EN BANC

G.R. NO. 241348 – LORETO CAÑAVERAS AND OFELIA B. CAÑAVERAS v. JUDGE JOCELYN P. GAMBOA-DELOS SANTOS AND RODEL MARIANO

Promulgated:

July 5, 2022

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CONCURRENCE

LAZARO-JAVIER, *J.*:

I concur.

Public respondent's Order dated May 23, 2018, and subsequent Orders were indeed issued with grave abuse of discretion. It is not automatic that an accused through counsel is denied effective cross-examination only because the defense counsel is absent. Section 10(b) of the Judicial Affidavit Rule itself provides the exception to the rule – valid cause.

Here, the defense counsel suffered an eye infection on the hearing date itself. As mentioned in the *ponencia*, the eye infection involved eye pain, headache, discharge of rheum, conjunctival cysts, trichiasis, and dry eye syndrome. It was validated, though unnotarized, by a Medical Certificate dated May 28, 2013.

With this situation, it was impossible for the defense counsel to have filed a motion to postpone the hearing on May 28, 2013, and paid the postponement fee before this date. For sure, he could have called the courthouse, but we have no information to verify the feasibility of giving this notice. We do not know if the courthouse had a phone, if the defense counsel's clients had phones, or if he could have made the call given his condition. In any event, this matter was not canvassed by the trial judge when she exercised her discretion.

My point here is this. There was an exaggerated reliance upon the text of Section 10(b) at the expense of both the actual and potential contexts of the events on May 28, 2013, and on June 6, 2018, when the defense counsel sought a reconsideration of the waiver. In my analysis, this constitutes grave abuse of discretion.

The issue was halfway a procedural matter – the waiver of the cross-examination of a prosecution witness due to the absence of the defense counsel, which he was seeking to set aside on account of his eye illness on the date of the hearing.

But it was also halfway an issue of a substantive right – the right of an accused to confront an accuser and/or an adverse witness and the potential imposition of criminal and civil penalties upon petitioners as a result of the waiver.

The trial judge may have been correct in finding deficiencies and issues about the Defense Counsel's medical cause. These deficiencies and issues, however, could have been clarified and corrected at the hearing on June 6, 2018. The trial judge could have called the defense counsel to swear to his Medical Certificate, thus, addressing the lack of a notarial certificate to his Medical Certificate. Right there and then too, she could have subjected the defense counsel to rigorous examination by the prosecution on his claim about his eye infection on May 28, 2013. The defense counsel could have also been ordered to pay the postponement fee and the reasonable expenses of the witness who had to be recalled for the cross-examination.

Why should the trial court bother itself with all these?

It is because of the interplay between the procedural and substantive aspects of the issue of waiver as a result of the defense counsel's absence. Verily, had all the foregoing avenues of circumspection been observed, we would not be here dealing with sacrificing an accused's right to confront the accuser and/or adverse witness in relation to the absence and eye infection of the defense counsel, and in the process delaying what would have been a straightforward disposition of the criminal case of *estafa*.

The trial court's exercise of discretion ran contrary to the goal of every rule of procedure – liberality and proportionality with an eye to a just, speedy, and inexpensive determination of an action. This is a rule of first principles the disregard of which amounts to grave abuse of discretion. While for sure done in good faith, the trial court's failure to consider these first principles amounted to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.

In every iteration of our Rules of Civil Procedure, we have painstakingly prefaced each and every rule with this reminder: "These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."

This is not a rudderless or purposeless liberality we serve as the rule of thumb for construing our rules. It is liberality within the context of achieving the goal of just, speedy, and inexpensive procedures. Implicit in this guideline is the requirement of proportionality. We have to ask – if we apply this rule *verba legis*, what harm would occur, and upon whom? We have to be mindful of the proportion of the impact upon the losing party and the perceived violation perpetrated by the latter.

Here, in the proper weighing of the values involved, the trial judge could have factored in the fairness of potentially sending petitioners to jail when the defense counsel's violation – if indeed the eye injury were not a valid cause – could have been punished by some other means. As I have said, the trial court –

> x x x could have called the defense counsel to swear to his Medical Certificate, thus addressing the lack of a notarial certificate to his medical certificate. Right there and then too, she could have subjected the defense counsel to rigorous examination by the prosecution on his claim about his eye infection on May 28, 2013. The defense counsel could have also been ordered to pay the postponement fee and the reasonable expenses of the witness who had to be recalled for the cross-examination.

For greater certainty, Sections 5 and 6 of Rule 135, Rules of Court, provide the basis for this manner of controlling the court proceedings and moving on using alternative means:

> SECTION 5. *Inherent Powers of Courts.* — Every court shall have power:
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> (a) To preserve and enforce order in its immediate presence;
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> (b) To enforce order in proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;
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> (c) To compel obedience to its judgments, orders, and processes, and to the lawful orders of a judge out of court, in a case pending therein;
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> (d) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto;
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> (e) To compel the attendance of persons to testify in a case pending therein;
>
> (f) To administer or cause to be administered oaths in a case pending therein, and in all other cases where it may be necessary in the exercise of its powers;

> (g) To amend and control its process and orders so as to make them conformable to law and justice;
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> x x x x
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> SECTION 6. *Means to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

For the trial judge's failure to exercise her discretion properly and in the process gravely abusing it, given the context of what was at stake, the proffered valid cause for the defense counsel's absence, and the matters that could have remedied the defects and addressed the perceived violation, which the trial judge did not at all canvass.

For clarity, the proffered excuse given by the defense counsel constituted a valid cause to adjourn the cross-examination of the prosecution witness. To be fair to the witness, the Court could have imposed sanctions upon petitioners and their lawyers by requiring them to pay not only the postponement fee but also the reasonable costs for the recall of the witness.

In another vein, judges are not allowed to submit their own comments on petitions questioning their orders. This restriction is actually already in place in Section 5, Rule 65, Revised Rules of Court.[1]

There are good reasons for this interdiction.

For one, allowing them to do otherwise would not be efficient. Judges could better use their time, effort, and talent to resolve matters before them.

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[1] Rule 65 – *Certiorari*, Prohibition and Mandamus –
Section 5. *Respondents and costs in certain cases.* — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer[,] or person impleaded as public respondent or respondents.
Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (5a)
(1997 RULES OF CIVIL PROCEDURE, AS AMENDED, EFFECTIVE JULY 1, 1997).

For another, this procedure demeans their, or actually our, status as decision-makers. Judges are not litigants. Making judges argue their reasons and disposition apart from what has been said in their assailed Orders or Decisions diminishes the authority implicit in why we refer to them as rulings. Hence, we do not argue. Instead, we listen, consider, and adjudge. The assailed Orders or Decisions should be the ones to speak for their correctness and dignity, and their appropriateness and integrity.

Lastly, I urge our trial judges to interpret and apply our rules of procedure always with an eye to efficient outcomes. Very useful in this regard are the twin precepts of purposeful and reasoned liberality and proportionality.

On the other hand, lawyers must stop resorting to motions to recuse trial judges when they do not get what they want. The Code of Professional Responsibility, I am sure, already prohibits the misuse of court procedures to the detriment of the administration of justice. The Court is looking forward to putting more teeth to the enforcement of ethical practices and the inculcation of moral precepts in the general fiber of law practice. The childish tactic of inhibiting judges from hearing a case because the ruling did not go the lawyer's way, as in this case, should already stop. I repeat what the Court said about this inimical maneuver –

> The Court cannot countenance the ease with which lawyers, in the hopes of strengthening their cause in a motion for inhibition, make grave and unfounded accusations of unethical conduct or even wrongdoing against other members of the legal profession. It is the duty of members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justness of the cause with which they are charged.[2]

AMY C. LAZARO-JAVIER

CERTIFIED TRUE COPY

MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court

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2 *Law Firm of Chavez Miranda Aseoche v. Lazaro*, 794 Phil. 308, 320–321 (2016).