PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. BONIFACIO SANZ MACEDA, PRESIDING JUDGE OF BRANCH 12, REGIONAL TRIAL COURT OF ANTIQUE, AND AVELINO T. JAVELLANA, RESPONDENTS.

G.R. Nos. 89591-96. January 24, 2000

Ponente: PARDO, J.

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PARDO, J.:

On September 8, 1999, we denied the People's motion seeking reconsideration of our August 13, 1990 decision in these cases. In said resolution, we held that respondent Judge Bonifacio Sanz Maceda committed no grave abuse of discretion in issuing the order of August 8, 1989 giving custody over private respondent Avelino T. Javellana to the Clerk of Court of the Regional Trial Court, Branch 12, San Jose, Antique, Atty. Deogracias del Rosario, during the pendency of Criminal Cases Nos. 3350-3355. At that time, sufficient reason was shown why private respondent Javellana should not be detained at the Antique Provincial Jail. The trial court's order specifically provided for private respondent's detention at the residence of Atty. del Rosario. However, private respondent was not to be allowed liberty to roam around but was to be held as detention prisoner in said residence.

This order of the trial court was not strictly complied with because private respondent was not detained in the residence of Atty. Del Rosario. He went about his normal activities as if he were a free man, including engaging in the practice of law. Despite our resolution of July 30, 1990 prohibiting private respondent to appear as counsel in Criminal Case No. 4262,[1] the latter accepted cases and continued practicing law.

On April 7, 1997, Senior State Prosecutor Henrick F. Guingoyon filed with the Supreme Court a motion seeking clarification on the following questions: "(1) Does the resolution of this Honorable Court dated July 30, 1990, prohibiting Atty. Javellana from appearing as counsel refer only to Criminal Case No. 4262? (2) Is Atty. now (Judge) Deogracias del Rosario still the custodian of Atty. Javellana? and (3) Since it appears that Atty. (now Judge) del Rosario never really held and detained Atty. Javellana as prisoner in his residence, is not Atty. Javellana considered an escapee or a fugitive of justice for which warrant for his arrest should forthwith be issued?"[2]

In a resolution dated June 18, 1997, we "noted" the above motion.

After we denied the motion for reconsideration on September 8, 1999, the trial court resumed hearing Criminal Cases Nos. 3350-3355. Earlier, on August 2, 1999, Rolando Mijares filed with the Regional Trial Court, Branch 12, San Jose, Antique, a motion seeking the revocation of the trial court's custody order and the imprisonment of private respondent Javellana in the provincial jail.

On November 15, 1999, private respondent Javellana filed with the Supreme Court an urgent motion seeking to clarify whether the June 18, 1997 resolution finally terminated or resolved the motion for clarification filed by the State Prosecutor on April 7, 1997.

Private respondent Javellana has been arrested based on the filing of criminal cases against him. By such arrest, he is deemed to be under the custody of the law. The trial court gave Atty. Deogracias del Rosario the custody of private respondent Javellana with the obligation "to hold and detain" him in Atty. del Rosario's residence in his official capacity as the clerk of court of the regional trial court. Hence, when Atty. del Rosario was appointed judge, he ceased to be the personal custodian of accused Javellana and the succeeding clerk of court must be deemed the custodian under the same undertaking.

In our mind, the perceived threats to private respondent Javelana's life no longer exist. Thus, the trial court's order dated August 8, 1989 giving custody over him to the clerk of court must be recalled, and he shall be detained at the Provincial Jail of Antique at San Jose, Antique.

Regarding his continued practice of law, as a detention prisoner private respondent Javellana is not allowed to practice his profession as a necessary consequence of his status as a detention prisoner. The trial court's order was clear that private respondent "is not to be allowed liberty to roam around but is to be held as a detention prisoner." The prohibition to practice law referred not only to Criminal Case No. 4262, but to all other cases as well, except in cases where private respondent would appear in court to defend himself.

As a matter of law, when a person indicted for an offense is arrested, he is deemed placed under the custody of the law. He is placed in actual restraint of liberty in jail so that he may be bound to answer for the commission of the offense.[3] He must be detained in jail during the pendency of the case against him, unless he is authorized by the court to be released on bail or on recognizance.[4] Let it be stressed that all prisoners whether under preventive detention or serving final sentence can not practice their profession nor engage in any business or occupation, or hold office, elective or appointive, while in detention. This is a necessary consequence of arrest and detention. Consequently, all the accused in Criminal Cases Nos. 3350-3355 must be confined in the Provincial Jail of Antique.

Considering that the pendency of Criminal Cases Nos. 3350-3355 has dragged on for more than ten (10) years, the presiding judge of the Regional Trial Court, Branch 12, San Jose, Antique, is ordered to continue with the trial of said criminal cases with all deliberate dispatch and to avoid further delay.

WHEREFORE, the August 8, 1989 order of the trial court is hereby SET ASIDE. All accused in Criminal Cases Nos. 3350-3355, including Avelino T. Javellana and Arturo F. Pacificador are ordered detained at the Provincial Jail of Antique, San Jose, Antique, effective immediately, and shall not be allowed to go out of the jail for any reason or guise, except upon prior written permission of the trial court for a lawful purpose.

Let copies of this resolution be given to the Provincial Director, PNP Antique Provincial Police Office, San Jose, Antique and to the Provincial Jail Warden, Provincial Jail of Antique, San Jose, Antique.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.

Kapunan, J., no part.

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[1] During the pendency of G. R. No. 89591-96, on July 16, 1990, private respondent Avelino T. Javellana filed a motion seeking permission from this Court to be allowed to appear as counsel for accused Norberto Patino in Criminal Case No. 4262, then pending before Regional Trial Court, Branch 12, San Jose, Antique. This Court denied his motion and ruled that being a detention prisoner, he cannot be allowed to appear as counsel for the aforesaid accused. Rollo, p. 510.

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[2] Rollo, p. 1445.

[3] Rule 113, Sections 2, 3, 1985 Rules on Criminal Procedure.

[4] Rule 114, Section 1, 1985 Rules on Criminal Procedure.

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