

ELIAS CARREDO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, VICTORIA CATOSTOS, AND HON. GENEROSO A. JUABAN (JUDGE OF THE REGIONAL TRIAL COURT OF CEBU, BRANCH VII) RESPONDENTS.

G.R. NO. 77542. March 19, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue in this case is whether or not an accused who, after arraignment, waives his further appearance during the trial can be ordered arrested by the court for non-appearance upon summons to appear for purposes of identification.

On February 3, 1983, petitioner was charged with malicious mischief before the Municipal Trial Court of Malabuyoc, Cebu City. He deposited a cash bond for his provisional liberty. Upon arraignment, he entered a plea of not guilty and thereafter he filed a written waiver of appearance dated May 14, 1984 which reads as follows:

"IN COMPLIANCE with the Letter of Instruction No. 40, dated November 10, 1972, the undersigned accused hereby waives his appearance during the trial or any stage thereof and he agrees that in case he fails to appear for trial despite due notice, his absence will be deemed as express waiver of his right to be present, and the Honorable Court may proceed with the trial of his case as if he were present. In this connection, he admits that he could be identified by witnesses who are testifying at the time that said accused was not present. (Underscoring supplied)

SO ORDERED."

At the hearing on August 14, 1985 the prosecution moved for the recall of its principal witness for the purpose of identifying the accused-petitioner who was not then present. Hence, the hearing was re-scheduled on October 9, 1985 and a subpoena was issued to petitioner who failed to appear on said date. The defense counsel justified petitioner's absence in that the latter's presence can no longer be required as he already filed a written waiver of appearance. Nevertheless, the municipal judge issued an order dated May 27, 1986 ordering the arrest of petitioner, the confiscation of the cash bond, and at the same time ordering the bondsman, who is the petitioner himself, to show cause why no judgment should be rendered against the bondsman.

A motion for reconsideration thereof having been denied, petitioner elevated the matter to the Regional Trial Court of Cebu City through a petition for certiorari and prohibition. In an order dated January 28, 1987, the said trial court denied the same. Hence, the herein petition for review on certiorari questioning the dismissal of the petition by the trial court and submitting for determination the issue of whether or not petitioner can be compelled, on pain of being arrested and his cash bond getting confiscated, to be present during the trial for purposes of his identification by the prosecution witnesses in a complaint for malicious mischief despite his written waiver of appearance. The issue is not new.

Section 19, Article 4 of the 1973 Constitution which was then in force provides as follows:

"SEC. 19. In all criminal prosecutions, 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."[1]

It is the proper interpretation and application of this constitutional provision on which the resolution of this petition depends.

In *Aquino, Jr. vs. Military Commission No. 2*[2] where a similar issue was presented, six justices were of the view that petitioner may waive his right to be present at all stages of the proceedings, while five justices were in agreement that he may so waive such right, except when he is to be identified. The result was that the order of the respondent military commission requiring his presence at all times during the proceedings before it should be modified in the sense that petitioner's presence shall be required only in the instance just indicated.[3]

In *People vs. Presiding Judge*,[4] the accused was charged with murder before the Regional Trial Court of Pangasinan. Upon his arraignment he manifested orally in open court that he is waiving his right to be present during the trial. The prosecuting fiscal moved that the accused be compelled to appear and be present at the trial so that he can be identified by the prosecution witnesses. This court sustained the position of the accused on the strength of the ruling of this Court in *Aquino*. However, this Court made the following disquisition:

"In the case of *People vs. Prieto, Sr.*, 84 SCRA 198, it was held that '[r]espondent Judge unfortunately assumed that thereby a defendant was thus conferred a fundamental right to ignore the terms of the bond posted by him in accordance with his constitutional right to bail. The present Constitution certainly has not made a dent on the traditional and correct concept of a bail as given to allow the release of a person in the custody of the law on condition that he would appear before any court whenever so required. Upon failure to do so, the warrant of arrest previously issued can be a sufficient justification for his confinement.' Further, in *Aquino, Jr. vs. Military Commission No. 22, et al.*, 63 SCRA 546, the late Chief Justice Fred Ruiz Castro, in his concurring and dissenting opinion, clearly stated that 'the accused may waive his presence in the criminal proceedings except at the stages where identification of his person by the prosecution witnesses is necessary. I might agree to the proposition of 'total' waiver in any case where the accused agrees explicitly and unequivocally in writing signed by him or personally manifests clearly and indubitably in open court and such manifestation is recorded, that whenever a prosecution witness mentions a name by which the accused is known, the witness is referring to him and to no one else.' Stated differently, the 1973 Constitution now unqualifiedly permits trial in absentia even of capital offenses, provided that after arraignment he may be compelled to appear for the purpose of identification by the witnesses of the prosecution, or provided he unqualifiedly admits in open court after his arraignment that he is the person named as the defendant in the case on trial. The reason for requiring the presence of the accused, despite his waiver, is, if allowed to be absent in all the stages of the proceedings without giving the People's witnesses the opportunity to identify him in court, he may in his defense say that he was never identified as the person charged in the information and, therefore, is entitled to an acquittal.

Furthermore, it is possible that a witness may not know the name of the culprit but can identify him if he sees him again, in which case the latter's presence in court is necessary."[5]

Thus, in *People vs. Presiding Judge*,[6] this Court reiterated the rule in *Aquino* that while the accused may waive his presence at the trial of the case his presence may be compelled when he is to be identified.

Petitioner, however, argues that he should not be ordered arrested for non-appearance since he filed a written waiver stating that "he admits that he could be identified by witnesses who have testified at the time that said accused was not present" following the ruling of this Court in *People vs. Presiding Judge*. The aforesaid statement in the waiver of appearance of petitioner that he admits he could be identified by the witnesses for the prosecution even in his absence is not such unqualified admission contemplated in *Presiding Judge*. What is stated in *Presiding Judge* as an exception is when the accused "unqualifiedly admits in open court after his arraignment that he is the person named as defendant in the case on trial," no more no less. In the present case petitioner only admits that he can be identified by the prosecution witnesses in his absence. He did not admit that he is the very person named as defendant in the case on trial. His admission is vague and far from unqualified. He cannot therefore seek the benefit of the exception recognized in *Presiding Judge*.

It is important to state that the provision of the Constitution authorizing the trial in absentia of the accused in case of his non-appearance after arraignment despite due notice simply means that he thereby waives his right to meet the witnesses face to face among others. An express waiver of appearance after arraignment, as in this case, is of the same effect. However, such waiver of appearance and trial in absentia does not mean that the prosecution is thereby deprived of its right to require the presence of the accused for purposes of identification by its witnesses which is vital for the conviction of the accused. Such waiver of a right of the accused does not mean a release of the accused from his obligation under the bond to appear in court whenever so required.^[7] The accused may waive his right but not his duty or obligation to the court.

WHEREFORE, the petition is DENIED without pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Section 14(2), Article III of the 1987 Constitution has a similar provision.

[2] 63 SCRA 546 (1975).

[3] *Ibid*, at 593.

[4] 125 SCRA 269 (1983).

[5] *Ibid*, at 271 to 272.

[6] 141 SCRA 37 (1986).

[7] Rule 114, Sections 1 and 2, 1985 Rules On Criminal Procedure.

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