

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ANACLETO MAGDANG, JOSE CADUNGON AND AMPARO SUMUGAT, DEFENDANTS AND APPELLEES.

G.R. No. L-836. March 30, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

In December, 1942, the defendants-appellees were charged with malicious mischief in the justice of the peace court of Culasi, Antique. The complaint alleged that they had plowed land planted with mongo thereby damaging the owner in the sum of fifteen pesos. They asserted the right to cultivate the land. Found guilty by the justice of the peace, they appealed to the court of first instance.

There the trial was postponed several times. On March 10, 1944, the case was called for hearing. The provincial fiscal was absent. Counsel for defendants moved for dismissal. Whereupon the judge made this order:

"The record of this case shows that the information filed by the Acting Provincial Fiscal is dated October 25, 1943, and that the original complaint in the court below was filed on December 31, 1942. This case, therefore, has been pending in court for quite a long period of time, and the hearing of this case has been postponed a number of times. The Acting Provincial Fiscal has failed to appear in court this morning without any reason, but the accused have signified their readiness to have an immediate trial of the case. Their counsel verbally moved for the dismissal of the case, for the reason that they have come to the court a number of times, and that the case should be heard with the least possible delay. Finding their motion justified, the case is hereby dismissed, with costs de officio."

The Fiscal filed a notice of appeal on March 20, 1944.

The Solicitor-General contends in this Court that the order should be revoked, because it does not appear that the provincial fiscal had been officially notified of the actual date of hearing.

The records of the case now before us demonstrate how incomplete and informal the proceedings were—obviously due to the emergency caused by the war. We find therein that the Fiscal never asserted in writing that he had not been notified. On the other hand the judge says that said officer "failed to appear in court this morning without any reason" which fairly implies that the Fiscal had been notified, notice being a fundamental requirement which must be presumed to have been complied with.

In situations similar to the one asserted here by the prosecution, the Fiscal or the party affected should first make representations in the court below (in a motion for reconsideration or new trial) as to the alleged non-receipt of notice, so that the trial judge may have an opportunity to make an official statement on the point or see to it that the records are completed.

Considering that the question involves a petty offense possibly mixed up with a civil litigation, we see no justification in letting it clutter court records for a long time, especially in the absence of a clear case.

The order of dismissal is affirmed. So ordered.

Moran, C.J., Ozaeta, Pablo, Padilla, Tuason, and Reyes, JJ., concur.

BENGZON, J.:

Mr. Justice Montemayor voted to affirm.

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