

SECOND DIVISION

[G.R. No. 129120, July 02, 1999]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND ARTURO F. PACIFICADOR, RESPONDENTS.

R E S O L U T I O N

QUISUMBING, J.:

This is an appeal by way of Petition for Review on *Certiorari* of the decision of the Court of Appeals dated February 11, and of its resolution of May 2, 1997 in CA-G.R. SP NO. 42691 entitled "*People of the Philippines vs. Hon. Nery S. Duremdes, Presiding Judge, RTC, Branch 11, San Jose Antique and Arturo F. Pacificador.*" The decision, penned by Justice Minerva Gonzaga-Reyes, set aside the orders in the resolutions dated May 14, and July 16, 1996 of Judge Nery G. Duremdes in Criminal Case 3174. The appellate court ruled (1) against the lower court's resolution to grant bail and provisional liberty to private respondent Pacificador but (2) denied petitioner's prayer seeking to inhibit Judge Duremdes from further hearing the case. The resolution of July 16 denied petitioner's motion for partial reconsideration.^[1]

A review of the antecedent facts of this case, in particular the events pertinent to this motion for *recusation*, is in order.

Private respondent Pacificador, and six (6) men who were alleged to be his bodyguards, were charged with multiple murder and frustrated murder committed against supporters of Pacificador's political rivals. The victims were allegedly ambushed at the Pangpang Bridge in Sibalom, Antique on May 13, 1989. Seven persons died in the ambush.

Before trial, Pacificador fled. Meanwhile, Pacificador's six (6) co-accused were tried separately and all were consequently sentenced to an indeterminate sentence ranging from nine (9) years, four (4) months and one (1) day of *prision mayor* as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, for the crime of frustrated murder, and a term of seven (7) *reclusion perpetua* each for the murders. Noteworthy in the decision convicting the six was the trial court's conclusion that there was conspiracy among the accused.

After eluding arrest for nine years, Pacificador surrendered on March 8, 1995. When brought to trial, he filed a petition for bail before Judge Duremdes which was granted on May 14, 1996.

The prosecution filed a motion for reconsideration of the order granting bail and a motion to inhibit the trial court judge. On July 19, 1996, the trial court judge denied the motion for reconsideration of the order granting bail and motion to inhibit.

Petitioner filed a petition for *certiorari*, prohibition and *mandamus*, with urgent

prayer for issuance of a writ of preliminary injunction and temporary restraining order, docketed as CA-G.R. S.P. No - 2691, before respondent Court of Appeals. The grounds cited are as follows:

"(1) RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION WHEN IN HIS ASSAILED ORDER AND RESOLUTION HE RULED THAT THE PROSECUTION'S EVIDENCE AGAINST ACCUSED PACIFICADOR "IS SUFFERING FROM PAUCITY, NEBULOUSNESS AND SHROUDED WITH AMBIGUITY", NOTWITHSTANDING THE TESTIMONIES OF PROSECUTION WITNESSES WHICH POSITIVELY ESTABLISHED THE PRESENCE OF ACCUSED PACIFICADOR AT THE AMBUSH SITE IMMEDIATELY BEFORE AND DURING THE AMBUSH.

"(2) RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDER AND RESOLUTION WHICH PREJUDGED THE CASE AND MANIFESTED UNDUE BIAS IN FAVOR OF ACCUSED PACIFICADOR."

[2]

On February 11, 1997, respondent Court of Appeals granted the petition insofar as it set aside the order of Judge Duremdes which granted bail. But it denied petitioner's motion for inhibition of Judge Duremdes. It ruled,

"WHEREFORE, the petition is Granted. The orders issued by the respondent court dated May 14, 1996 and July 19, 1996 granting bail to the accused Pacificador are hereby SET ASIDE and the respondent judge is hereby enjoined from enforcing the said orders.

"SO ORDERED." [3]

Hence this petition.

An issue for resolution by this Court is whether respondent appellate court gravely erred in denying the motion for inhibition of Judge Duremdes despite the alleged manifest prejudgment, bias and partiality which petitioner asserts could result to eventual acquittal if Judge Duremdes is allowed to preside over the case.

It is the contention of petitioner that the very language and justification of the trial judge in allowing bail, reflect his prejudgment and bias, in particular, the following portions of the Resolution which granted bail stating,

"Insofar as the herein accused Arturo F. Pacificador is concerned, the prosecution's evidence is shrouded with ambiguity.

X X X

"The foregoing testimonies are nebulous and nothing therein slightly suggests that the herein accused Arturo F. Pacificador was carrying a firearm that fateful evening . . . It is axiomatic, then, that the participation of the accused Arturo F. Pacificador in the criminal aggression cannot be conjectured. For, paucity of evidence does not signify resort to speculation." [4]

According to petitioner, the facts that Judge Duremdes disregarded the categorical testimonies of two witnesses of the ambush, and Pacificador's own admission to the effect that he was present and that he was the target of the ambush, further reveal Judge Duremdes' bias in favor of Pacificador and his inclination to acquit the latter.
[5]

Furthermore, petitioner insists that the case has generated strained personal relationship, animosity and hostility among the parties, counsels, and the trial judge such that at this point the needed objectivity and impartiality required of a judge are no longer present.

Respondent judge comments that the prosecutor is wrong in speculating that since Pacificador's co-accused who were tried separately were convicted, then it follows with certainty that Pacificador should also be convicted and therefore no bail should be allowed. Respondent judge argues that if such were the case, no trial as far as the case against Pacificador would be needed. This effectively meant that the latter would not be given his day in court. Respondent judge insists that petitioner must not only allege bias but must show clear and convincing proof of his bias for him to be inhibited from hearing the case.

In a string of cases decided by this Court we said that while bias and prejudice, which are relied upon by petitioner, have been recognized as valid reasons for the voluntary inhibition of the judge under Rule 137, sec.1, par. 2, the rudimentary rule is that mere suspicion that a judge is partial is not enough. There should be clear and convincing evidence to prove the charge of bias and partiality. Bare allegations of partiality and prejudgment will not suffice. Bias and prejudice cannot be presumed especially if weighed against a judge's sacred obligation under his oath of office to administer justice without respect to person and do equal right to the poor and the rich.
[6]

In our more recent decisions, we reiterated parameters that mere suspicion that a judge was partial to a party is not enough; that there should be adequate evidence to prove the charge;
[7] that there must be showing that the judge had an interest, personal or otherwise, in the prosecution of the case at bar;
[8] and that to be disqualifying, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.
[9]

The belief of the prosecution that Pacificador will be acquitted by Judge Duremdes for the same reasons he granted bail, has no basis and unduly imputes bias. An erroneous ruling on the grant of bail does not constitute evidence of bias. Aptly stated by respondent court, the erroneous order issued by the judge can be remedied and was actually corrected, as in this case militating against the disqualification of the judge on the ground of bias and partiality.
[10]

To disqualify a judge on the ground of bias and prejudice, the movant must prove the same by clear and convincing evidence. Mere allegation and perception of bias from tenor and the language of a judge alone is insufficient to show prejudgment. Neither can the perception that the pleadings of the parties have become personal and loaded with insulting innuendoes be the basis for inhibition. Allowing inhibition for these reasons would open the flood gates to forum-shopping. Unless, there is