

EDILBERTO ESGUERRA, PETITIONER, VS. COURT OF FIRST INSTANCE OF MANILA, BRANCH VII, AND ASSISTANT FISCAL GREGORIO T. LANTIN, RESPONDENTS.

G.R. No. L-7691. July 31, 1954

Ponente: BENGZON, J.

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BENGZON, J.:

On January 31, 1952 an information was filed in the Manila Court of First Instance accusing Edilberto Esguerra of bigamy for having married Arsenia Yabut while his first marriage with Sabina Barcelona was still subsisting.

Arraigned on February 13, 1953, he pleaded not guilty. Trial was set for April 24, 1953; but on that date, due to non-appearance of a prosecution witness (Arsenia Yabut) the case was postponed. Then it was called on May 22, 1953, and on that day some evidence was taken; however owing to the absence again of Arsenia Yabut the prosecution prayed for continuance, which was granted, because the court was informed there were reasonable grounds to believe Arsenia Yabut and another vital witness were being hidden by parties interested in the defendant's acquittal.

On May 29, 1953 the case was again slated for trial but upon request of the defendant, who alleged illness and inability to attend for about 3 months a continuance was directed.

On July 20, 1953 the case was called; but upon learning that the two wives had not been served with subpoenas because they were hiding or being hidden, the court postponed the hearing and ordered the arrest of said witnesses.

Seized and brought before the judge, Arsenia Yabut explained that she had changed to a new address; wherefore she was set free.

Thereafter the case was newly scheduled for March 31, 1954; but the prosecution was again unable to present said Arsenia Yabut, because when last taken before the judge, she deliberately gave a fictitious address to forestall her being summoned and other consequence.

For the fifth time the trial judge ordered postponement

This exhausted defendant's patience; and having objected to every postponement, except the third, he promptly started these proceedings in April 1954 pleading for an order to require the court of first instance to dismiss the criminal information against him. He invoked his constitutional right to speedy trial, as applied in *Conde vs. Rivera*, 45 Phil., 650 and other decisions of this court.[1]

The fundamental right of the accused to speedy trial is a distinct feature of the American system of criminal procedure after which our own is patterned. Many states of the Union have approved laws implementing it, by fixing definite periods for trial, the expiration of which constitutes prima facie a violation of defendant's basic right to speedy trial and entitles him to demand dismissal of the information. Here no such period has been fixed

by the Legislative Department; yet we may apply the unquestionable judicial opinion that speedy trial means "one that can be had as soon after indictment as the prosecution can with reasonable diligence prepare for it, trial * * * free from vexations, capricious and oppressive delays" [Moran, Comments on the Rules of Court (1952) Ed. Vol. II p. 7<87 citing cases]. Such right is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice. (Mercado vs. Santos, 66 Phil., 215.)

From the pleadings and the oral argument it appears that the several postponements of which the petitioner complains were due to the absence of material witnesses for the prosecution, who were hiding or were being hidden by friends of the accused, probably with his knowledge or connivance. Such being the situation, the law will not help him defeat itself. The constitutional privilege was never intended as furnishing a technical means for escaping trial. (State vs. Miller, 129 Pac, 1100.)

Construing statutes in furtherance of defendant's right to speedy trial, the courts are unanimous in that he will not be allowed to complain if he keeps the State witnesses away.

"The defendant cannot be discharged under such statutes where he kept the state's witness out of the way." Commonwealth ex rel. Haggerty vs. Superintendent of Philadelphia county Prison, 4 Brewst. (Pa.) 320. Respublica vs. Arnold, 3 Yeates (Pa.) 263.

In the cast; of Commonwealth vs. Haggerty, supra, the court said: "This defendant has voluntarily delayed his trial. He has succeeded in carrying off all the commonwealth's witnesses. Possibly when he did this, he had no intention of securing the present result. Like the defendants in Respublica vs. Arnold, 3 Yeats (Yeates [Pa.]) 263, he doubtless supposed that if he stripped the commonwealth of her weapons, the victory would of necessity be with him. He is not the first artificer who has been caught in his own toils, and by the very means employed to defeat justice he finds himself confounded. Upon principle and upon authority, therefore, there is no escape for such a prisoner."

In the case of Clark vs. Commonwealth, 29 Pa. (5 Casey) 129, Mr. Justice Woodward said: "The statute was made to restrain the malice and oppression of prosecutors, and to relieve wrongful imprisonment; not to embarrass the administration of the criminal law; not to relieve righteous imprisonment, and to defeat public justice." (Ex parte Morgan, M. D. [1929] 224 N. W., p. 210.)

And in Massachussetts it was held that where a prosecution witness avoids or is enticed away and such avoidance is collusive, the accused can not complain of unconstitutional delay even if such avoidance or enticement was not caused by him. (Note at page 444, 16 C. J.)

Indeed, had the respondent judge denied postponement and dismissed the information for insufficiency of evidence, it would have permitted the case to go by default, and would deserve the same criticism leveled at judges granting suits for annulment of marriage upon defendant's absence or even connivance. Because the dismissal of the bigamy charge would have enabled herein petitioner to live with two wives—if he has really married twice. And the situation would all the more be scandalous if it is borne in mind that accused is a member of the Bar and the alleged second wife, elusive and reluctant, is an applicant for admission to the Bar Examinations.[2]

Hence it would seem there is no reason to blame His Honor for sanctioning a few continuances to enable the State to get hold of its principal witnesses.

The petitioner emphasizes the circumstance that most postponements had been ordered *motu proprio* by the respondent judge. On this point, we find the following statement of principles about statutes implementing defendant's right to speedy trial:

"Some courts hold that the statutes operate only when there is some laches on the part of the prosecution, and that the accused is not entitled to his discharge if the delay is caused by continuances made by the court on its own motion." (C. J. S. Vol. 22, p. 725).

And in *State vs. Pierson*, 123 S. W. (2d) 151, the Supreme Court of Missouri explained:

"Mindful of the rights of the accused, and also of those of the public, this court has held that, in considering whether a defendant is entitled to a discharge under these statutes, the bar cannot be invoked where the continuances were made by the court on its own motion; and, if the phrase 'on its own motion' were not a sufficient statement of the reason for same, the presumption would nevertheless obtain that the state was in no manner responsible for the delay in the trial thus occasioned. *State vs. Marshall*, 115 Mo. 383, 22 S. W. 452 (Italics ours) (See also *State vs. Nelson*; 279 S. W., 401; *Ex p. Meadows*, 112 Pac. [2nd] 419).

Wherefore upon the showing made, we do not feel justified to declare that in this instance there was vexatious or oppressive delay, in violation of the Constitution. However it is hoped that the Government agencies will hereafter take a more active interest in the matter, the prosecution availing itself if necessary, of the sections concerning "bail to secure appearance of witness of prosecution" and/or the conditional examination of such witness (Rule 115, sections 6 and 7).

The petition will be denied, with costs. So ordered.

Paras, C. J., Pablo, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

[1] *Mercado vs. Santos*, 66 Phil., 215; *Kalaw vs. Apostol*, 64 Phil., 852.

[2] The Fiscal may take note of this to the end of securing her appearance, and for other purposes. He is also requested to inform this Court about the outcome of the bigamy charge.

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