Ildefonso M. Bleza, District Judge of the Court of First Instance of Cavite, Branch V, at Bacoor, Cavite who is directed to conduct all further proceedings in the case.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

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