

CIRILO M. MANAOIS, PETITIONER, VS. HON. JOSE S. DE LA CRUZ, AS JUDGE PRESIDING OVER BRANCH NO, IV OF THE COURT OF FIRST INSTANCE OF PANGASINAN, AND HON. AUGUSTO O. SAEOCA AS FIS...

G.R. No. L-25567. February 20, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petitioner was charged with the offense of murder in Criminal Case No. D-1817 of the Court of First Instance of Pangasinan, Branch IV, presided by respondent Judge Jose S. de la Cruz. The information was filed June 30, 1965. On October 27, 1965 petitioner wrote a letter to respondent Judge, asking that assessors be appointed to assist in the trial of the case pursuant to Section 154 of Act No. 190. On November 24, 1965 respondent Judge denied the request in an order worded as follows:

"Acting upon the request of the accused dated October 27, 1965, for the appointment of assessors, and the memorandum in opposition thereto dated November 3, 1965, filed by the prosecution;

Considering that, although assessors may be appointed in a criminal case, the request therefor should be made 'at the earliest convenient time so as not to hinder or delay the trial or to unnecessarily inconvenience the progress of the work of the Court';

Considering that the accused was arraigned on July 13, 1965, and the trial was set for, by choice of the parties, September 7 8 and 9. 1965;

Considering that when the case was called for hearing on September 7, 1965, the Court upon verbal motion of counsel for the accused, alleging that, as per a telegram which he submitted, said accused was sick, to which motion counsel for the prosecution objected, the Court postponed the hearing to October 28 and 29, 1965;

Considering that is was only on October 27, 1965, or one day before the scheduled date of hearing, that the accused filed a request for the appointment of assessors, or more than three months after his arraignment, thereby having failed to make said request at the earliest convenient time, considering that he has been represented by-counsel since the beginning;

The Court is inclined to deny, as it hereby denies, the aforesaid request for appointment of assessors.

SO ORDERED."

Petitioner moved to reconsider the foregoing order, and upon denial of his motion instituted the instant petition for certiorari, with preliminary injunction.

The only question here is whether or not respondent Judge, acted without or in excess of jurisdiction, or with grave abuse of discretion in denying petitioner's request for the appointment of assessors to assist in the trial of his case. We believe that the question should be answered in the negative. The right to the service of assessors is subject to the provision that the request for this appointment should be made at the earliest convenient time so as not to; hinder or delay the. trial or to unnecessarily inconvenience the progress of the work of the Court. In this

case, petitioner was arraigned on July 13, 1965; the trial was set by choice of the parties for September 7, 8 and 9, 1965, only to be postponed again upon petitioner's motion to October 28 and 29, 1965; and then on October 27, or one day before the hearing, petitioner came up with his request for assessors. Under the circumstances respondent Judge had reason to believe that the request was not seasonably made and was merely for purposes of delay. We are not prepared to say that he committed an abuse, let alone a grave abuse, of discretion so as to be correctable by certiorari.

The petition is therefore dismissed, without pronouncement as to costs.

Concepcion, C. J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Petition dismissed.

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