

ISIDORO GEVEROLA, PETITIONER, VS. THE HON. VICENTE N. CUSI, JR., COURT OF FIRST INSTANCE OF DAVAO, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-25031. September 25, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

On certiorari against the Court of First Instance of Davao, seeking to set aside the order of the respondent Judge decreeing the immediate arrest of herein petitioner, Isidoro Geverola, and the confiscation of the bail posted by him, for his failure to appear at the trial of the criminal case for Malversation through Falsification of Public Documents filed against the said petitioner, before the Court a quo.

Herein petitioner, Isidoro Geverola, is accused of Malversation through Falsification of Public Documents, in criminal case No. 8219, before the Court of First Instance of Davao. He was previously released provisionally upon a bail of P32,000.00. Upon arraignment, he interposed the plea of not guilty. The trial of the case was set for the first time on August 23, 24 and 25, 1965.

On the morning of August 23, 1965, the first day of the scheduled date of hearing of the case, Atty. Primo L. Ocampo appeared before the court in representation of the accused. In open court, said counsel orally moved for postponement of the hearing of the case, on the ground that the accused was ill on influenza with chronic cough, and was physically incapable of appearing at the trial. A medical certificate issued by Dr. Eugenio Cla-veria, municipal health officer of the town, duly sworn to before Enrique de los Santos, municipal judge of Malita, Davao, was submitted in support of the motion. The medical certificate states that Isidoro Geverola was under his treatment since August 20, 1965, of Influenza, with Chronic Cough, and the patient is a resident of Liquiab, Malita, Davao. (Annex A - motion.)

Respondents do not dispute the allegations in the petition that the distance between Malita (where petitioner resides) and Davao City (where the court holds its session) is 125 kilometers of rough road.

Acting upon but without resolving the defense motion for postponement, without objection on the part of the fiscal, an order was dictated in open court, as follows:

"We will order the arrest of the accused and forfeiture of the bond and we will have a hearing of your motion with the doctor testifying." (T.S.N. p. 3, Exhibit A, petition.)

No hearing of the case was held that morning, neither on the merits nor to receive the testimony of the doctor, for the reason that neither the accused nor the doctor was present in court.

Thereafter, a written order was issued, dated August 23, 1965, which was served on counsel of the accused the next day, as follows:

"For failure of the defendant Isidoro Geverola to appear this morning for trial despite notice to bondsmen, the

bond filed herein for his temporary liberty is hereby declared forfeited and the said bondsmen are given thirty (30) days from today within which to produce the body of the accused and to explain why final judgment should not be rendered against the bond. Moreover, the immediate arrest of the accused is hereby directed." (Annex B, petition.) [Underscoring supplied.]

On August 25, 1965, the accused, through counsel, filed a motion for reconsideration of the order, alleging among other matters:

"x x x if the motion for postponement, supported as it is by a medical certificate duly sworn to before a municipal judge, the truth, of which was not traversed by the fiscal, x x x."

had been found spurious or that the illness of the accused is determined to be of such a nature as not to prevent him from travelling over 125 kilometers of rough roads in order to attend trial -

"x x x and the court had passed upon the motion, and denied it, x x x."

the order of August 25, 1965, would have been beyond question.

The motion for reconsideration was denied in an or-der dated August 28, 1965, as follows:

"Since no action on the oral motion for postponement has been taken because the Court will hear the same or the oral testimony of the doctor and since the accused failed to appear on the day set for trial, the order of forfeiture, and his arrest was well taken. Had the counsel for the accused press-ed the court to resolve his motion, the same would have been denied be-cause the medical certificate which is the basis thereof does not comply with the requirements prescribed by the Rules of Court."

Hence, the instant petition for certiorari.

In retrospect, upon the foregoing facts which are not disputed, it is evident that without passing on the merits of the motion for postponement, the respondent judge ordered the arrest of the accused, and the con-fiscation of the bail. Significantly, however, having realized the necessity of a prior resolution of the mo-tion for postponement, the respondent judge tried to justify the order of immediate arrest of the accused and the confiscation of the bail by declaring in his be-lated order of August 28 -

"x x x Had the counsel for the accused pressed the Court to resolve his motion, the same would have been denied x x x."

Be that as it may, however, the last order could hardly be a justification for the improvident issuance of the order of arrest and confiscation of the bail, be-cause the transfer of the hearing of the motion for postponement and consequent deferment of a resolution thereon should preclude and legally bar any further proceedings, especially when the order of arrest and forfeiture of the bail was premised on the inability of the accused to appear at the trial.

Section 2, Rule 119 of the Rules of Court provides:

"The court on the application of either party or on its own motion may in its discretion for good cause postpone one 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."

It is a settled principle that the granting or denial of a motion for postponement rests, as a general rule, upon the discretion of the court. But this doctrine should not b taken to mean absolute authority, it being qualified in the sense that the discretion to be exercised must be sound end reasonable, not arbitrary or capricious. While the trial of cases with reasonable dispatch is as much the concern of the judges as of the parties, for that is conducive to the attainment of justice, however, considering that in the present case, the postponement sought was the first to

be asked by the accused; the illness of the accused was seemingly serious, requiring rest on the part of the patient; the distance from Malita, where the accused was confined, to Davao City is more than 125 kilometers; there was no objection to the postponement on the part of the fiscal; the medical certificate was sworn to before a municipal judge and the truth of the certification was not traversed by the fiscal, under these circumstances, it would have been the better course of prudence to give the defense a reasonable opportunity to present the doctor to testify on his medical certificate, even if that course of action would involve a delay of the trial. For the court which is the guardian of the rights of the accused as well as those of the people at large should not, for light-cause, jeopardize the rights or interest of both the accused and the jural society.

The fact that the notice for postponement was made orally in open court on the morning of the scheduled date of trial, without previous notice to the fiscal, is not inexcusable negligence, considering the peculiar circumstance obtaining in the case, that the accused appears to have been stricken with "influenza with chronic cough", on August 20, a contingency or accident which could not be anticipated or foreseen. As counsel for petitioner states in his memorandum -

"August 21 and 22 was a Saturday and Sunday, respectively, and it was only on August 22 when he was informed of the sickness of client. Even if he had wanted to, he could not have filed an opportune motion before August 23, because the preceding day was a Sunday."

What has rendered less excusable the issuance of the orders complained of, is the fact that without ruling on the motion for postponement, the accused was immediately ordered arrested and his bail confiscated.

"In perusing the records of this case, we noted that the attorney de officio in the court below, prayed and insisted for the postponement of the trial which was scheduled to take place on the very morning in which he was notified of his appointment. WITHOUT RULING ON THE PETITION FOR POSTPONEMENT, WHICH WAS ITS DUTY TO DO, THE LOWER COURT PROCEEDED WITH THE TRIAL." (People vs. Labra, 81 Phil. 394.)

The evident philosophy underlying the necessity of a prior resolution of the motion for postponement is to afford the movant ample opportunity to seek and avail of such remedies as may be proper under the premises, for, it cannot be disputed that there are legal remedies under the Rules of Court. Such an opportunity is an integral part of the due process and its denial constitutes a violation of a constitutional right of the accused.

"Although litigants are not justified in taking for granted that their motions would be granted, THE COURTS ARE BOUND TO ACT - in proper cases - ON ALL MOTIONS WITH SUFFICIENT DISPATCH NECESSARY TO ALLOW THE PARTIES TO AVAIL THEMSELVES OF PROPER REMEDIES. THIS IS IMPLIED IN THE MANDATE THAT 'JUSTICE SHALL BE IMPARTIALLY ADMINISTERED WITHOUT UNNECESSARY DELAY.'" (Semira vs. Enriquez, 88 Phil. 228.)

Upon the foregoing considerations, We are of the opinion, and so hold, that the respondent judge acted with gross abuse of discretion in issuing the orders complained of.

WHEREFORE, the writ is granted, and the orders complained of are set aside. Without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, and Capistrano, JJ., concur. Zaldivar, J., on official leave of absence.

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