

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REMILIA DICHOSO, DEFENDANT-APPELLANT.

*G.R. No. L-51674. March 31, 1980*

Ponente: MELENCIO-HERRERA, J.

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### MELENCIO-HERRERA, J.:

Appeal certified to this Court by the Tenth Division[1] of the Court of Appeals on a pure question of law.

On April 30, 1976, accused-appellant Remilia Dichoso was indicted before the City Court of San Pablo City for the crime of Estafa. The Information alleged that she had received in trust from Complainant, Mrs. Norma Dychangco, jewelries worth P9,500.00 under the express obligation to sell them on commission basis and to return them or the proceeds thereof by a certain date but that she had failed to do either and instead, with unfaithfulness and abuse of confidence, had misappropriated the same for her own personal use and benefit to Complainant's damage and prejudice.

Upon arraignment, the accused-appellant entered a plea of "not guilty". Thereafter, the prosecution presented its evidence. During the trial on February 2, 1977, after the prosecution had rested, the defense manifested that it was not ready to present its evidence and asked for fifteen (15) days within which to move for dismissal. The trial Court acceded and reset the case for hearing on March 8, 1977. This was apparently postponed and trial was consecutively reset to April 12, 1977, May 4, 1977, June 6, 1977, July 11, 1977 and August 24, 1977. However, at the instance of the defense, all these settings were cancelled. When the case was called for hearing on September 7, 1977, the trial Court issued an Order to the effect that it considered the failure of the accused to appear at said hearing as a waiver on her part to present evidence and deemed the case submitted for decision. Upon motion of the accused, however, the aforementioned Order was reconsidered and the trial Court reset the case for reception of evidence for the defense on Sept. 28, 1977, Oct. 10, 1977 and Oct. 24, 1977. Again, these settings were postponed upon petition of the defense.

During the resumption of trial on November 17, 1977, the following proceedings transpired:

"COURT

Evidence for the defense?

ATTY ALVERO

May I request, your Honor, for a deferment of the hearing until 9:00 o'clock, with a manifestation that should the accused fail to arrive at 9:00 o'clock, this representation will submit the case without presenting any evidence for the defense, considering that she repeatedly failed to appear and failed to see this representation?

COURT

Granted.

ATTY ALVERO

It is now 9:00 o'clock in the morning, Your Honor, and pursuant to my previous manifestation, if the accused will not arrive at 9:00 o'clock, then, I will be going to rest the case for the defense. The defense, Your Honor, is no longer presenting any evidence for the defense and we will submit the cross examination as evidence for the defense, Your Honor.

COURT

Case submitted for decision."<sup>[2]</sup>

On December 14, 1977, the trial Court promulgated its judgment convicting the accused-appellant and sentencing her thus:

"WHEREFORE, the accused REMELIA DICHOSO is sentenced to suffer the penalty of three (3) months and eleven (11) days of arresto mayor as minimum to one (1) year, eight (8) months and twenty-one (21) days of prision correccional as maximum, to indemnify the offended party in the sum of P9,500.00, and to pay the costs."

Immediately after promulgation, the defense filed an unverified "Motion to Set Aside Judgment and to Allow the Accused to Introduce Evidence in her Defense". In its Order dated December 15, 1977, the trial Court, after a recital of the antecedents and stressing the repeated postponements at the defense instance, denied the Motion for lack of merit.

On December 28, 1977, a new defense counsel (the former counsel having withdrawn his appearance) filed a Motion for Reconsideration of the Decision on the ground that errors of law and irregularities had been committed during the trial prejudicial to the constitutional right of the accused and prayed "that forth-with the accused be allowed to be heard and introduce evidence in her defense." The trial Court denied reconsideration for lack of merit.

Hence, the appeal elevated to the Court of Appeals, which, as stated heretofore, certified the same to us on a question of law.

Allegedly, two errors were committed by the trial Court, to wit:

"I

The trial court erred in ruling that the express waiver of the appellant to be present authorized her former defense counsel to waive the presentation of the evidence for the defense.

"II

The trial court erred in abetting the repeated postponements by the appellant and then suddenly considered the case submitted without the appellant having presented her evidence when she failed to appear in the hearing of November 17, 1977."

The pivotal issue is whether the accused-appellant has been denied the right to be heard and to present evidence in her defense.

Section 19, Article IV of the 1973 Constitution, as did section 1(17), Article III of the 1935 Constitution, guarantees to the accused the right to be heard by himself and counsel. As a basic precept, an accused must be heard in his defense before sentence is pronounced on him. Such "constitutional right is inviolate" and

"No court of justice under our system of government has the power to deprive him of that right. If the accused does not waive his right to be heard but on the contrary - as in the instant case - invokes that right, and the court denies it to him, that court no longer has jurisdiction to proceed; it has no power to sentence the accused

without hearing him in his defense; and the sentence thus pronounced is void and may be collaterally attacked in a habeas corpus proceeding." [3]

However, as explicitly stated in the foregoing opinion, penned by Justice Roman Ozaeta in that leading case, the right of an accused to present evidence on his behalf may be waived expressly. And in *People vs. Angco*, [4] this Court, speaking through Justice Sabino Padilla, also held that it may be waived by implication.

"His failure to appear with counsel of his choice at the hearing of the case, notwithstanding repeated post-ponements and warnings that failure to so appear would be deemed a waiver on the part of the appellant to present his evidence and the case would be deemed submitted for decision upon the evidence presented by the prosecution, was sufficient legal justification for the trial court to proceed and render judgment upon the evidence before it."

The foregoing ruling is squarely pertinent to the case at bar. The trial Court took all the steps necessary to safeguard the rights of accused-appellant and to accord her the opportunity to present whatever evidence she had for her own defense. But she persisted in her dilatory tactics. The case was first reset for hearing for the presentation of evidence by the defense on March 8, 1977. This was postponed and re-scheduled once a month for five months from April, 1977 to August 1977. All these hearings were cancelled upon the accused's motion. On the rescheduled date of September 7, 1977, the accused again failed to appear thereby prompting the trial Court to consider such failure as a waiver on her part to present evidence and deemed the case submitted for decision. The trial Court heeded the accused's motion for reconsideration and reset the hearing for three consecutive times on September 28, October 10 and October 24, 1977, only to be postponed again. Thus, a total of ten days of hearing allotted to the Accused was completely ignored by her. On November 17, 1977, at the resumption of trial and after eight months of repeated postponements, her counsel had no other recourse but to manifest that he was "no longer presenting any evidence for the defense" and was "submit(ting) the cross examination as evidence for the defense". The trial Court then deemed the case submitted for decision, and rendered judgment in due course.

Clearly, the trial Court was possessed of sufficient legal justification to proceed and render judgment upon the evidence before it. The proceedings below had been conducted properly and consistently with law and jurisprudence. Having unreasonably absented herself from all hearings set by the trial Court, the accused cannot now be heard to complain that she was deprived of the right to present evidence in her own behalf. The waiver by her counsel did not really spring from her express waiver to be present, now a built-in provision in every bail bond, sanctioned by the 1973 Constitution. [5] Her counsel's actuation was prompted by her repeated failure to dignify the dates of hearing set by the trial Court without justifiable reason. If the trial Court leniently granted repeated continuances, it was to safeguard her rights as an accused and for a more perfect attainment of justice. But the Accused had obviously embarked on a scheme to defeat the expeditious determination of the case and was trifling with the administration of justice. The trial Court could not be expected to abet nor condone the same. When the trial Court, therefore, ultimately considered the case submitted for decision, it is unfair and baseless to brand such actuation as an act of "entrapment." Courts sit as guardians of the rights of the accused as well as those of the people at large. Speedy justice is as much a prerogative of an Accused as of Complainant.

"In the case at bar, the accused, instead of invoking the right to submit evidence, waived said right and submitted the case without proof in their behalf. x x x To grant that plea, reopen the case, and send it back for trial anew would be to sanction the plainly dilatory tactics adopted to harass and tire out the complainant. We refuse to be a party to such a reprehensible trifling with the orderly administration of justice. A complainant is as much entitled to speedy justice as the accused themselves." [6]

It has been conclusively shown that the Accused had obtained two rings from Complainant to sell on commission basis and if unable to do so, to return the same. The accused failed to account for the proceeds or to return the

jewelry despite repeated demands by Complainant and written promises made by the Accused. The crime proven beyond reasonable doubt is Estafa as defined and punished under Article 315, paragraph 1(b) of the Revised Penal Code. There being no circumstance to modify the penalty, and as the offense involves the amount of P9,500.00, the imposable penalty is prision correccional in its minimum and medium periods.[7] The indeterminate penalty meted out by the trial Court is well within the range prescribed by law.

WHEREFORE, the judgment appealed from is hereby affirmed in toto, with costs against the accused-appellant.

**SO ORDERED.**

Teehankee, Acting C.J., Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

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[1] Composed of JJ. Venicio Escolin, Serafin Cuevas and Elias B. Asuncion, ponente.

[2] T.s.n. dated November 17, 1977, pp. 2-3.

[3] Abriol vs. Homeres, 84 Phil. 525 (1949).

[4] 103 Phil. 33 (1958).

[5] Sec. 19, Art. IV.

[6] People vs. Mendez, 28 SCRA 881 (1969).

[7] Art. 315, 2nd parag., Revised Penal Code.

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