

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. MAXIMO ABAÑTILDEJO, JUDGE OF THE COURT OF FIRST INSTANCE OF PAMPANGA, ET AL., RESPONDENTS.*G.R. No. L-7862. May 17, 1955*

Ponente: PADILLA, J.

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An information charging Zacarias Suñga with attempted rape was filed in the court of first Instance of Pampanga (Crim. Case No. 1831). At the trial of the defendant held on 26 and 27 May 1954 two witnesses for the prosecution testified. The trial was continued and the resumption thereof was set for 1 June. On 31 May the assistant provincial fiscal filed a petition for continuance of the trial for the reason that Atanacia L. Mallare, the complaining witness, was suffering from chololelithiasis and right ureterolithiasis and confined in the Mary Chiles Hospital in Manila. A verified medical certificate issued by Dr. Martin Santos, the attending physician, was attached to the petition. Before acting on the petition for continuance the respondent judge inquired from the Director of the Provincial Hospital of Pampanga about the ailment from which the complainant claimed she was suffering, and directed the clerk of court to call up the Director of the Mary Chiles Hospital in Manila by long distance telephone to find out whether the complaining witness was really confined there. The clerk reported that she was. In spite of the objection of the assistant provincial fiscal to an early resumption of the trial because of the inability of the complainant to leave the hospital before two or three weeks, as stated in the attending physician's affidavit (Annex B-1), the resumption of the trial was set for 12 June. On 11 June the assistant provincial fiscal moved for continuance of the trial because the complainant was still sick and confined in the Sacred Heart Hospital in Manila. The resumption of the trial was set for 15 June. On this day the private prosecutor moved for continuance of the trial because of complainant's sickness and confinement in the hospital. The motion was denied and because of the inability of the prosecution to produce further evidence, counsel for the defense moved for the dismissal of the case. Before the end of the trial on that day the prosecution announced its intention to file a petition for a writ of certiorari and injunction in this Court. After the respondent judge had reserved his resolution on the motion to dismiss, on that same day he dismissed the case.

The prosecution filed this petition to annul and set aside the order of the respondent judge which denied the motion for continuance of the trial on the ground that it was a grave abuse of discretion.

After a perusal of the documents attached to the petition for a writ of certiorari, we fail to find an abuse of discretion committed by the respondent judge. He took pains to inquire about the nature of the ailment from which the complaining witness claimed she was suffering. He continued the trial three times, to wit: on 27 May, 1 and 12 June. The defendant was entitled to a speedy trial. When on 15 June, the last day set for the resumption of the trial, the prosecution failed to secure the continuance thereof and could not produce further evidence because of the absence of the complaining witness, the respondent judge was justified in dismissing the case upon motion of the defense. Even if the denial of the motion for continuance be deemed an error, still it does not amount to a grave abuse of discretion. An error committed by a competent court in ruling on interlocutory or incidental

matters or in deciding a case does not divest it of its jurisdiction. Neither does such an error render the ruling or judgment null, and void. The defendant was placed in jeopardy of punishment for the offense charged in the information and the annulment or setting aside of the order of dismissal would place him twice in jeopardy of punishment for the same offense.

The petition for a writ of certiorari is denied and the writ of preliminary injunction to prevent the respondent judge from further proceeding with the trial of the defendant issued ten days after the order of dismissal of the case had been entered is dissolved. No costs shall be taxed.

Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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