

ELISEO EGUIA DUMAPIG, PETITIONER, VS. HON. GERONIMO R. MARAVE, PRESIDING JUDGE, BRANCH II (OZAMIZ CITY), COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL; AND THE CITY FISCAL AND/O...*G.R. No. L-25308. May 22, 1968*

Ponente: DIZON, J.

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Petitioner Eliseo Eguia Dumapig and others were charged with murder, with assault upon an agent of a person in authority, before the Court of First Instance of the City of Ozamiz in an amended information filed therewith by City Fiscal Amado Gador. They were tried upon a plea of not guilty, the prosecution having rested its case. Thereupon, the defense filed a motion to dismiss the case upon the ground that the guilt of the defendants had not been established beyond reasonable doubt, but the respondent judge denied the motion in his order of September 22, 1965, which also set the case for the continuation of the trial on October 7 to 9 of the same year. Thereafter, the defense filed a motion to postpone the continuation of the trial upon the ground that the transcript of the stenographic notes taken of the testimony of the prosecution witnesses was not yet available. This motion was apparently granted because the continuation of the trial was reset for October 25 to 27 of the same year. Counsel for the defendants again filed a motion to postpone the same upon exactly the same ground and the trial was again reset for continuation on November 17, 1965, with the warning that no further postponement would be granted.

On November 14, 1965, however, apparently upon the instance of the court itself, the case was postponed again to December 14 to 16, 1965 in view of the fact that stenographer Magallanes had not yet been able to transcribe his notes. The Court, however, warned the parties - particularly the defense - that no further postponement would be granted, and, in fact, denied the latter's motion for an indefinite postponement.

On November 15, 1965, petitioner filed the present petition for certiorari and prohibition, with a prayer for a writ of preliminary injunction, to prevent the respondent court from going ahead with the continuation of the trial, claiming that the order of the respondent judge denying his motion for an indefinite postponement of the trial or until the transcript of the testimony of the prosecution witnesses has been filed in the record is illegal because it violates his right to defend himself properly.

The petition was given due course and on the 17th of November 1965 We issued a temporary restraining order effective only up to and including December 2 of the same year. Petitioner's motion to extend the effectivity of the said restraining order until the present case is decided was denied by Us on December 8, 1965. However, the continuation of the trial could not be held below for the reason that the respondent judge filed an answer in the present proceeding to which he attached and submitted to Us the entire record of the case, together with all the transcript of the stenographic notes taken of the testimony of the prosecution witnesses.

Upon the facts above setforth, it is clear that the petition under consideration has absolutely no merit. No legal provision We are aware of supports petitioner's view that before an accused in a criminal case may be compelled

to produce his evidence, the transcript of the stenographic notes taken of the testimony of the prosecution witnesses must be made available to him. In this connection, it is obvious that it is the duty of his counsel to take notes whether complete or incomplete, of the testimony of said witnesses in order to be in a position to present whatever evidence, in his opinion, is necessary to prove the innocence of his client.

In connection with the issue under consideration, all that the defendant in a criminal case is entitled to under the Rules is two days after arraignment to prepare himself for trial. This, petitioner has enjoyed and more.

WHEREFORE, the petition under consideration is dismissed and the writs therein prayed for denied, with costs. Let the records of Criminal Case No. OZ-230, elevated to this Court by the respondent judge be remanded to the Court of First Instance of Ozamiz City for the immediate continuation of the trial.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

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