

BIENVENIDO O. MARCOS, PETITIONER, VS. HON. FERNANDO S. RUIZ, RTC JUDGE, 7TH JUDICIAL, REGION, TAGBILARAN CITY, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 70746-47. September 01, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In this special civil action for certiorari under Rule 65 of the Rules of Court, petitioner seeks to set aside, for being null and void, the Orders of respondent Judge of 8 April 1985 which considered the failure of petitioner and his counsel to appear on that date as a waiver of the right to present evidence, and of 29 April 1985 denying petitioner's motion for the reconsideration of said order in Criminal Cases No. 3890 and No. 3892.

The facts are not complicated.

On 2 August 1984, after conducting the appropriate preliminary investigation, Acting 2nd Assistant City Fiscal Lorenzo A. Lopena of the City of Tagbilaran filed with the Regional Trial Court of Bohol two (2) informations against petitioner herein for violating Batas Pambansa Blg. 22; said violations allegedly took place on 5 July 1983 in the City of Tagbilaran when the petitioner, knowing fully well that he did not have sufficient funds deposited with the Far East Bank and Trust Company (Cebu North Proclamation Area Branch), delivered to Fulgencia Oculam, in payment for assorted pieces of jewelry taken by petitioner's wife Anaclea Marcos, two (2) checks drawn against said bank in the amount of P3,000.00 each. The informations were docketed as Criminal Cases No. 3890[1] and No. 3892[2] and were raffled to Branch II of said court. The petitioner posted a surety bond for his temporary liberty.

The arraignment was set for 12 November 1984. The petitioner appeared on that date but asked for a resetting on the ground that his lawyer had just withdrawn and he had to look for another lawyer. The court granted his request and the arraignment was reset to 29 November 1984.[3]

It turned out, however, that petitioner settled his obligation with the offended party who, on 3 November 1984, executed an Affidavit of Desistance which she subscribed and swore to before Notary Public Paulino G. Clarin. Pertinent portions thereof read:

x x x

"2. That upon my instance, I requested that the cases be remanded to the City Fiscal for reinvestigation but which motion was denied;

3. That meanwhile, the respondent settled all his obligations subject matter of the present cases;

4. That under the circumstances, I possess no ground to further proceed with the prosecution of the cases;

5. That I am willing to have cases dismissed with the consent of the respondent or accused, as I hereby desist from further proceeding with the case;

6. That this affidavit of desistance may be utilized by the City Fiscal of the City of Tagbilaran for the dismissal of the cases."[4]

x x x

At 10:00 o'clock in the morning of 12 November 1984, Acting 2nd Assistant City Fiscal Lopena filed a Motion to Dismiss Criminal Case No. 3892 on the ground:

"1. That the complaining witness in this case has turned hostile and shown manifest lack of interest to prosecute the above-entitled case as evidenced by his (sic) Affidavit of Desistance, which is hereto attached as Annex "A" and is made an integral part hereof;

2. That without the testimony of said complaining witness, the above-entitled case cannot be prosecuted successfully, there being no other evidence on hand to prove the guilt of the accused."[5]

The motion bears the approval of Acting 1st Assistant City Fiscal Miguel Relampagos who acted for the Acting City Fiscal because of the latter's absence, and the consent of petitioner. It also contains the request of the movant fiscal addressed to the Clerk of Court that the same be set for resolution of the court "upon receipt hereof."

When the cases were called on 29 November 1984, neither petitioner nor his counsel appeared; however, the court received a telegram from petitioner's wife, Lita Marcos, advising the court that the petitioner was indisposed. Without any objection on the part of the prosecution, the court cancelled the arraignment on that date and re-scheduled the same, together with the trial, for 7 and 8 February 1985.[6]

On 7 February 1985, the petitioner appeared together with his counsel de parte, Atty. Carlos Marcos. He was arraigned in both cases; he entered a plea of not guilty. Forthwith, the court set the trial of the cases for 8 April 1985 at 2:30 P.M. and 9 April 1985 at 8:30 A.M. The petitioner, his counsel and the Assistant City Fiscal were notified in open court of the setting.[7]

When the cases were called in the afternoon of 8 April 1985, neither petitioner nor counsel appeared. The prosecution presented its evidence ex-parte and rested its case. The court then issued an Order[8] forfeiting the bond posted by the petitioner, directing Paramount Insurance Corp., the bondsman, to show cause, within thirty (30) days from notice, why no judgment should be issued against the bond and declaring that as no evidence has been submitted by the petitioner, the cases were deemed submitted for decision.

On 9 April 1985, the trial court received an urgent motion for the resetting of the hearing filed by counsel for the petitioner.[9] The motion, sent by registered mail and dated 29 March 1985, alleges:

- "1. That undersigned counsel has a previous legal commitment in Manila needing his personal attention;
2. That it would be physically impossible for him to arrive on time for the hearing of the above-entitled case;
3. That because of this unavoidable circumstances (sic) he is constrained to pray for their (sic) resetting."[10]

and prays that the hearing of the cases be reset to 13 and 14 May 1985 at 2:30 P.M. and 8:30 A.M., respectively. This motion does not contain a notice of hearing to the Prosecuting Fiscal but a mere request addressed to the Branch Clerk of Court reading:

"Please submit the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof."

On 23 April 1985, petitioner's counsel filed a "Motion for Reconsideration to (sic) Order" dated 8 April 1985.[11] In justifying petitioner's failure to appear at the hearing on 8 April 1985, counsel contends:

"THAT in view of the said motion [for resetting of hearing] the accused, in good faith, believed that the hearing set on April 8, 1985 would not proceed and his presence would thus be unnecessary; that to save money for fare and meals in a trip to Tagbilaran City from Cebu City, and vice versa, the accused who is a government employee did not anymore attend the hearing which he believed was cancelled on account of the motion aforementioned;

THAT the accused likewise believed that aside from the motion for postponement, the pendency of the Motion to Dismiss filed by the prosecuting fiscal, Lorenzo A. Lopena, in view of complaining witness. Affidavit of Desistance, this Honorable Court would not proceed to receive the evidence of the prosecution. In fact, up to the present, the aforementioned Motion to Dismiss dated November 12, 1984 has not been acted upon by this Honorable Court;

THAT the non-appearance of the accused in the scheduled trial is not a sufficient ground for the cancellation of the bailbond because his failure could still be considered as a waiver of his presence.

THAT it is the stand of the undersigned counsel that the motion to dismiss by the prosecuting fiscal be first resolved before this Honorable Court could proceed with the further proceeding of this case. Let it be stressed that the accused was arraigned by this Honorable Court over the objection of the accused AFTER the Motion to Dismiss was filed by the prosecution and BEFORE it was, as it still is, resolved which could be a denial or granting (sic) thereof, which to the undersigned does not matter as long as it is acted upon."

Once again, the motion does not contain a notice of hearing to the prosecuting fiscal; it has instead a mere request that the Clerk of Court submit it for the consideration of the court immediately upon his receipt thereof.

On 29 April 1985, the court issued an Order^[12] denying the aforesaid motion for reconsideration on the following grounds: that the petitioner should not assume that the motion for postponement would be granted; he is estopped from insisting on a ruling on the motion to dismiss because he agreed to be arraigned, pleaded not guilty and did not question the scheduling of the cases for trial; and the presentation by the Prosecution of its evidence amounted to an abandonment of its motion to dismiss.

On 3 May 1985, a Notice of Promulgation setting the promulgation of sentence in the two (2) cases to 17 May 1985 was sent to the parties by Antonio R. Monungol,^[13] the Research Attorney of Branch II of the court below.

Hence, this petition which was filed on 14 May 1985 and is anchored on and raises the principal issue of the alleged denial of petitioner's right to confront the witnesses for the prosecution and to be heard. Corollarily, petitioner submits that respondent Judge erred in not acting upon the motion to dismiss before setting the arraignment of the accused and receiving the People's evidence.

On 16 May 1985, this Court resolved to require the respondents to comment on the petition and to issue a Temporary Restraining Order enjoining respondent Judge from promulgating the judgment in Criminal Cases Nos. 3890 and 3892.

Respondent Judge filed his Comment^[14] by mail on 30 May 1985. He maintains that petitioner voluntarily submitted to the arraignment and was not denied due process. On the other hand, Acting 2nd Assistant City Fiscal Lopena mailed his Comment on 8 June 1985.^[15] The Office of the Solicitor General filed its Comment on 6 September 1985,^[16] and asserts therein that the Order in question is interlocutory and hence, not appealable; respondent Judge acted in accordance with law and sound discretion in issuing the orders; and petitioner was not denied his day in court.

On 28 October 1985, petitioner mailed his Joint Reply to the Comments.

On 27 November 1985, this Court resolved to give due course to the petition, consider the Comments as Answer

and require the parties to file their respective Memoranda, which they subsequently complied with.

The issues to be resolved in this petition are whether or not the respondent Court committed grave abuse of discretion amounting to lack or absence of jurisdiction in:

- (1) ordering the arraignment of the accused and receiving the evidence for the prosecution without first resolving the motion to dismiss;
- (2) ordering the forfeiture of the bail bond when petitioner failed to appear on 8 April 1985; allowing the Prosecution to present its evidence ex parte and declaring the petitioner as having waived his right to present his evidence; and
- (3) denying the motion to reconsider the Order of 8 April 1985 and setting the promulgation of judgment on 17 May 1985.

1. All the parties agree that the 12 November 1984 Motion to Dismiss was not resolved by the trial court. Respondent Judge asserts that the petitioner is estopped from questioning the inaction on this motion because he voluntarily appeared at his arraignment, entered a plea and agreed to the scheduling of the case for trial on the merits; besides, the Prosecution, by presenting its evidence, is deemed to have abandoned the motion. While the first proposition is incorrect, the second is inaccurate. Estoppel does not operate in the present case for the motion may still be resolved after the arraignment; by its nature, it may be filed by the prosecution at any time. As a matter of fact, had the petitioner not signed his conformity thereto, it would have been to his benefit or advantage that the motion be resolved after his plea for, by then; if the same is granted, the Prosecution would be precluded from refileing the case on the ground of double jeopardy.

This Court noted, however, that the motion to dismiss is for Criminal Case. No. 3892 only^[17] although the instant petition makes it appear, and the respondents seem to accede thereto, that the motion affects both Criminal Cases Nos. 3890 and 3892. This, of course, would become entirely irrelevant in the light of the succeeding discussion on the second ground stressed by the respondent Judge.

What actually transpired before the court a quo was that the Prosecution orally withdrew the motion to dismiss. In the transcripts of the stenographic notes of the proceedings on 7 February 1985,^[18] We find the following:

"ASST. CITY FISCAL L. LOPENA

Your Honor please, I have conferred with the complaining witness and she manifested her willingness to testify in this case for the prosecution. In view of this development, we are constrained to withdraw our motion to dismiss.

COURT

All right, then arraign the accused."^[19]

This manifestation and withdrawal of the motion were made in the presence of the accused and his counsel; neither of them objected thereto for they knew too well that they had no legal basis therefor. The only flaw in this regard is the respondent Judge's failure to explicitly make a ruling on the oral motion. He merely granted the motion impliedly by immediately directing the arraignment of the accused. He should have taken the trouble of making an unequivocal ruling thereon by simply stating: "Motion is granted; the motion to dismiss is considered withdrawn. All right, arraign the accused." The demands of orderly procedure require that a judge of a court of record must ensure that actions on motions must not be left to conjecture but must, in a manner of speaking, be done in black and white.

2. Considering that he had been arraigned -- which both the parties and the court thought that the same was for

both cases -- petitioner was not required to appear at the trial on 8 and 9 April 1985. While it may be true that he has the right to be present at every stage of the proceedings, i.e., from the arraignment to the promulgation of judgment, he can waive his presence. The second sentence of paragraph (2), Section, 14, Article III of the 1987 Constitution provides as follows:

"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 unjustifiable." [20]

Section 1 (c), Rule 115 of the Rules of Court provides, in part, as follows:

"x x x The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail bond, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without any justifiable cause at the trial on a particular date of which he had notice shall be considered a waiver of his right to be present during that trial."

While Section 2(c), Rule 114 of the Rules of Court, on the different conditions attached to a bail bond, provides:

x x x

"(c) The failure of the accused to appear at the trial without justification despite due notice shall be deemed an express waiver of his right to be present on the date specified in the notice. In such case, the trial may proceed in absentia;"

Having failed to appear on 8 April 1985 despite due notice, and considering that on said date the urgent motion for resetting had not yet been received by the court, respondent Judge could not be faulted for believing that petitioner's non-appearance was unjustified. Hence, a hearing in absentia was proper under the aforequoted provision of the Constitution and Sections 2(c) and 1(c) of Rules 114 and 115, respectively, of the Rules of Court.

However, respondent Judge gravely abused his discretion when he ordered the forfeiture of the bond and required the bonding company to show cause why no judgment should be rendered against it for the amount of the bond. One other condition for the granting of bail, set forth in Section 2(b), Rule 114 of the Rules of Court, is that the accused shall appear before the proper court whenever so required by the court or the Rules of Court.

A bail bond may be forfeited only in instances where the presence of the accused is specifically required by the court or the Rules of Court and, despite due notice to the bondsmen to produce him before the court on a given date, the accused fails to appear in person as so required. [21] There is no showing that the court had specifically required the bonding company to produce the body of the petitioner on 8 and 9 April 1985. Moreover, since Criminal Cases Nos. 3890 and 3892, which involve two (2) checks with a face value of P3,000.00 each, were merely for the violation of Batas Pambansa Blg. 22 which imposes a penalty of "imprisonment of not less than thirty (30) days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court," the presence of the accused at the hearing on 8 and 9 April 1985 was not indispensable.

Under the Rules of Court, the accused has to be present:

- (a) at the arraignment pursuant to paragraph (b), Section 1, Rule 116;
- (b) at the promulgation of judgment, except when conviction is for a light offense, in which case the judgment may be pronounced in the presence of his counsel or representative pursuant to Section 6 of Rule 120, or unless promulgation in absentia is allowed under the third paragraph of said section; and
- (c) when the prosecution intends to present witnesses who will identify the accused. [22]

Before the advent of the 1985 Rules on Criminal Procedure, the accused did not have to be present at the arraignment if the charge was for a light offense triable by the then justice of the peace or any other inferior court of similar jurisdiction. Also, his plea may be entered on his behalf by his attorney if the charge is for a misdemeanor or a minor offense in which the penalty that may be imposed is a fine not exceeding P200.00.[23]

3. Petitioner, however, is not fully justified in claiming that he was denied his right to due process by the respondent Judge. In the first place, it is not true that petitioner was arraigned over his objection. The transcript of the proceedings on 7 February 1985[24] reveals that his counsel merely asked for “enough time to confront the accused and advise him of what to plea (sic) in case the arraignment will push through,” for the reason that it was his initial appearance. He asked for a deferment of the arraignment for ten (10) days. The court, however, gave him until 10:00 o'clock that morning to prepare for the arraignment, to which he agreed. When the cases were called again at 10:00 o'clock that morning, the following transpired:

"ATTY. CARLOS MARCOS

Your Honor please, before the arraignment, may I make it of record that the Fiscal just have (sic) today turned over the information which is for reading by the Clerk of Court.

COURT

All right, arraign the accused now in the two cases?

NOTE - Information was read to the accused after which. . .

COURT (To accused)

What is your plea?

ACCUSED

Not guilty, Your Honor.

ATTY. CARLOS MARCOS

Your Honor please, the reading of the information of the other case, may we pray that it be waived and the accused will enter the plea of not guilty?

COURT:

So, what is the pleasure now of the defense?

ATTY. C. MARCOS

Considering that the accused's arraignment has just been terminated, may we be given ample time to prepare the defense of our case, Your Honor.

COURT

All right, you agree on the date?

COURT

ORDER

In the above-entitled two cases, the accused assisted by counsel, Atty. Carlos Marcos, pleaded not guilty upon being arraigned.

Let the joint trial of these cases be set on April 8 at 2:30 p.m. and April 9, 1985, at 8:30 a.m.

Notified in open court are Asst. City Fiscal Lorenzo Lopena, Atty. Carlos Marcos, and the accused.

Notify the private prosecutor, Atty. Paulino G. Clarin.

SO ORDERED."[25]

It will, however, be noted that insofar as the second case, Criminal Case No. 3892, is concerned, the court made no ruling on the manifestation and offer by petitioner's counsel that the reading of the information be waived and a plea of not guilty be entered. The petitioner was neither made to confirm the manifestation nor directed to personally make the plea. There was, therefore, no valid arraignment in Criminal Case No. 3892. Section 1(b), Rule 116 of the Rules of Court, as amended, requires the accused to personally enter his plea.

In the second place, the motion to reset the hearing was a mere subterfuge to obtain a postponement of and delay the proceedings. Petitioner and his counsel were notified in open court about the 8 and 9 April 1985 hearing on 7 February 1985. Having agreed to that setting, counsel in effect certified that he had no prior commitment on those dates and he was thereby bound to give priority to the same, unless events of greater importance or of a more serious nature requiring his presence, supervened. The only reason he gave for the notice was that he "has a previous legal commitment in Manila needing his personal attention." [26] He did not elaborate on what that legal commitment was. If he indeed had such a commitment and his conformity to the 8 and 9 April 1985 setting was a mistake, he should have immediately filed a motion for the resetting of hearing. It hardly needs to be said that either the so-called "legal commitment" in Manila -- whatever that could have been -- was made sometime after 7 February 1985 or that it never existed at all. In the motion to reconsider the 8 April 1985 Order, petitioner's counsel did not bother to explain the importance of that commitment or convince the court that he actually made the trip to Manila.

Thirdly, counsel for petitioner should not have presumed that the motion, which he prepared and sent by registered mail only on 29 March 1989, would reach the court and be granted before 8 April 1985. He knew, or ought to know that the granting of motions for postponement in criminal cases is left to the sound discretion of the Court -- a rule which has been steadfastly adhered to since *United States vs. Lorenzana* [27] and which this Court more explicitly expressed in *United States vs. Ramirez* [28] in this wise:

"Applications for continuances are addressed to the sound discretion of the court. In this respect, it may be said that the discretion which the trial court exercises must be judicial and not arbitrary. It is the guardian of the rights of the accused as well as those of the people at large, and should not unduly force him to trial, nor for light causes jeopardize the rights or interests of the public. Where the court conceives it to be necessary for the more perfect attainment of justice, it has the power upon the motion of either party to continue the case. But a party charged with a crime has no natural or inalienable right to a continuance."

This rule was succinctly stated in Section 2 of Rule 119 before its amendment by the 1985 Rules of Criminal Procedure as follows:

"SEC. 2. Continuance or postponement of the trial. -- The court on the application of either party or on its own motion, may in its discretion for good cause postpone the trial of the case for such period of time as the ends of justice and the right of the defendant to a speedy trial require."

As amended, it now reads:

"SEC. 2. Continuous trial until terminated; postponements. -- Trial once commenced shall continue from day to day as far as practicable until terminated; but for good cause, it may be postponed for a reasonable period of time."

Finally, the urgent motion for resetting was a mere scrap of paper. As earlier noted, it does not contain a notice of hearing to the Prosecution; all it had was a mere request, addressed to the Clerk of Court, that it be submitted for the consideration and approval of the court immediately upon his receipt thereof. There was, therefore, a clear violation of Section 5, Rule 15 of the Rules of Court, which is also applicable in motions for continuance in criminal cases. Said section provides as follows:

"SEC. 5. Contents of notice. -- The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion."

In *Bank of the Philippine Islands vs. Far East Molasses Corp.*,^[29] this Court explicitly ruled that a motion that does not contain a notice of hearing is but a mere scrap of paper; it presents no question which merits the attention and consideration of the court. It is not even a motion for it does not comply with the rules and hence, the clerk has no right to receive it.

Since on 8 April 1985 the motion for resetting had not yet been received by the court, the respondent Judge committed no error, much less abuse of discretion, in allowing the prosecution to present, ex-parte, its evidence and rest its case immediately thereafter in Criminal Case No. 3890; the same, however, cannot be said about Criminal Case No. 3892 for, as earlier mentioned, no valid arraignment had as yet been conducted thereon. Petitioner should blame no one else but his counsel. Nonetheless, a client is bound by the acts, even mistakes of his counsel in the realm of procedural technique; however, if the former is prejudiced by the latter's negligence or misconduct, he may recover damages.^[30]

However, respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction when he capriciously and arbitrarily considered Criminal Cases Nos. 3890 and 3892 -- more particularly the latter wherein there was no valid arraignment -- submitted for decision after the prosecution rested its case on 8 April 1985. He thus blatantly ignored and disregarded Section 2(c), Rule 114 and Section 1(c), Rule 115 of the Rules of Court which merely consider the accused's non-appearance during trial -- 8 April 1985, in this case -- as a waiver of his right to be present for trial on such date only and not for the succeeding trial dates. This is quite clear from Section 1(c) of Rule 115 which further provides:

"x x x The absence of the accused without any justifiable cause at the trial on a particular date of which he had notice shall be considered a waiver of his right to be present during that trial. When an accused under custody had been notified of the date of the trial and escapes, he shall be deemed to have waived his right to be present on said date and on all subsequent trial dates until custody is regained." (underscoring supplied)

Thus, with respect to an accused who is not in custody, his non-appearance constitutes a waiver of his right to be present only for the trial set for the particular date of which he had notice. Upon the other hand, such non-appearance by an accused in custody and who later escapes is considered a waiver of the right on such date and all subsequent trial dates until such custody is regained.

The hearing on 8 April 1985 was actually the initial hearing for the two (2) cases, albeit erroneously for the second due to the infirmity referred to earlier; it was likewise for the purpose of receiving the evidence for the prosecution. It cannot be fairly presumed that said setting was also for the purpose of presenting the accused's evidence considering that neither the court nor the parties knew in advance the number of cases to be tried on those dates and the length of the direct and cross examinations of the witnesses. Besides, even assuming for the sake of argument that the prosecution could rest its case on 8 April 1985, the defense could have still filed a demurrer to evidence under Section 15, Rule 119 of the Rules of Court, which would have necessarily meant a deferment of the reception of the evidence for the accused.

The order of the respondent Judge declaring the two (2) cases submitted for decision is not only a violation of

Section 1(c) of Rule 115 but is also a pronouncement that the petitioner had waived his constitutional right to be heard by himself and counsel,[31] and present his evidence. This is certainly lamentable for he thus allowed his court to breach one of its highest duties -- the protection of the citizen and the maintenance of his constitutional rights.[32]

While constitutional rights may be waived,[33] such waiver must be clear and must be coupled with an actual intention to relinquish the right.[34] There is nothing on record to suggest conduct on the part of the petitioner from which it may be reasonably inferred that he had waived his right to submit his evidence. On the contrary, his counsel's motion for resetting requested specifically for the hearing of the cases on 13 and 14 May 1985.

WHEREFORE, judgment is hereby rendered:

1. SETTING ASIDE that portion of the Order of respondent Judge of 8 April 1985 forfeiting the bond, posted by petitioner's bondsmen and declaring Criminal Cases Nos. 3890 and 3892 submitted for decision;
2. DECLARING that there was no valid arraignment in Criminal Case No. 3892;
3. UPHOLDING the validity of the ex-parte reception of the prosecution's evidence on 8 April 1985 insofar as Criminal Case No. 3890 is concerned and DECLARING petitioner as having waived his right to cross-examine the witness presented by the prosecution in said case;
4. SETTING ASIDE the Notice of Promulgation issued on 3 May 1985; and
5. DIRECTING the court below to arraign the petitioner in Criminal Case No. 3892, set the case for trial for the reception of the evidence for the prosecution, hold a joint hearing of both cases for the reception of the evidence for the petitioner and, in due course, render judgment thereon.

No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, and Romero, JJ., concur.
Feliciano, J., on leave.

[1] Rollo, 14-15.

[2] Id., 18-19.

[3] Order of 12 November 1984; Id., 47.

[4] Annex "C" of Petition; Rollo, 20.

[5] Annex "D", Id.; Id., 21. It is not explained why the motion to dismiss is for Criminal Case No. 3892. No copy of a separate motion to dismiss is attached to the petition.

[6] Order of 29 November 1984; Rollo, 48.

[7] Order of 7 February 1985; Id., 50.

[8] Annex "F" of Petition; Id., 25.

[9] First paragraph, Comments of respondent Judge; Rollo, 23-24.

[10] Annex "E" of Petition; id., 23-24.

- [11] Annex "G", Id.; Id., 26-27.
- [12] Annex "I" of Petition; Rollo, 29.
- [13] Annex "H", Id.; Id., 28.
- [14] Rollo, 44-47.
- [15] Id., 57-61.
- [16] Id., 72-83.
- [17] See footnote no. 5.
- [18] Attached to the Comments of Acting 2nd Assistant City Fiscal Lopena; Rollo, 57-61.
- [19] Id., 58.
- [20] This was lifted from Section 19, Article IV, 1973 Constitution.
- [21] Section 18, Rule 114, Rules of Court.
- [22] Aquino vs. Military Commission No. 2, 63 SCRA 546 [1975]; People vs. Salas, 143 SCRA 163 [1986]. See REGALADO, F.D., Remedial Law Compendium, Vol. Two, Fifth Revised Ed., 1988, 292.
- [23] Old Section 2, Rule 116 and old Section 3, Rule 118, 1964 Rules of Court.
- [24] Rollo, 57-61.
- [25] Rollo, 60-61.
- [26] Rollo, 23.
- [27] 12 Phil. 64 [1908].
- [28] 39 Phil. 738, 741-42 [1919]. See also People vs. Mendez, 28 SCRA 880 [1969].
- [29] 198 SCRA 689 [1991], citing Firme vs. Reyes, 92 SCRA 713 [1979] and the cases cited therein. See also Philippine Advertising Counselors, Inc. vs. Revilla, 52 SCRA 246 [1973]; Sacdalan vs. Bautista, 56 SCRA 175 [1974]; Prado vs. Veridiano II, 204 SCRA 654 [1991].
- [30] Isaac vs. Mendoza, 89 Phil. 279 [1951], citing United States vs. Umali, 15 Phil. 33 [1910] and In Re Filart, 40 Phil. 205 [1919]. See also Gordulan vs. Gordulan, 3 SCRA 205 [1961]; Macavinta vs. People, 54 SCRA 420 [1973]; Don Lino Gutierrez & Sons Inc. vs. Court of Appeals, 61 SCRA 87 [1974].
- [31] Section 14(2), Article III, 1987 Constitution.
- [32] Rodriguez vs. Villamiel, 65 Phil. 230 [1937].
- [33] People vs. Donato, 198 SCRA 130 [1991].
- [34] People vs. Burgos, 144 SCRA 1 [1986].

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