

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ADELINA NABALUNA AND ENRIQUETA CIOCON, DEFENDANTS AND APPELLANTS.

G. R. No. L-9638. April 30, 1957

Ponente: PARAS, C.J.

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PARAS, C.J.:

Adelina Nabaluna and Enriqueta Ciocon were charged in the Court of First Instance of Negros Occidental with the crime of inducing a minor to abandon home. The court found the accused guilty and sentenced each of them to suffer 6 months and 1 day of prison correccional, to pay a fine of two hundred pesos, with subsidiary imprisonment in case of insolvency, and to pay the costs. The accused appealed to the Court of Appeals which elevated the case to this Court, considering that only a question of law is involved.

Appellants contend that the lower court erred in compelling them to enter trial on May 28, 1952, and in not acceding to their motion to grant the defense two days to prepare for trial. It is argued that the action of the court is contrary to section 7, Rule 114, of the Rules of Court which reads as follows:

"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."

When this case was originally called for hearing on May 28, 1952, the accused moved for postponement on the ground that accused Adelina Nabaluna had no attorney and accused Enriqueta Ciocon's lawyer did not appear. The court reset the arraignment and hearing for May 28, 1952 with the warning that the accused must be ready for trial and no further postponement would be granted. On May 28, 1952, the accused appeared with Atty. Jose Arroyo who formally entered his appearance for both. After the accused had pleaded not guilty, counsel moved for the postponement of the trial and for at least two days to prepare therefor. The court denied the motion, calling attention to the warning given on May 26, 1952. The prosecution was ordered to present its evidence. Three witnesses were introduced, but defense counsel desisted from any cross-examination on the ground that he was unprepared, the accused having engaged his services only at about 8:30 in the morning of the trial. After the prosecution had rested its case, the court ordered the trial continued on May 31, 1952 for the presentation of the evidence for the defense. On the latter date, defense counsel manifested his lack of preparation because the denial of his motion for postponement presented on May 28, 1952, had adversely affected the theory of the defense; he was unable to cross-examine the prosecution witnesses for lack of preparation; and cross-examination is vitally important in the presentation of a party's theory. Said counsel manifested that he was submitting the case without presentation of evidence. The lower court asked the accused if they agreed, and both answered in the affirmative.

There is no dispute that the services of defense counsel were secured only in the morning of the trial, and that the accused were compelled to proceed therewith despite vigorous objections and proper motion for continuance on the part of defense counsel who pleaded for at least two days to prepare. In its brief, appellee agrees with appellants that the trial court committed reversible error in not granting appellants counsel time for preparation.

We have invariably held that the requirement of Section 7 of Rule 114 of the Rules of Court, allowing the accused as a matter of right at least two days to prepare for trial is mandatory and that a denial thereof is a ground for new trial. (Moran's Comments on the Rules of Court, 2nd Ed., Vol. II, p. 688, citing the case of *People vs. Valte*, 43 Phil.), 927.) A similar case had been resolved as follows :

"In stating that he was not prepared for trial Attorney Sudario argued that, as the affidavits of the witnesses for the prosecution were not attached to the records, he could not learn the basis of the information. In denying the motion for postponement, the trial court ruled that the names of the witnesses for the government are listed in the original and amended information. Regardless of the merit of the ground advanced by Attorney Sudario in support for postponement, or of the merit of the denial by the trial court, the fact is conspicuous that defense counsel was not ready for trial on the date the appellants were arraigned. Under Section 7 of Rule 114 of the Rules of Court, 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. This requirement has been held to be mandatory and, by its terms, the defendant is entitled as of right to at least two days to prepare for trial, and denial of this right is a reversible error and a ground for a new trial." (*People vs. Mejares, et al.* 85 Phil., 727, 47 Off. Gaz., No. 9, p. 4804).

In view of foregoing, the decision appealed from is hereby set aside and the case remanded to the court of origin for retrial. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, and Endencia, JJ., concur.

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