

**FERNANDO VALDEZ ALIAS WILSON VALDEZ, PETITIONER, VS.
HONORABLE JUDGE GREGORIO U. AQUILIZAN, PRESIDING JUDGE
OF THE REGIONAL TRIAL COURT, 12TH JUDICIAL REGION, BRANCH
XVI, KABACA...**

G.R. Nos. 67422-24. October 31, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition for certiorari which was posted on March 22, 1984 in Cotabato City by speed airmail but was received only on April 26, 1984. The petitioner is accused of rape in three cases - Criminal Case Nos. 13, 14 and 15 - filed in the court presided by the respondent judge. The private complainant is the same in all the three cases but the rapes were alleged to have been committed on different dates, namely: February 10, 1982, March 17, 1982 and April 10, 1982.

The petition seeks to annul the proceedings which were conducted by the respondent judge and to disqualify him from the case. Because the verified petition imputed serious irregularities to the respondent judge, this Court issued a temporary restraining order on May 21, 1984, restraining him from further proceeding with Criminal Case Nos. 13, 14 and 15.

In the comment which the respondent judge was required to submit, he said that he had already decided the three cases. (Petitioner Wilson Valdez was convicted of rape in each of the three cases and was sentenced to three reclusion perpetua plus indemnity.) The decision is dated April 2, 1984, but the petitioner claims that it was promulgated on May 3, 1984, without the presence of his counsel and even of the Fiscal; that no notice was issued in respect of the promulgation; and that no copy of the decision was given to the defense counsel of record.

The case was set for hearing on August 6, 1984, and thereafter the Court issued a resolution which reads:

"At the hearing this morning the following appeared: Attys. Jose V. Juan and Antonio T. Nicolas of the Special Appealed Cases Division, Citizens' Legal Assistance Office, Ministry of Justice, Padre Faura, Manila, for the petitioner; respondent Judge Gregorio U. Aquilizan on his own behalf; and North Cotabato Provincial Fiscal Aquiles Narajos who brought the respondent of Criminal Case Nos. 13, 14 and 15 in the sala of the respondent judge.

"Counsels for the petitioner mentioned several irregularities said to have been committed by the respondent judge in the handling of the case above-mentioned. Resort to the record proved to be fruitless because it was grossly deficient.

"Counsels for the petitioner are hereby given ten (10) days from notice hereof to submit a memorandum specifying the irregularities said to have been committed by the respondent judge with supporting evidence. A copy of the memorandum shall be furnished to the respondent judge who is required to answer the same point by point within ten (10) days from receipt." (Rollo, p. 127.)

The memoranda are now before this Court and the immediate reaction is that the petition is highly impressed with merit.

In the hearing of the three criminal cases on May 26, 1983, the private complainant was to be cross-examined inasmuch as her direct examination had been finished at the previous hearing on April 7, 1983. On May 26, the private prosecutor, Atty. Norberto Ela, was absent. Thereafter, the respondent judge stated: "It appears in the records that the complaining witness is still under cross. It is the Honorable Judge who is examining her. x x x (Addressing the witness) During the last hearing of this case, the Honorable Court reserved its right to cross examine you on your testimony." And the respondent judge examined the witness but the examination is better described as direct rather than cross. Witness the following:

"COURT: x x x. After going over the records of the cases and the supposed exhibits, you mentioned about a pair of scissors used to intimidate you, coerced and forced by the accused, by pressing the same at your left side?

A Yes, your Honor.

COURT: Proceed Fiscal.

FISCAL FULVADORA:

Q You mentioned about a pair of scissors used by the accused. Showing to you this scissors, what relation is this scissors which was used by the accused in threatening you on February 10, 1982?

A Yes, sir, this is the one being used by him.

COURT:

Q Is this the very scissors that you saw when he pressed it?

A Yes, your Honor.

Q When was this used by the accused Wilson Valdez?

A On February 10, 1982, your Honor.

FISCAL FULVADORA:

May we request that this scissors identified by the witness be marked as Exh. "F", your Honor.

COURT:

Mark it.

Q Please demonstrate to the Court how this Exh. "F" was used by the accused in in-timidating you?

A (Witness demonstrating to the Court) The witness demonstrating to the supposed victim the pressing of the pointed scissors at the left side abdomen.

Q Did he also use that during the accord rape he committed?

A Yes, your Honor.

Q About the third time, he use also?

A Yes, your Honor." (TSN, May 26, 1983.)

To be sure a trial judge has the right, nay even the duty, to address questions to witnesses. But the questions

should be clarificatory; they should not build the case for any of the adversaries.

On June 23, 1983, a hearing was scheduled. The transcript for that day shows that Fiscal Camilo Fulvadora appeared for the prosecution but private prosecutor Ela was absent. Also absent was Atty. Jorge Zerrudo, counsel for the accused. The transcript does not show whether or not the accused was brought to court. Notwithstanding the absence of counsel for the accused and probably the accused himself, the respondent judge continued his "cross-examination" of the private complainant.

The respondent judge explained his behaviour thus:

"WHEREFORE, premises considered, in view of the absence of Atty. Zerrudo who in spite of due notice in open court, during the last hearing of this case and without justifiable reason failed to appear, however, for the sake of justice in order not to prejudice the right of the accused as the complaining witness was on cross-examination, stated the witness is being cross examined by the court in order to get an illustration of certain facts needed by all defense here or the prosecution of the accused Wilson Valdez alias Willy." (TSN, June 23, 1983.)

In his memorandum the respondent judge claims that he "did not proceed with the trial but merely sought clarifications on vital aspects taken up in the hearing of April 7, 1983."

The explanation of the respondent judge is belied by the transcript which shows that he asked the private complainant searching questions and this is reflected on pages 4 to 12 of the transcript.

The statement of the respondent judge that he wanted to protect the right of the accused to a speedy trial is not appreciated. He "protected" the rights of the accused by holding a trial in the absence of the latter's counsel. If an accused has a "protector" like the respondent judge, there is no need for a fiscal or a private prosecutor. It may not be amiss to state in this connection that the accused did not complain of delay in the trial of his case probably because he was not there. At any rate if the respondent judge had wanted to expedite the trial he should have appointed a temporary counsel for the accused.

The hearing on the three cases was resumed on August 18, 1983. In the meantime, Atty. Zerrudo was replaced by Atty. Julian Ruiz as counsel for the accused because he wanted an Ilocano lawyer to represent him for better communication. On that day, the private complainant was still on cross-examination. Without any request from the parties, the respondent judge decided to hold the hearing in his chamber "due to delicadeza." Present in the chamber were counsel for the accused, the fiscal and the stenographer only; the accused was not allowed to go inside.

The respondent judge claims, however, "that the accused together with his guard were at the door of a make-shift room, so-called judge's chamber." This might well have been the case but the accused was entitled as of right to be inside the room because it was his liberty and honor which were at stake.

On August 31, 1983, the respondent judge announced, "We will hear this in chamber." And then the following took place:

"ATTY RUIZ:

Now, last time this case was presented and was scheduled for hearing inside the chamber. Counsel for the accused requested that the accused be given chance to confront the complaining witness but this, your honor was denied so at this instance it is reiterated that the accused be given again a chance to be present during the investigation (sic).

COURT:

Fiscal.

FISCAL CAMILO FULVADORA:

With the sound discretion of the Honorable Court.

COURT:

Denied." (TSN, August 31, 1983.)

On February 7, 1984, the following took place:

"ATTY RUIZ:

Your honor, we are still in the process of direct examination for the accused. We are recalling the accused in the witness stand. I understand your honor last time, due to lack of material time, we requested for a resetting of these three cases inasmuch as the matter whether to give the accused for the meantime your honor, I am petitioning that he must be recalled and placed in the witness stand.

COURT:

It is discretionary on the part of the Judge. What can you say Fiscal?

FISCAL FULVADORA:

I remembered right that it is the purpose for the trial, that the manifestation of the defense counsel that he is through with the testimony of the witness, he requested that the prosecution will be continued in some other time.

ATTY. RUIZ:

We concur with the Provincial Fiscal but prior, we are petitioning the Honorable Court to recall the witness for further direct examination and I am requesting that will have to continue the proceeding. We are convinced with the observation of the Court that it is discretionary of the Honorable Court but this representation however, we would like to request and reiterate and manifest for the petition that he be recalled. It is not the intention of the defense counsel, your honor, to delay the speedy termination of these cases. As a counsel for the accused, I would like to reiterate that the accused be recalled to the witness stand.

FISCAL FULVADORA:

The Honorable Court will decide on that part of presentation of the accused, whether to grant it or not the manifestation.

COURT:

How many questions are you asking?

ATTY. RUIZ:

Due to lack of material time, the three cases, I forgot to ask few questions regarding the evidences or exhibits which are the panty, knife, and scissors, in the direct examination in that, it was overlooked in the part of this representation that the three after presented some of the exhibits per prosecution, were not questioned.

FISCAL FULVADORA:

It is not the matter of forgetting the exhibits of the counsel, there are time given to present this trial. I remembered that he propounded few questions for the defense and he manifested that he is through in his direct examination and it is my time to cross the testimony of the accused.

ATTY. RUIZ:

I forgot, before the Honorable Court that this representation have reasons of overlooking why I was not able to question to all the matters considering of the lack of material time and that there are other cases waiting which are ready for the hearing. It is the discretionary on the part of the Honorable Court specially that the criminal penalty is death and while the Provincial Fiscal having further presentation of exhibits at the beginning of the case, where the questioning we were already finished, yet the Provincial Fiscal continued separately to the presentation of other cases.

COURT:

Denied.

Under cross." (TSN, Feb. 7, 1984.)

It is obvious from the foregoing that the respondent judge did not manifest the requisite cold impartiality which the petitioner deserved.

The petition which questions the actuations of the respondent judge and seeks his disqualification was received by him on March 29, 1984. Prudence dictated that he refrain from deciding the cases or at the very least to hold in abeyance the promulgation of his decision pending action by this Court. But prudence gave way to imprudence; the respondent judge acted precipitately by deciding the cases on April 2, 1984, and promulgating his decision on May 3 of the same year. All of the acts of the respondent judge manifest grave abuse of discretion on his part amounting to lack of jurisdiction which substantively prejudiced the petitioner.

WHEREFORE, the petition is hereby granted. The decision in Criminal Case Nos. 13, 14 and 15 of the respondent judge is set aside; the aforesaid cases shall be transferred to Branch XVII of the Regional Trial Court in Kidapawan for trial de novo which shall also resolve the petitioner's motion for release on recognizance under Sec. 191 of P.D. No. 603. No costs.

SO ORDERED.

Makasiar (Chairman), Concepcion, Jr., Guerrero, Escolin, and Cuevas, JJ., concur.

Aquino, J., no part.

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