

**PEOPLE OF THE PHILIPPINES AND ALFREDO QUIJANO,
PETITIONERS, VS. HON. BERNARDO SALAS (IN HIS CAPACITY AS
PRESIDING JUDGE OF RTC, CEBU, BRANCH VIII), MARIO ABONG,
ALFREDO DE LEON,...**

G.R. No. 66469. July 29, 1986

Ponente: CRUZ, J.

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CRUZ, J.:

Mario Abong was originally charged with homicide in the Court of First Instance of Cebu but before he could be arraigned the case was reinvestigated on motion of the prosecution.[1] As a result of the reinvestigation, an amended information was filed, with no bail recommended, to which he pleaded not guilty.[2] Trial commenced, but while it was in progress, the prisoner, taking advantage of the first information for homicide, succeeded in de-ceiving the city court of Cebu into granting him bail and ordering his release; and so he escaped.[3] The respondent judge, learning later of the trickery, cancelled the illegal bail bond and ordered Abong's re-arrest.[4] But he was gone. Nonetheless, the prosecution moved that the hearing continue in accordance with the constitutional provision authorizing trial in absentia under certain circumstances.[5] The respondent judge denied the motion, how-ever, and suspended all proceedings until the return of the accused.[6] The order of the trial court is now before us on certiorari and mandamus.[7]

The judge erred. He did not see the woods for the trees. He mistakenly allowed himself to be tethered by the literal reading of the rule when he should have viewed it from the broader perspective of its intendment.

The rule is found in the last sentence of Article IV, Section 19, of the 1973 Constitution, reading in full as follows:

"Sec. 19. In all criminal prosecution, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."

The purpose of this rule is to speed up the disposi-tion of criminal cases, trial of which could in the past be indefinitely deferred, and many times completely abandoned, because of the defendant's escape. The old case of *People v. Avanceña*[8] required his presence at certain stages of the trial which as a result, had to be discontinued as long as the defendant had not reappeared or remained at large. As his right to be present at these stages was then held not waivable even by his escape, such escape thus operated to the fugitive's advantage, and in mockery of the authorities, insofar as the trial could not proceed as long as he had not been recaptured.

The doctrine laid down in that case has been modi-fied by Section 19, which now allows trial in absentia. Now, the prisoner cannot by simply escaping thwart his continued prosecution and possibly eventual conviction

provided only that: a) he has been arraigned; b) he has been duly notified of the trial; and c) his failure to appear is unjustified.

The respondent judge was probably still thinking of the old doctrine when he ruled that trial in absentia of the escapee could not be held because he could not be duly notified under Section 19. He forgets that the fugitive is now deemed to have waived such notice precisely because he has escaped, and it is also this escape that make his failure to appear at his trial unjustified. Escape can never be a legal justification. In the past, his escape "rewarded" him by postponing all further proceedings against him and in effect ultimately absolving him of the charge he was facing. Under the present rule, his escape will, legally speaking, operate to his disadvantage by preventing him from attending his trial, which will continue even in his absence and most likely result in his conviction.

The right to be present at one's trial may now be waived except only at that stage where the prosecution intends to present witnesses who will identify the accused.[9] Under Section 19, the defendant's escape will be considered a waiver of this right and the inability of the court to notify him of the subsequent hearings will not prevent it from continuing with his trial. He will be deemed to have received due notice. The same fact of his escape will make his failure to appear unjustified because he has, by escaping, placed himself beyond the pale, and protection, of the law.

Trial in absentia was not allowed in *Borja v. Mendoza*[10] because it was held notwithstanding that the accused had not been previously arraigned. His subsequent conviction was properly set aside. But in the instant case, since all the requisites are present, there is absolutely no reason why the respondent judge should refuse to try the accused, who had already been arraigned at the time he was released on the illegal bail bond. Abong should be prepared to bear the consequences of his escape, including forfeiture of the right to be notified of the subsequent proceedings and of the right to adduce evidence on his behalf and refute the evidence of the prosecution, not to mention a possible or even probable conviction.

We admonish against a too-literal reading of the law as this is apt to constrict rather than fulfill its purpose and defeat the intention of its authors. That intention is usually found not in "the letter that killeth but in the spirit that vivifieth," which is not really that evanescent or elusive. As judges, we must look beyond and not be bound by the language of the law, seeking to discover, by our own lights, the reason and the rhyme for its enactment. That we may properly apply it according to its ends, we need and must use not only learning but also vision.

The trial judge is directed to investigate the lawyer who assisted Mario Abong in securing bail from the city court of Cebu on the basis of the withdrawn information for homicide and to report to us the result of his investigation within sixty days.

WHEREFORE, the order of the trial court dated December 22, 1983, denying the motion for the trial in absentia of the accused is set aside. The respondent judge is directed to continue hearing the case against the respondent Mario Abong in absentia as long as he has not reappeared, until it is terminated. No costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, and Paras, JJ., concur.

[1] Rollo, pp. 5-6.

[2] Ibid., p. 6.

[3] Ibid.

[4] Ibid.

[5] Ibid., pp. 6-7; 1973 Constitution, Art. IV, Sec 19.

[6] Ibid., pp. 30-31.

[7] Ibid., p. 66.

[8] 32 O.G. 713.

[9] Aquino v. Mil. Commission No. 2, 63 SCRA 546; People v. The Presiding Judge, 125 SCRA 269.

[10] 77 SCRA 422.

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