

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MIGUEL MENDEZ, ET ALS., DEFENDANTS, MIGUEL MENDEZ AND
SEGUNDO GIANAN, DEFENDANTS-APPELLANTS.**

G.R. No. L-27348. July 29, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This appeal was forwarded^[1] to us by the Court of Appeals for resolution as involving purely legal questions, principally as to whether due process was denied to the accused-appellants by the Justice of the Peace Court of Virac, Catanduanes, in a criminal case ^[2] wherein the latter, reacting to said accused-appellants' failure to appear and adduce evidence in their defense at a scheduled hearing, despite seasonable notice, and in view of previous repeated continuance, deemed the case submitted for 'decision after rejecting the defense counsels' last-minute motion for continuance on the ground that their clients were suddenly taken ill, and rendered a judgment of conviction on the basis of the evidence already presented by the prosecution.

Appellants Miguel Mendez and Segundo Gianan were two of several persons^[3] accused of the crime of slander by deed^[4] in a complaint filed on 20 January 1962 in the Justice of the Peace Court of Virac by the aggrieved party, Alberto R. David. Many postponements and continuances characterized the case. The proceedings below literally commenced and ended with motions seeking adjournment.

The initial hearing set for 26 March 1962 was postponed upon motion of the complainant on the ground that he would take his oath as director of the League of Liberal Party Legal Officers in Manila. Reset for 3 May 1962, it was again postponed upon motion of the complainant on the ground that he would appear as counsel in a certain administrative case. Set for 22 June 1962, it was postponed for the third time, for the reason that the accused, Miguel Mendez and Castor Vargas, were absent and their co-accused, Segundo Gianan, Pedro Gianan, and Joel Vargas, although present in court, manifested through their counsel that they were not ready for trial.

Likewise suspended were the subsequent hearings set for 9 July, 10 July, 3 August, and 22 August 1962. These were postponed for various reasons: On 9 July, the defense questioned the personality of the private prosecutor to conduct the prosecution without authority from either the town chief of police or the Office of the Provincial Fiscal. On the 10th, the assistant provincial fiscal assigned to handle the case requested for more time to study the same. On 3 August complainant got sick, and on 22 August accused Segundo Gianan was sick in his turn.

Finally, on 10 October 1962, the lower court was able to start the trial which it previously re-scheduled for three consecutive days. The prosecution began presenting evidence until the following day. On the 12th, however, accused Castor Vargas allegedly suffered a stroke and the parties were forced to agree to a continuance. This was fixed on 5 November 1962 up to the 8th of the same month.

But once again further continuance was prayed for by the defense, giving as an excuse this time the inability of accused Gianan to appear at the hearings set by the court due to the fact that he was in Manila attending to his wife who was allegedly under medical treatment. This was granted by the court.

On 10 December 1962, the trial was resumed and the prosecution continued presenting evidence. The next hearing was also fixed and set for 3 January 1963 and the following two days.

On 3 January 1963, the prosecution adduced some more evidence. Thereafter, it rested its case, with the court admitting all the exhibits.

During the same hearing, the defense manifested its intention to file a motion to dismiss the case on the ground of irregularity of the complaint. The following discussion transpired thereat:

"Atty. Monjardin: Since there is no conspiracy in this case the accused herein cannot be joined in one complaint and because of this representation will present a memorandum to support our argument.

"Court: In this connection, the Court gives you up to Monday to submit and then we will proceed with this case.

"Atty. Monjardin: At least ten days.

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"Court: I will give ten days, but if the case will be again postponed the Court will be constrained to have the case deemed submitted for decision. I will give you up to January 14.

"Atty. David: We beg for further enlightenment. After they fail to submit, continuation of trial on the merits?

"Court: Failure of defense to do that, case is submitted.

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"Court: The case is definitely scheduled on Friday. Memorandum must be submitted Jan. 14, trial of this case is definitely on Jan. 23, session adjourned."[5]

Came 23 January 1963, the date set for the next hearing, but the accused-appellants were nowhere in court when their case was called. At this juncture, one of the defense counsels asked for a thirty-minute recess to look for them.

When the session was resumed, the accused-appellants were still missing. The reason was supplied by their counsel thus:

"Atty. Monjardin: Your Honor, the defense wishes to manifest that two of the accused, the persons of Miguel Mendez and Segundo Gianan could not be present in Court because they thought the hearing of the case would be on Jan. 24 . . . (Besides), no notice of hearing was issued (to the bondsmen) and it is a matter of knowledge in criminal cases that not only the accused are to be notified of the hearing but also the bondsmen. It is improper to enter trial now. Miguel Mendez has sent me from Manila a medical certificate which I request . . . (to be) made part of the record; and Segundo Gianan was stricken ill only this morning, however no medical certificate could be presented now by this representation. We are asking permission to submit said medical certificate in due time. Because of the absence of the two accused, hearing cannot proceed because it is the right of the accused to be present."[6]

Acting on the foregoing manifestation, the lower court made the following observation:

"Court: . . . (L)ast January 3, 1963, . . . (the Court) acceded to counsel's manifestation to file a memorandum to support their conten-tion for the dismissal of the case. In this connection counsel for the accused even committed himself to the Court that the memorandum would be submitted within ten days and the Court was made to understand that (with his) failure to file the same, the continuation of the hearing will definitely go on . . . Counsel for the accused was given opportunity to file that memorandum . . . yet no memorandum was

filed. And now, . . . the defense (claims that it) is not ready for trial (because neither the two accused Miguel Mendez and Segundo Gianan nor their witnesses are present) . . . It should be borne in mind that this case has been dragging on for a long time."[7];

denied the motion for continuance as a mere subterfuge to delay the trial; and ruled that, "under the circumstances", the case should be, as it was, deemed submitted for decision.[8]

After reviewing the evidence of the prosecution, the lower court found the accused Miguel Mendez and Segundo Gianan guilty as charged, and sentenced them to pay a fine of P250.00 each, with subsidiary imprisonment in case of insolvency, P180.00 as damages, and costs. The other accused, Pedro Gianan, Castor Vargas, and Joel Vargas, were acquitted.

On 15 March 1963, the judgment was promulgated. But present in court on that date was Segundo Gianan only. Accused Miguel Mendez failed again, for unspecified reasons, to appear.[9] He was merely provided with a copy of the decision.

Both appealed. In their common brief, three complaints were raised against the lower court: (1) abuse of discretion in denying their motion for continuance; (2) denial of due process in considering the case submitted for decision without their evidence having been heard and duly appreciated; and (3) unlawful promulgation of judgment insofar as Miguel Mendez is concerned. Contending that a judgment tainted with such "irregularities" is null and void, appellants now want us to reverse their conviction and to remand the case to the lower court for reception of their evidence.

(1) The granting or refusal of an application for continuance or postponement of the trial lies within the sound discretion of the court.[10] This rule is, even independently of statute, universally recognized.[11] In this jurisdiction, the rule finds expression in the Rules of Court that provides:

"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 periods as the ends of justice and the right of the defendant to a speedy trial require."[12]

Expounding on this judicial discretion, former Justice Malcolm said:

"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 and interests of the public. Where he 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.

"The ruling of the court will not be disturbed on appeal in the absence of a clear abuse of discretion. When the discretion of the court is exercised with a reasonable degree of judicial acumen and fairness, it is one which the higher court is loathe to review or to disturb. The trial judge must be to a certain extent free to secure speedy and expeditious trials when such speed and expedition are not inconsistent with fairness. Since the court trying the case is, from personal observation, familiar with all the attendant circumstances, and has the best opportunity of forming a correct opinion upon the case presented, the presumption will be in favor of its action. It would take an extreme case of abuse of discretion to make the action of the trial court a denial of due process."[13] (Emphasis supplied)

In the instant case, we find no abuse of discretion on the part of the Justice of the Peace Court of Virac. The lower court was, in fact, too liberal in its grant of motions for postponements and continuances. Even applications based on the most trivial causes which were usually not only unsubstantiated but also prayed for only on the eleventh

hour were granted. If the court had decided to put a stop to this anomalous practice, its action should be, and it ought to be, upheld.

Appellants asked for another continuance. Whether this request was made in good faith was for the lower court to assess in view of its familiarity with the surrounding circumstances of the case. If the court had reasons to doubt appellants' good faith and had a well-founded belief that the application was merely intended for delay, its denial thereof was no reversible error.[14]

During the next to the last hearing, appellants were duly notified in court of the trial set for 23 January 1963. Aware of the dozen postponements and continuances that had interrupted the proceedings, the court even warned said appellants that it would no longer allow further delay and would deem the case submitted for decision should attempt in this direction be made. This warning was not contested but was ignored. Appellants absented themselves in an obviously vain effort to force a continuance. Their flimsy excuses that they thought that the trial was on the 24th, that their bondsmen were not notified, and that they suddenly got sick on the very day of the trial unmasked their scheme to defeat the speedy and expeditious determination of the case.

While accused Miguel Mendez submitted a medical certificate stating that he was suffering from hematoma and swelling of the right leg and needed some rest, there was no showing that his life or health would be endangered with his attendance of the trial. His co-accused Segundo Guanan did not even bother to submit a proof of his illness. Under these circumstances, the lower court wisely exercised its discretion[15] in denying the application in question.

(2) Appellants aver denial to them of due process by the court below when the latter, after denying their last minute plea for further continuance of the hearing, considered the case submitted on 23 January 1963 without receiving evidence for the defense. This claim must be rejected, for the transcript clearly evidences that the accused had waived their right to introduce evidence on their behalf.

The record (quoted in pages 3 and 4 of this decision) is clear that on 23 January 1962 the defense had made its fourth successive move for continuance on the plea that it wished to ask for the dismissal of the charges on the ground of irregularity of the complaint (a step that should have been taken before trial), and asked for ten days to file a memorandum in support of its stand. The court granted the accused twelve days (up to 14 January), with the explicit warning that the case would be considered submitted if no memorandum was filed, and reset the hearing for the 23rd. Counsel for the accused made no protest or remonstrance against the order.

On 23 January 1963, because the promised memorandum had not been filed, the trial court denied the defense's further motions (its fifth since 22 August 1962) for postponement and declared the case submitted for decision. Instead of interposing a protest or motion for reconsideration, the defense merely stated as follows (transcript, pages 97-98)

"Atty. Monjardin: We submit to whatever discretion the court renders in regards to the case.

"Court: This is the proper action for the court to do. The defense being not ready to enter trial today after having manifested during the last hearing that it will file a memorandum to the effect that the case be dismissed and that counsel committed himself that in case he could not file that memorandum up to January 14, 1963, the case that is set for today, Jan. 23, 1963, will proceed without any further postponement. Under the circumstances wherein the defense is not ready as the two accused are not present and that they have no witness, the court considers the case as submitted. In view thereof, the case is submitted for decision.

"Atty. Monjardin: Submitted." (Emphasis supplied)

In *Abriol vs. Homeres*, 84 Phil. 525, 534, speaking of the right of the accused to be heard or to present evidence in

his defense before being sentenced, this Court ruled:

"No court of justice under our system of government has the power to deprive him of that right. If the accused does not waive his right to be heard but on the contrary - as in this case - invokes that right, and the court denies it to him, that court no longer has jurisdiction to proceed; it has no power to sentence the accused without hearing him in his defense - - - ." (Emphasis supplied)

But in this specific case now before us, the accused, instead of invoking the right to submit evidence, waived said right and submitted the case without proof in their behalf. Not only this: they made no move for reconsideration nor prayed for an opportunity to submit evidence before or after the sentence was promulgated. They raise the alleged violation of their right to be heard for the first time on appeal. To grant that plea, reopen the case, and send it back for trial anew would be to sanction the plainly dilatory tactics adopted by these appellants to harass and tire out the complainant, who had had to travel all the way from Manila to Virac no less than twelve times. We refuse to be a party to such reprehensible trifling with the orderly administration of justice. A complainant is as much entitled to speedy justice as the accused-appellants themselves.

(3) But there was no valid promulgation of judgment in the case of appellant Miguel Mendez, because the latter was not present during said promulgation. Under section 6, Rule 116, of the old Rules of Court, the defendant must be personally present during the promulgation of judgment if the conviction is for a grave or less grave offense. Such requirement is mandatory. "(I)n case of a failure to comply therewith the sentence will be reversed, without disturbing the verdict, and the case remanded with instructions to the court below to pronounce judgment in accordance with the provisions of the statute." [16]

Considering that appellants were convicted of a less grave felony, [17] they having been sentenced to pay a fine of P250.00 each, the presence of every one of them at the promulgation of the judgment below could not be dispensed with. There is, therefore, need to order the trial court of Virac for proper promulgation of its judgment against accused Mendez.

WHEREFORE, the appealed judgment of conviction is affirmed, but the case is ordered remanded to the Justice of the Peace Court of Virac for promulgation and reading of the sentence to the accused, Miguel Mendez, as required by law. The appellant, Segundo Gianan, shall pay one-half of the costs.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.
Zaldivar, J., did not take part.

[1] Resolution dated 17 January 1967 of the Court of Appeals in its C.A.-G. R. No. 03908. This appeal was originally raised to the Court of Appeals.

[2] Criminal Case No. 1118.

[3] The other accused were Pedro Gianan, Castor Vargas, Joel Vargas, John Doe, Richard Doe, Mike Doe, and other unidentified persons. Appellants and their named co-accused all pleaded not guilty.

[4] Punishable under Article 369 of the Revised Penal Code.

[5] T. S. N., 23 January 1963, pages 94.

[6] T. S. N., 23 January 1963, pages 95 - 96.

[7] Ibid., pages 96 - 97.

[8] Ibid., page 97.

[9] Mendez sent the court a telegram from Manila begging deferment of the promulgation. This was obviously ignored by the court.

[10] United States vs. Lorenzana, 12 Phil. 64; United States vs. Ramirez, et al., 39 Phil. 738.

[11] 17 Am. Jur., 2d 118.

[12] Rule 118; emphasis supplied

[13] People vs. Ramirez, et. al., supra.

[14] Am. Jur., 2d, op. cit., page 163, and cases cited.

[15] Ibid., pages 163 - 164.

[16] United States vs. Karelsen, 3 Phil. 223.

[17] See Article 9 of the Revised Penal Code.

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