

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. PHILIPPINE RECORDING SYSTEM, INC., ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 11310, March 29, 1960

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from an order of the Court of First Instance of Manila, dismissing plaintiff's complaint for failure of its witnesses to appear when the case was called for trial.

On November 13, 1954, the plaintiff-appellant filed against the defendants-appellees a complaint for recovery of money. After answer and joinder of issues, the court below, on August 27, 1956, issued a notice setting the trial for August 27, 1956. On the latter date, the witnesses for the plaintiff were not present at 8:00 o'clock in the morning; and when they still failed to show up within the extension requested by plaintiff's counsel, the court issued the following order of dismissal, now the subject of plaintiffs appeal:

"When the case was called at eight o'clock this morning, the attorney for the plaintiff asked for ten minutes to give him time to present his witnesses who were not then present. The case was again called for hearing after the lapse of ten minutes, at 8:13 a.m., and still the witnesses for the plaintiff have not appeared. This Court cannot sanction this indolence on the part of government witnesses. They should be more prompt in their duties, than of private persons or private companies.

"In view of the foregoing, the Court hereby dismisses this case, without pronouncement as to costs."

Once more we are confronted with a question which could have been avoided had the trial judge been more human and tolerant. As the records show, barely two minutes had passed after the entry of the order of dismissal when plaintiff's witnesses arrived in court. There was a display on the part of the court of incorrect use of discretion. It was impatience personified.

The affidavit executed by witness Villanos explained the cause of his tardiness, which was neither intentional and deliberate nor calculated to have the court wait. Plaintiff's witnesses could not accordingly be considered indolent in the performance of their duty. It is a daily occurrence in Manila for traffic to be at its heaviest between 7:30 and 8:00 o'clock in the morning; and though strictly this may not be an acceptable excuse, the fact remains that said witnesses had to pass by the Philippine National Bank to get the needed documentary evidence and were late by only some twelve minutes.

We have always counseled judges to be more reasonable in the exercise of their discretion in dismissing cases due to tardiness of party litigants, their witnesses or attorneys. In *Agustin Gil vs. Rose S. Talaña, et al.*, 95 Phil., 78, We said:

"In view of the fact that the plaintiff and his counsel were only about fifteen minutes late in arriving at the court, we believe that it constituted an abuse of discretion of the trial court to dismiss the case definitely.

Sometimes a delay of a few minutes is unavoidable in trips such as that taken by the plaintiff in going to the court and it would be too drastic to make him suffer for such short tardiness."

Furthermore, there was no reason for the excessive haste shown by the judge a quo, since no other case had been calendared for the same day. And a perusal of the records reveal that plaintiff's claim is meritorious and the appellees are deemed to have admitted the genuineness and due execution of the letter of credit, draft and trust receipt in question. The amount claimed is substantial and should have deserved serious consideration by the trial court.

Wherefore, the order appealed from is hereby set aside and the case remanded to the trial court for further proceeding. So ordered without pronouncement as to costs.

Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera and Gutierrez David, JJ., concur.

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