

96 Phil. 20

[G.R. No. L-7251. October 18, 1954]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. IRENEA ALIPAO, DEFENDANT AND APPELLEE.

D E C I S I O N

BENGZON, J.:

The fiscal of Surigao has appealed from the order of the court of that province dismissing the information charging Irene Alipao with oral defamation.

The matter originated from the justice of the peace court, wherein a fine had been imposed. The defendant appealed. The corresponding information was filed in the higher court, later substituted by an amended information.

When in the morning of July 2, 1952, the case was called for hearing, the prosecution moved for postponement, the complaining witness being absent because there was a typhoon on that day. The court advertent to the presence of the accused and her witnesses and the right of defendants to speedy trial, denied the postponement, and dismissed the proceeding. A motion to reconsider failed. Hence this appeal, which may be entertained, because, at least it does not appear that the accused had pleaded to the information. The order of dismissal reads as follows:

“The Provincial Fiscal moves, for the postponement of the trial of this case on the ground that his witnesses have failed to come because there is now a typhoon. The defense objects to the motion for postponement on the ground that the accused and her witnesses are

from the same place as the complaining witness and other witnesses for the prosecution; but in spite of this fact said accused and said witnesses have come and there is no reason why the witnesses for the prosecution should not have come.

The accused is entitled to a speedy trial. She has come with her witnesses inspite of the inclement weather. There is no reason why the trial of this case should be postponed.

Wherefore, this case is hereby dismissed with *costs de officio* and the bail bond of the accused, release.”

There is no question that postponements are discretionary with the court. However, as the fiscal alleged in his motion to reconsider, in the afternoon of July 1, 1952 the local station of the Weather Bureau issued a warning to the public of a storm approaching Surigao, with strong winds expected the following day; the next day at 8 a.m. another typhoon warning was published, announcing that Surigao would be lashed by the typhoon between eleven and 2 at noon “today”; there were strong winds and heavy rains that blew down some houses; and because of the weather the complainant and her two witnesses, who resided in barrio Rizal and had small children, could not appear in court.

Under the circumstances, we believe the continuance should have been granted considering it was *for the first time* asked by the Government. The court’s concern for the defendant’s right to speedy trial is commendable; but it should not be carried to the extreme of practically denying the prosecution its day in court for causes beyond its control.

That the accused had come from the same place where the complainant lived, is not conclusive. The judge was advised that whereas the accused had no children, the complainant had several small boys to take care of. And the condition of their respective dwellings—in relation to the stormy weather —does not appear. The presence of complainant’s husband—pointed out by defense—is no reason to say that she could have

come if she wanted. A man may be willing to face consequences which it is unfair to require a woman to face. That the judge and the court personnel were in court, may be due either to their high degree of sense of duty or to the sturdiness of the Government buildings. A mother out in the barrio, will hesitate to go to town five kilometers distant, knowing the probability of being overtaken by the storm, and of finding no means of transportation. Wherefore, the order of dismissal will be reversed, and the record will be remanded for further proceedings. So ordered.

Paras, C. J., Pablo, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

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