

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. GODOFREDO ROMERO, DEFENDANT AND APPELLEE.*G. R. Nos. L-4517-20. May 25, 1953*

Ponente: REYES, J.

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Godofredo Romero was charged with murder, frustrated murder, attempted murder, and illegal possession of firearm in separate informations filed by the provincial fiscal in the Court of First Instance of Antique on October 31, 1949. After a plea of guilty had been entered, trial of the four cases was set for December of that year; but, upon motion of the defense and with the accused out on bail, it was later postponed to February, 1950. Trial, however, was not held as scheduled, because the defense again asked for postponement and the court, acceding to the motion but with warning that it was doing so for the last time, set the trial for June 12 and 13, the dates being later advanced to May 25 and 26. On May 25 the four cases were called for hearing, and after it was agreed that they would be heard jointly, the prosecution began presenting its evidence by putting Dr. Andres Dolar on the witness stand. This doctor was the one who performed the autopsy on the body of the victim in the murder case, and in the course of his testimony a point was reached where it became necessary to exhibit the pellet or shot he had extracted from the wound of the deceased; but as the pellet had, through oversight, been left in Manila by Captain Fernandez, the government ballistic expert, the fiscal had to suspend examination of the doctor and move for a continuance. The defense objected. But considering the gravity of the charges against the accused, the court granted the motion and set the next hearing for June 14, 15 and 16, 1950, though warning that the cases would be dismissed should the fiscal not be prepared on June 14.

In preparation for trial, the fiscal saw to it that the corresponding subpoena were issued and did what he could to insure the coming of his witnesses. But when the cases were called at 8:30 a.m. on June 14, not one of the six principal witnesses for the prosecution was in court, and although there were then present four other prosecution witnesses their testimony was, according to the fiscal, not sufficient to convict the accused. The fiscal, therefore, asked the court to order the arrest of the absent witnesses and to postpone trial until their arrival. But the trial judge denied the motion and dismissed the cases in open court, stating: "a petition del abogado Fornier de la defensa, que el Juzgado encuentra bien fundada, sobreseanse estas cuatro causas, con las costas de oficio."

The next day the fiscal filed a motion for reconsideration duly supported by affidavits of merit and set the hearing of the same for June 24. After postponing consideration of this motion twice, once *motu proprio* on account of the absence of the attorney for the accused, and the second time at the instance of said attorney, the court in a court order finally denied said motion. From this order of denial as well as from the order of dismissal the prosecution has appealed to this court.

With the issue of double jeopardy already resolved in our resolution of July 31, 1951, denying the defendant's motion to dismiss the appeal, the only question for us now to decide is whether the orders appealed from should be upheld.

The following facts appearing from the fiscal's motion for reconsideration and its supporting affidavits and set forth by the Solicitor General in his brief are not controverted:

"The principal witnesses for the prosecution who were not in the courtroom when the 4 criminal cases were called for the continuation of the trial in the morning of June 14, 1950, are the following:

"(1) Capt. Jose G. Fernandez, PC ballistic expert of Camp Crame, Quezon City;

"(2) Dr. Andres B. Dolar, Iloilo Provincial Hospital;

"(3) Francisco Ybera, the offended party in criminal case No. 360 for frustrated murder, residing in Balboa, Antique;

"(4) Benjamin Oberes, ex-policeman of San Jose, Antique, complaining witness in criminal case No. 359 for attempted homicide, and subsequently employed as guard of the Muntinglupa Insular Prisons;

"(5) Lt. Luis A. Aro, who had been transferred to Catbalogan, Samar, after the shooting incident in San Jose, Antique, out of which the 4 criminal cases arose; and

"(6) Capt. Wilfredo C. Goles, who had been transferred to Lanao after the same shooting incident.

"Captain Fernandez arrived at San Jose, Antique, from Manila via Iloilo between 1 and 2 o'clock p.m. of June 14, 1950. He received his order from headquarters to proceed to San Jose, Antique, on June 12, 1950, at about 3 o'clock p.m. and he immediately sent a messenger to the PAL office in Manila to make a reservation for the following day, but the booking having been already closed, no reservation could be made for the PAL flight for Iloilo on June 13, 1950. Captain Fernandez was able to take a plane for Iloilo only on the next day, June 14, 1950, at 7:30 a.m., arriving at Iloilo at 9:55 a.m. of the same day. He proceeded immediately to San Jose, Antique, by bus and reached San Jose, Antique, between 1 and 2 o'clock p.m. of June 14, 1950 (Appendix C, p. 143, rec.). From the fiscal's motion for reconsideration it would appear that Captain Fernandez was to identify the bullet extracted from the deceased as having been fired from the pistol of the accused and not from that of ex-policeman Benjamin Oberes.

"Dr. Dolar of the Iloilo Provincial Hospital arrived at San Jose, Antique, half an hour after the dismissal of the 4 cases, his bus having been delayed on the road between Iloilo and Antique. According to the fiscal the presence of Doctor Dolar in the courtroom was noted by the presiding judge himself a little while after the dismissal of the said cases (p. 133, rec).

"Francisco Ybera, the offended party in criminal case No. 360, arrived at San Jose, Antique, only 5 minutes after the cases were dismissed (p. 133, rec).

"Benjamin Oberes was the offended party in criminal case No. 359. He was the object of a manhunt in Manila and Quezon City at the instance of the fiscal (Appendices F-2 and F-3, pp. 146-149, rec.), and was finally located at Bilibid Prisons, Muntinglupa, where he found employment as guard. According to the fiscal, his arrival at San Jose was assured by Prisons Director Balagtas (p. 164, rec).

"Lt. Luis Aro came all the way from Catbalogan, Samar, via Tacloban, Ormoc, Cebu, and Iloilo arriving at San Jose at 1 o'clock p.m. on June 14, 1950. He did not receive a subpoena but only a radio notification on June 12, 1950. After preparing the necessary travel papers, he left Catbalogan, Samar at 8 o'clock on June 13, 1950, and apparently only his failure to obtain accommodation in the capacity-filled PAL plane for Tacloban prevented his arrival on time for the scheduled trial (p. 114, rec).

"Captain Wilfredo C. Goles, who came all the way from Lanao, arrived at San Jose, Antique, several days prior to June 14, 1950. "While waiting for the day of the trial, he stayed in barrio Piate of the same municipality which barrio is about 3 or 4 kilometers from the courthouse. On the morning of June 14, 1950, he waited from 7 to 7:40 o'clock for some kind of transportation to take him to the courthouse, but, not finding

any, he had to walk all the way to the courthouse arriving there about 5 minutes after the dismissal of these 4 cases (Appendix E, p. 145, rec.)."

Section 2 of Rule 115, Rules of Court, reads:

"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 period of time as the ends of justice and the right of the defendant to a speedy trial require."

Applications for continuance are, in accordance with this rule, addressed to the sound discretion of the court. But the exercise of that discretion must be judicial and not arbitrary. And while an appellate court will be reluctant to interfere with the sound exercise of that discretion, it will not brook its abuse when it results in manifest in-justice.

In passing upon applications for continuance in a criminal case, the court should bear in mind "that it is the guardian of the rights of the accused as well as of those of the people at large, and should not unduly force him to trial, nor for light causes jeopardize the rights or interests of the public." (22 C.J.S. 742.)

The Constitution, it is true, guarantees the accused a speedy trial. But, as was said by a former Chief Justice of this Court, the right to a speedy trial is necessarily a relative one, consistent with reasonable delays. (II Moran, Rules of Court, 3rd ed. pp. 716-717.) And there is authority for the view that the right is not violated by granting a continuance on the ground of the absence of material witnesses. (14 Am. Jur. pp. 860-861.)

It appears of record that the four criminal cases now before us were pending in the lower court for only about 8 months, from October 31, 1949 when the informations were filed, to June 14, 1950, when they were dismissed. Five of those months, from December 14, 1949, to May 25, 1950, were wasted in continuances granted by the court at the instance of the defense. Only the delay from May 25 to June 14, 1950 may be attributable to the prosecution.

The record also shows that the fiscal has not been negligent in procuring the attendance of his witnesses, having seen to it that the corresponding subpoena were issued and in some cases even addressed communications to the Solicitor General and the Chief of Police of Quezon City. And the witnesses themselves did make an attempt to be in court on time. If they arrived late on the day of the trial, it was because of circumstances beyond their control.

With the above facts in mind, we think the trial court acted rather hastily in refusing a continuance and dismissing the cases. As the Solicitor General observes, considering that the accused was charged with serious offenses, one of them capital, and that he was out on bail, the trial court before dismissing the four cases "should have first ordered the arrest of the absent government witnesses, as requested by the prosecution, and only after it had become apparent that even the coercive powers and processes of the court were unavailing to secure the witnesses' attendance and that any further delay would constitute a denial of the accused's right to a speedy trial, could the court have justifiably dismissed the cases against the accused." At any rate, the least that the trial court should have done, considering that the trial was set for 3 consecutive days, June 14, 15, and 16, was to adjourn the hearing until the next day to make allowance for possible delay in the arrival of witnesses who had to come from distant places, and this would have been the proper measure under the circumstances. (Municipality of Dingras vs. Bonoan, [*] 47 Off. Gaz., 3542.) In any event, the trial court should have granted the fiscal's motion for reconsideration in view of the facts and circumstances set forth therein, a synopsis of which we have reproduced above.

As already stated, appellate courts are usually reluctant to interfere with the trial court's discretion in granting or denying a continuance on account of absence of material witnesses. But in the present case, the trial court has made such an arbitrary use of that discretion that it has become amenable to correction in order to prevent a

possible miscarriage of justice.

Wherefore, reiterating the ruling contained in our resolution denying the motion to dismiss the appeal, the orders appealed from are revoked and the cases ordered remanded to the court below for further proceedings. With costs against the appellee.

Feria, Pablo, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

PARAS, C, J.:

I dissent for the same reasons stated in my opinion on the motion to dismiss the appeal.

[*] 85 Phil. 457.

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