

RAMON F. SAYSON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. 51745. October 28, 1988

Ponente: CORTES, J.

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CORTES, J.:

Petitioner seeks the reversal of the Court of Appeals decision finding him guilty of attempted estafa.

On March 25, 1972, an information for the crime of Estafa through Falsification of a Commercial Document was filed against the herein petitioner, Ramon F. Sayson, before the Court of First Instance of Manila, the pertinent portion of which reads:

. . . the said accused having come in possession of a blank US dollar check #605908142, with intent to defraud Ernesto Rufino, Sr. and/or Bank of America, did then and there wilfully, unlawfully and feloniously forge and falsify or cause to be forged and falsified the said check, by then and there writing or filling or causing to be written or filled up the following words and figures: "March 10, 1975", "Atty. Norberto S. Perez," "2,250.00" and forging the signature of the Asst. Cashier, Manager of the Bank of America, Dania Branch, making it appear, as it did appear, that the said check was duly issued by the Bank of America, when in truth and in fact, as the accused well knew, the said check was never issued nor authorized by the said bank; that thereafter, said accused wrote or affixed the signature "Norberto Perez" on the back of said check as indorser; that once the said check had been forged and falsified in the manner above described, the said accused by means of false manifestations and fraudulent representations which he made to Ernesto Rufino, Sr. that he is "Atty. Norberto Perez" who is the payee of the said Check, and by means of other similar deceits, induced and succeeded in inducing the said Ernesto, Rufino, Sr. to change said dollar check, as in fact, said Ernesto Rufino, Sr. issued Manufacturer's Bank Check No. 87586 dated March 22, 1972 payable to "Norberto Perez" in the amount of "P14,850.00" in exchange for said dollar check; . . . [Rollo, pp. 23?24.]

Arraigned on December 8, 1972, petitioner pleaded not guilty. On October 9, 1974, after several postponements, the prosecution rested its case. At the hearing of December 9, 1974, when the defense was scheduled to present its evidence, only the petitioner appeared. He said that his counsel had another case in a different court. In the morning of the said day, his lawyer also sent a telegram to the court requesting cancellation of the hearing because he was sick. The court denied the motion for postponement and the case was considered submitted for decision without petitioner's evidence.

The trial court rendered judgment on January 30, 1975, finding the accused guilty of the crime charged and sentencing him to an indeterminate penalty of 2 years, 4 months and 1 day to 6 years of prision correccional, to pay a fine of P2,000.00, with subsidiary imprisonment and to pay the costs. The Court of Appeals affirmed but modified the penalty by imposing six months of arresto mayor and eliminating the fine. Hence, this petition for review on certiorari.

The background facts as found by the appellate court as well as its conclusions thereon follow:

On March 22, 1972, appellant Ramon Sayson y Fernandez was introduced by Vicente Jaucian, a former

employee of the Luzon Theatres, Inc. to Anselmo Aquiling, private secretary to Ernesto Rufino, Sr., General Manager of the corporation. Vicente Jaucian had known appellant as "Fiscal Perez" who wanted to exchange dollars for pesos, having been introduced to him in that capacity by his (Jaucian's) cousin. Thinking that Rufino might be interested in dollars, Jaucian accompanied appellant to the offices of the Luzon Theatres, Inc. and Mever Films, Inc. at the Avenue Hotel on Rizal Avenue, Manila. Upon being introduced to Anselmo Aquiling, appellant showed the latter an identification card indicating that he was Norberto S. Perez, a Prosecuting Attorney from Angeles City. After making the introduction, Jaucian left. Mr. Rufino said that he was not personally interested in dollars but suggested to his secretary to inquire if Mever Films, Inc. needed dollars.

Mr. Rufino was also Chairman of the Board of the aforesaid corporation; and when told that Mever Films needed dollars, he authorized the transaction. Appellant then presented to Edgar Mangona, the assistant accountant of Mevers Films, a Bank of America check in the amount of \$2,250.00 payable to the order of Atty. Norberto S. Perez, a xerox copy of which was introduced in evidence as Exhibit E. Actually, Exhibit E appears to be a bill of exchange or draft drawn by the Dania, Florida Branch of the Bank of America on its San Francisco Branch in favor of said payee and bears serial number 605908142. Edgar Mangona prepared a check of the Manufacturer's Bank and Trust Company in the amount of P14,850.00 at the exchange rate of P6.60 to a dollar (Exh. B). He then walked over to the office of Mrs. Teresita Rufino Litton whom he asked to sign the check; and thereafter Mangona asked Mr. Rufino to countersign it. Finally, the check was exchanged with appellant's Bank of America draft and the latter signed the voucher for the peso check.

On the same day, March 22, 1972, appellant repaired to the Tayuman Branch of the Banco Filipino and informed its Branch Manager, Mrs. Maria Fe Relova that he wanted to open a savings account. He was given an application form which he filled up with the name Norberto S. Perez as the applicant, among other things. Appellant then presented the Manufacturer's Bank check Exhibit B, payable to the order of Norberto S. Perez, and after endorsing the same, it was posted in the passbook issued to him. Unknown to appellant, however, Mrs. Relova, an astute woman had been suspicious of the former's actuations. So that after he left, she called up the office of the PLDT and inquired if the telephone number which appellant had unsolicitedly given her was listed in Perez' name. She was told that the number referred to had not yet been issued by PLDT. She then telephoned the office of Mevers Films, Inc., the drawer of the check, and inquired if the check was in fact issued by it and she was answered in the affirmative. Despite this assurance, she tested her suspicions further by sending out a bank employee to deliver a brochure to the address given by appellant and the messenger returned without locating the place.

Within a short time, the officials of the Mevers Films, Inc. became doubtful of the genuineness of the Bank of America draft. And on March 24, 1972, two days after the issuance of the Manufacturer's Bank check and one day after the check was cleared with the Central Bank, Mevers Films which was convinced that the draft was spurious ordered its payment stopped (Exhibit D). On the same day, Vicente Jaucian who had introduced appellant to Anselmo Aquiling and the latter himself went to the office of the National Bureau of Investigation (NBI) and there gave written statements on what they knew about appellant (Exhibits F and G). Also on the same day, the Assistant Manager of the Bank of America, Manila Branch, who must have been informed of the transaction involving the draft, addressed a letter to the NBI authorities (Exh. B) which reads:

Gentlemen:

This is to certify that U.S. Dollar draft No. 605908142 drawn on the Bank of America NT & SA, San Francisco, in favor of Atty. Norberto S. Perez for \$2,250.00 and dated March 10, 1972, is one of the blank drafts surreptitiously taken from a shipment sent to us by our San Francisco Headquarters sometime in the latter part of 1970.

Issuance of the above-mentioned draft was not authorized by this bank.

Jose R. Lopez, the abovementioned assistant manager who issued the aforesaid certification, testified that the

draft in question was one of the 900 blank drafts which were missing from a shipment received from their head office in the United States sometime in 1971. He declared that the words "Dania Branch" and "Dania, Florida" appearing on the face of the draft were superimposed so as to make it appear that the draft was drawn by the Dania, Florida Branch of the Bank of America on the San Francisco Branch, when in fact the blank draft was for the exclusive use of the Manila Branch, as revealed by the first four code figures of the draft's serial number.

We are satisfied with Lopez' testimony that the draft in question was a forgery. Since the same was a blank draft appertaining to the Manila Branch of the Bank of America, of which he was the Assistant Manager, Lopez was competent to state whether or not the draft was a forgery. And the fact that appellant had openly and falsely represented himself to be Atty. Norberto S. Perez indicated in the forged draft as the payee, is a strong circumstantial evidence that he was instrumental in its forgery. [Rollo, p. 25-30.]

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The appellant has raised the issue of due process, alleging denial of his right to be heard and to present evidence. This requires inquiry into the extent of the rights accorded an accused in a criminal case and whether the accused-appellant has been denied the rights to which he is entitled.

The right to be heard by himself and counsel is one of the constitutional rights of the accused. But while the accused has the right to be heard by himself and counsel and to present evidence for his defense by direct constitutional grant, such right is not exempt from the rule on waiver as long as the waiver is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law [Article 6, Civil Code.] There is nothing in the Constitution nor in any law prohibiting such waiver. Accordingly, denial of due process cannot be successfully invoked where a valid waiver of rights has been made, as in this case.

Petitioner claims though that he was not waiving such right; on the contrary, he was vigorously asserting his right to be heard by counsel and to present evidence in his verbal motion for postponement due to absence of his counsel de parte. He thus assails the denial of his motion as it in effect deprived him of his day in court.

It is too well established to require citation of authorities that the grant or refusal of an application for continuance or postponement of the trial lies within the sound discretion of the court. Justice Malcolm, in a 1919 decision, expounded on such judicial discretion as follows:

Applications for continuances are addressed to the sound discretion of the court. In this respect, it may be said that the discretion which the trial court exercises must be judicial and not arbitrary. It is the guardian of the rights of the accused as well as those of the people at large, and should not unduly force him to trial nor for light causes jeopardize the rights and interests of the public. Where he conceives it to be necessary for the more perfect attainment of justice, it has the power upon the motion of either party to continue the case. But a party charged with a crime has no natural or inalienable right to a continuance.

The ruling of the court will not be disturbed on appeal in the absence of a clear abuse of discretion. When the discretion of the court is exercised with a reasonable degree of judicial acumen and fairness, it is one which the higher court is loathe to review or disturb. The trial judge must be to a certain extent free to secure speedy and expeditious trials when such speed and expedition are not inconsistent with fairness. Since the court trying the case is, from personal observation, familiar with all the attendant circumstances, and has the best opportunity of forming a correct opinion upon the case presented, the presumption will be in favor of its action. It would take an extreme case of abuse of discretion to make the action of the trial court a denial of due process. [Underscoring supplied; U.S. v. Ramirez, 39 Phil. 738 (1919).]

The factual background of the case penned by Justice Malcolm, which was quoted with approval in the case of *People v. Mendez* (G.R. No. L-27348, July 29, 1969, 28 SCRA 880), is very similar to that of the case at bar. In the instant case, the information was filed on March 25, 1972 and arraignment was held on December 8, 1973.

The prosecution started presenting its evidence on March 12, 1973 and after 1 year, 10 months and 1 day from the day of arraignment, it rested its case. During this time, petitioner had already secured seven postponements, which it admitted in its brief filed with the Court of Appeals [Rollo, p. 20] thus prompting the trial judge to remark that "this is a notoriously postponed case" and that "the defense had abused the rules" [TSN, December 12, 1973, pp. 2-3.] Since the judge's comments were borne out by the record regarding the postponements which were admitted by petitioner himself in his brief filed before the Court of Appeals, petitioner cannot rightfully cast aspersion on the integrity of said judge by attributing to him a non-existent attitude of bias and hatred towards the petitioner-accused.

No grave abuse of discretion in denying the petitioner's motion for postponement can be imputed the trial court. First, the petitioner's motion was not seasonably filed as the three-day notice required by the rules (Rule 15, Section 4 of the Revised Rules of Court) was not complied with. Moreover, it was not accompanied by an affidavit nor a medical certificate to support the alleged illness of counsel, contrary to what Rule 22, Section 5 of the Revised Rules of Court mandates:

Sec. 5. Requisites of motion to postpone trial for illness of party or counsel. - A motion to postpone trial on the ground of illness of a party or counsel may be granted if it appears upon affidavit that the presence of such party or counsel at the trial is indispensable and that the character of his illness is such as to render his non-attendance excusable.

Besides, when petitioner himself sought postponement of the case during the December 9 hearing, he claimed that his counsel had another case in a different court. Certainly, the conflicting stories advanced by petitioner and his counsel only indicate the lack of a good cause for the postponement.

Petitioner's lament that "at least, in the name of justice and fair play, the trial court should have warned accused that no further postponements shall be entertained by the court" [Rollo, p. 97] is baseless. As he was aware that the case had already been postponed seven times at his initiative, he had no right to assume that his motion would be granted; rather, he should have foreseen that any further motions for postponement might not be met with approval by the trial court. Besides, the record of the case clearly shows that the accused had repeatedly appeared in court without his counsel, seeking postponements which were liberally granted by the court with an order directing his counsel to show cause why he should not be held in contempt for repeated failure to appear at the trial of the case. In fact, the court, in its Order dated August 12, 1974, categorically declared: "In the meantime, let the trial of this case be DEFINITELY POSTPONED FOR THE LAST TIME to August 14, 1974 at 8:30 a.m. as previously scheduled, with the warning to the accused to be ready with his present counsel or another counsel on said date as the court will not entertain any further delays in the proceedings in this case and shall proceed with the trial of this case with or without his counsel." [Original Records, p. 430.] This, certainly, was enough warning.

Finally, the motion for postponement was properly denied inasmuch as the defendant failed to present any meritorious defense. This Court's pronouncement -- that in incidents of this nature before the trial court, two circumstances should be taken into account, namely, 1) the reasonableness of the postponement and 2) the merits of the case of the movant -- should not be lightly ignored [Udan v. Amon, G.R. No. L-24288, May 28, 1968, 23 SCRA 837]. There may be an accident, surprise or excusable neglect justifying postponement or reconsideration but if the movant does not present a meritorious claim or defense, denial of his motion for postponement may not be considered as an abuse of the discretion of the court [De Cases v. Peyer, G.R. No. L-18564, August 31, 1962, 5 SCRA 1165.]

Absent any meritorious case in defendant's favor, his motion for postponement was properly denied. His invocation of his right to counsel and to present evidence was an empty gesture revealing his dilatory scheme.

Under the circumstances, the petitioner must be deemed to have waived his rights and to have been extended the protection of due process.

Moreover, the petitioner in negotiating the check presented himself as a lawyer; he was addressed in the Notice of the Order dated September 11, 1972 as "Atty. Ramon Sayson y Fernandez" [Original Records, p. 38] and he himself filed the Motion to Quash [Original Records, p. 22] and a pleading captioned "Compliance" dated December 2, 1972 [Original Records, p. 41.] These facts indicate that he was capable of defending himself. That he himself was allowed to file pleadings clearly negatives the alleged deprivation of his right to due process of law. Consequently, there being no abuse of discretion on the part of the trial court, its order will not be disturbed.

The Court finds the petitioner's plea that it was incumbent upon the trial judge to appoint a counsel de oficio for him when he appeared without his counsel utterly without legal basis. The duty of the court to appoint a counsel de oficio when the accused has no counsel of choice and desires to employ the services of one is mandatory only at the time of arraignment [Rule 116, Section 6, Revised Rules of Court.] This is no longer so where the accused has proceeded with the arraignment and the trial with a counsel of his choice but when the time for the presentation of the evidence for the defense has arrived, he appears by himself alone and the absence of his counsel was inexcusable. This Court's holding in a previous case that there is no deprivation of the right to counsel in such a case is squarely applicable:

As the appellant was represented by counsel of his choice at the arraignment, trial and in the incidental motions to dismiss and to postpone the resumption of the trial of the case, the trial court was not in duty bound to appoint a counsel de oficio to assist him in his defense. His failure to appear with counsel of his choice at the hearing of the case, notwithstanding repeated postponements 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. Taking into consideration all the steps taken by the trial court to safeguard the rights of the appellant, the latter cannot pretend that he was deprived of his right to be assisted by counsel and to present evidence in his behalf. Moreover, the repeated failure of the appellant to appear with counsel at the resumptions of the trial of the case may be taken as a deliberate attempt on his part to delay the proceedings. [People v. Angco, 103 Phil. 33, 39 (1958).]

At the most, the appointment of a counsel de oficio in situations like the present case is discretionary with the trial court, which discretion will not be interfered with in the absence of abuse. Here, the trial court had been liberal in granting the postponements secured by the petitioner himself, at the same time admonishing the latter to be ready with his present counsel or another counsel [Original Records, p. 430.] Notwithstanding this admonition, the petitioner kept on attending the hearings without securing another lawyer to substitute his present counsel who was constantly absent during the hearings. Still, as admitted by petitioner in his memorandum, the trial court, at the December 9, 1974 hearing, allowed him to look for a lawyer but no one was available at the time [Rollo, p. 94.] These steps undertaken by the trial court removes any doubt that its order was tainted with grave abuse of discretion.

The last issue to be resolved dwells on the effect of the alleged variance between the prosecution's allegation and proof.

The petitioner vigorously maintains that he cannot be justifiably convicted under the information charging him of attempting to defraud Ernesto Rufino, Sr. and/or Bank of America because the totality of the evidence presented by the prosecution show very clearly that the accused allegedly attempted to defraud Mever Films, Inc., a corporate entity entirely separate and distinct from Ernesto Rufino, Sr. He firmly asserts that his conviction was in gross violation of his right to be informed of the nature and cause of the accusation against him.

Petitioner's claim is unavailing. The rule in this jurisdiction is that "variance between the allegations of the information and the evidence offered by the prosecution in support thereof does not of itself entitle the accused to an acquittal. [People v. Catli, G.R. No. L-11641, November 29, 1962, 6 SCRA 642.]

The rules on criminal procedure require the complaint or information to state the name and surname of the person against whom or against whose property the offense was committed or any appellation or nickname by which such person has been or is known and if there is no better way of identifying him, he must be described under a fictitious name [Rule 110, Section 11, Revised Rules of Court; now Rule 110, Section 12 of the 1985 Rules on Criminal Procedure.] In case of offenses against property, the designation of the name of the offended party is not absolutely indispensable for as long as the criminal act charged in the complaint or information can be properly identified. Thus, Rule 110, Section 11 of the Rules of Court provides that:

Section 11. Name of the offended party. -?

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(a) In cases of offenses against property, if the name of the offended party is unknown, the property, subject matter of the offense, must be described with such particularity as to properly identify the particular offense charged.

(b) If in the course of the trial, the true name of the person against whom or against whose property the offense was committed is disclosed or ascertained, the court must cause the true name to be inserted in the complaint or information or record.

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In U.S. v. Kepner, [1 Phil. 519 (1902)], this Court laid down the rule that when an offense shall have been described in the complaint with sufficient certainty as to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial as the same is a mere formal defect which did not tend to prejudice any substantial right of the defendant. Accordingly, in the aforementioned case, which had a factual backdrop similar to the instant case, where the defendant was charged with estafa for the misappropriation of the proceeds of a warrant which he had cashed without authority, the erroneous allegation in the complaint to the effect that the unlawful act was to the prejudice of the owner of the cheque, when in reality the bank which cashed it was the one which suffered a loss, was held to be immaterial on the ground that the subject matter of the estafa, the warrant, was described in the complaint with such particularity as to properly identify the particular offense charged. In the instant suit for estafa which is a crime against property under the Revised Penal Code, since the check, which was the subject-matter of the offense, was described with such particularity as to properly identify the offense charged, it becomes immaterial, for purposes of convicting the accused, that it was established during the trial that the offended party was actually Mever Films and not Ernesto Rufino, Sr. nor Bank of America as alleged in the information.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the petition is hereby DENIED and the decision of the Court of Appeals is AFFIRMED in toto with costs against the appellant.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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