

**CARLOS A. MONTILLA, PETITIONER, VS. FRANCISCO ARELLANO,
JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS
OCCIDENTAL, RESPONDENT.**

G. R. No. L-3757. July 12, 1951

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari with preliminary injunction.

It appears that an information having filed against Carlos M. Montilla for homicide, the case was set for March 15, 1950. When it was called, the Provincial Fiscal appeared but not the accused nor any attorney in his behalf. Upon motion of the prosecution, Honorable Francisco Arellano, the Judge presiding, ordered the defendant arrested and his bond confiscated. Immediately after that order was dictated, the accused appeared with his counsel, Attorney Remigio M. Pena who explained that he and his client had come from the town of Isabela and the road was muddy, in answer to the court's question why the defendant had arrived late. Attorney Pena having moved for the reconsideration of the order of arrest and confiscation of the bond, Judge Arellano set aside said order and in its place fined the accused P5.00. Then the following incident and colloquy took place:

COURT:

* * * * *

Is the accused ready for trial?

Mr. PENA:

We are not ready Your Honor for the reason that this is the first time that the case was called for trial and besides, Your Honor, I am cited in the second sala to be a witness in another criminal case.

COURT:

But you are engaged by the accused in this case?

Mr. PENA:

Your Honor, I am. I was engaged by the accused a few days ago.

COURT:

What does the Fiscal say?

FISCAL MILLARES:

Your Honor, we have a witness from Iloilo, and he came this morning for this trial. In order not to prejudice in any way his professional business in Iloilo, the prosecution wants to have him on the witness stand now.

Mr. PENA:

Your Honor, we want to make a manifestation that we are not ready for trial.

COURT:

You are not ready to present your witnesses only.

MR. PENA:

I want to make it of record that I cannot crossexamine the witness. My services were asked by the accused a few days ago. I have not gone over the record. We do not know what will be the possible testimony of the doctor in this case. Besides, Your Honor, the witness is very important and it needs study.

COURT:

You can read the information right now.

Mr. PENA:

I want to make it of record Your Honor that I am not prepared and I am not ready to enter into trial. It is the right of the accused to be represented by counsel. It is the right of the accused to prepare himself for his defense. The accused in a criminal case against the government has no chance whatsoever, Your Honor, if not given opportunity. Your laws are very liberal in criminal cases in so far as the accused is concerned, that the accused should be given all the chances

COURT:

The Court has already decided the point.

Mr. PENA:

Your Honor, I want to go to the other sala. I am cited there.

COURT:

The case will be heard.

Mr. PENA:

With the permission of the Court, I will go to the other sala.

COURT:

You will be called by the other judge if you are only a witness. If you are called or needed there, the Court will order it

Mr. PENA:

May it please Your Honor, as I have manifested, Your Honor, that I am not ready, I may as well withdraw from this case. It is a crime on my part to represent the accused in this case without preparation. A lawyer who appears

in a case without preparation is putting his client on the mercy of whatever outcome of the case may be. I confess Your Honor, that I am not prepared, and that I ask for the indulgence of the Court.

COURT:

The Judge was once a practitioner and he knows that when an attorney appears on behalf of the defendant, it is presumed that he is prepared to handle the case, and if he is not prepared, why be present? The hearing now will not be for the whole witnesses but only one witness for the prosecution who is not from this place and he is only a doctor, so his statement is only technical, perhaps about the wounds or any scratch received by the victim. So it is not or it will not be to the prejudice of the attorney who says that he is not prepared. The Court knows the ordinary course of things in a court of law. He was also a practitioner. Informese de la querella al acusado.

Mr. PENA:

Your Honor, I withdraw my appearance. Court: You cannot withdraw your appearance without the authority of the Court and having made your appearance voluntarily, the Court denies your petition.

Mr. PENA:

Your Honor, perhaps you are not very well acquainted

COURT:

Informese de la querella al acusado.

Mr. PENA:

I want to make of record that I withdraw my appearance

COURT:

The Court denies your withdrawal and if you insist, the Court will punish you for contempt of court. No hay que hacer manifestaciones que reflejan al mismo juzgado. El juzgado conoce a los derechos constitucionales del acusado y ninguno le hace privar o le priva de sus derechos de el. Esta causa se llama solamente para oir el testigo tecnico del Gobierno. No son las pruebas que ocurrieron en el caso de autos, sino solamente lo que un doctor pueba declarar que cualquier abogado sabe poco mas o menos lo que va a declarar un doctor. Que desventaja puecla ocasionar al acusado. Teniendo en euenta que el testigo no es de aqui, el Juzgado se ve constrenido, con todo pesar, a negar la peticion del defensor.

Mr. PENA.

I want to say something more, Your Honor.

COURT:

No more. We are wasting time.

(The information was read to the accused by the interpreter and translated to him in the local dialect.)

Q.

Ha entendido usted la querella?

—

A.

Si, senior.

Q.

Que contesta usted?

—

A.

Que contesta usted? No culpable.

Venga el unico testigo del Gobierno que desea el Juzgado despachar porque no es de aqui.

Section 7 of the Rule 114 provides that "After a plea of not guilty, except when the case is on appeal from the justice of the peace, the defendant is entitled to at least two days to prepare for trial unless the court for good cause shown shall allow further time."

Under this rule, accused is entitled as of right to at least two days to prepare for trial and a denial of this right is a reversible error and a ground for a new trial. (People vs. Mejares et al., 85 Phil., 727; People vs. Valte, 43 Phil., 907; McMicking vs. Schields, 41 Phil., 971, reversed by the United States Supreme Court, 238 U. S. 99, 59 Law ed. 1220, on the ground that the defendant's remedy was by appeal and not in a proceeding in habeas corpus.) This Court, in the last-mentioned case, said: "The refusal of a trial court to give to the defendant in a criminal action, when demanded by him, the two days in which to prepare for trial * * *, such provision being mandatory and imperative, leaving no discretion in the court, deprives the accused of a constitutional right, namely, a right to trial by due process of law, and habeas corpus will lie to release him from imprisonment imposed under a judgment of conviction in such case. A trial without the opportunity to prepare for it given by the law of the land in a statute whose terms are mandatory and imperative, is no trial at all, and a conviction based upon such trial is without anything to sustain it."

The respondent Judge appearing in his own behalf does not question in his answer the right of the petitioner to have at least two days to make preparation for trial. What His Honor says is that the accused or his attorney did not make any motion expressly praying for postponement. He calls attention to the fact that Attorney Pefia limited himself to insisting that he was not prepared to go to trial, that his services had been contracted only a few days before, that he had not yet read the record of the case and was not in a position to cross-examine the government witness, Dr. Antonio S. Caram.

To say that the petitioner did not ask for postponement is to indulge in a play of words. When counsel said that he was not ready, his purpose could be no other than that he wanted the trial put off to another date. His manifestation could have no other meaning, and it is not possible that the respondent Judge understood it in any other way. Significantly, the respondent does not say, and there is no indication, that if the accused had expressly asked for postponement he would have granted the request. His Honor wanted the case tried right then and there and it does not look as if a variation in the wording of the defendant's motion would have swayed him from his determination.

Although the respondent Judge had not raised it, the question came up in the deliberation of the case as to whether certiorari and not appeal, now or in due time, was the proper remedy.

The Court is unanimous in the opinion that the court erred in allowing over the objection of the defendant the

taking of Dr. Caram's testimony, for it thereby violated the defendant's constitutional right to a due process. But an overwhelming majority also holds the view that the court acted within its jurisdiction and, for this reason, the error can only be attacked by appeal.

On this ground the petition for certiorari is dismissed, without costs.

If the parties wish the charges and counter-charges preferred against each other in the pleadings acted upon, they are advised to make said charges in separate complaints in the form provided by the Rules of Court.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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