

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MORO MAMACOL, DEFENDANT AND APPELLANT.

G.R. No. L-1748. September 29, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

The attorney de oficio for appellant, who was sentenced by the lower court to reclusion perpetua, to indemnify the heirs of the deceased in the amount of P2,000.00 and to pay the costs, for the killing of Dagodob in the early morning of October 16, 1946, in Ramitan, Malabang, Lanao, raises three questions:

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That at the last hearing at Iligan on July 16, 1947, according to the record, appellant was not present as he was still in Dansalan, and this is a reversible error as, according to Section 1 (a) of Rule 111, the accused is entitled to be present at every stage of the proceeding and when the crime charged is a capital one, such right cannot be waived.

- That the lower court erred in not allowing defendant to present evidence after denying a motion for dismissal made when the prosecution rested, without Reserving the right to present said evidence in the event the motion is denied.

- That the evidence of the prosecution is insufficient to convict appellant.

The first question is based on the fact that whether the accused was present or not at the hearing which took place at Iligan on July 16, 1947 the records appear blank. The controversy centers on whether, that blankness must be interpreted as that the accused was not present or it should be supplied by the presumption that the official duty to have the accused present at the trial has been complied with. It is not necessary, however, to decide this question in view of the result we have arrived at in deciding the last two questions.

On the second question, due to the silence of the Rules on the matter, the Solicitor General urges us to erase whatever doubts may exist regarding the matter and to set a precedent for the future guidance of judges and lawyers among whom the question has caused so much confusion.

The thesis of the Solicitor General is that whether the accused reserves or fails to reserve his right to adduce evidence in making a motion to dismiss, if the motion is denied, he can no longer do so, having elected to stand or fall on the evidence submitted by the prosecution, and the court should decide the case on the evidence submitted and the only question to be resolved on appeal is whether such evidence is sufficient to sustain a conviction or not.

While maintaining this thesis, the Solicitor General has given an evidence of fairness when he states honestly that the ordinary and common-day procedure adopted by the trial courts in this regard runs counter to the thesis. That is, with or without reservation made by the defense, said trial courts have been and are allowing the defense to

present evidence after a motion to dismiss has been denied.

We are of opinion that the procedure which has been practiced and is generally practiced in trial courts for a long number of years, is based on sound reason. There are criminal cases in which because of the insufficiency of the evidence for the prosecution, the presentation of defense's evidence will only entail waste of time. Where the motion to dismiss is denied, there is no harm to the interest of the administration of justice to allow defendant to present evidence, while to bar him to present said evidence, which might show his innocence, may lead to a miscarriage of justice. We rule that the denial of a motion to dismiss made by an accused, with or without reservation to present his evidence, will not impair his right to present it. The substantial rights of an accused should not be impaired because of his counsel's anxiousness to have him promptly acquitted. The need of applying the rule appears to be more emphatic in a case like this where life or death or perpetual imprisonment of the accused are at stake.

Upon the last question we hold, after going over the evidence presented by the prosecution, that the testimonies of Apuntok Mamangcas and Payocan Moro, the two witnesses for the prosecution, are enough to give the latter a prima facie, case.

The appealed decision is set aside and the case is ordered remanded to the lower court to allow the accused to present evidence and for further proceedings.

Paras, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

Feria, J., took no part.

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