

SECOND DIVISION

[G.R. No. 175473, January 31, 2011]

HILARIO P. SORIANO, PETITIONER, VS. HON. MARIA THERESA V. MENDOZA-ARCEGA, AS PRESIDING JUDGE OF BRANCH 17, REGIONAL TRIAL COURT, MALOLOS, BULACAN; AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision^[1] of the Court of Appeals (CA) dated August 31, 2006, and the Resolution^[2] dated November 7, 2006, denying herein petitioner's motion for reconsideration, be reversed and set aside.

The records reveal the following antecedent facts.

Petitioner is an accused in Criminal Case No. 237-M-2001 for Estafa through Falsification of Commercial Documents and in Criminal Case No. 238-M-2001 for violation of Section 38 of Republic Act No. 337, as amended. The criminal cases were consolidated and jointly tried before the Regional Trial Court of Malolos, Bulacan, Branch 17 (trial court).

After the prosecution rested its case, the trial court set the first hearing date for presentation of defense evidence on October 21, 2004. On said date, petitioner was absent allegedly due to illness so the defense moved for postponement. The trial court granted the motion and reset the hearing to December 6, 2004. The December 6, 2004 hearing was also cancelled upon motion of petitioner's counsel and the hearing date for presentation of defense evidence was moved to December 13, 2004. On that date, petitioner testified on direct examination and cross-examination began, but for lack of material time, continuation thereof was set for January 6, 2005. In an Order^[3] dated March 11, 2005, the conduct of the proceedings was summarized by the trial court as follows:

For resolution is the motion by the Private Prosecutor to have the direct examination of Hilario Soriano [herein petitioner] be stricken off the record, considering that said accused failed to appear during the continuation of his cross examination on March 10, 2005. x x x

Record shows that accused Hilario Soriano was presented for his direct examination on December 13, 2004 and per Order of said date, his cross examination was deferred on the request of the Private Prosecutor to January 6 & 17, 2005. **On January 6, 2005, the hearing was cancelled** since accused was said to be indisposed. On January 17,

2005, the cross examination of the accused pushed through, but for lack of material time it was reset to March 10, April 5 and 21, 2005. **On March 10, 2005, accused was reported to be, again, indisposed** and this reasoning irked the Private Prosecutor and caused him to make unpalatable remarks before the Court.

Under the circumstances, the Court is constrained to grant the request for postponement by the accused, however, with a warning that if at the next setting on April 5, 2005 the hearing will be cancelled for any reason that may be advanced by the defense, the Court will be constrained to grant the present motion by the prosecution. Additionally, the accused is given five (5) days from today within which to submit a verified medical certificate.^[4]

Petitioner appeared at the April 5, 2005 hearing, but cross-examination was still not finished. At the next hearing date of April 21, 2005, cross-examination had to be cut short, because petitioner was again not feeling well. The following hearing date was set for June 2, 2005.

In an Urgent Motion to Reset Hearing dated May 18, 2005, petitioner's counsel moved that the hearing on June 2, 2005 be reset to June 23, 2005, on the ground that said counsel had a previously scheduled hearing in a case involving his own personal property. The prosecution strongly opposed said motion. However, in an Order^[5] dated May 26, 2005, the trial court granted petitioner's motion for postponement, "provided that another cancellation thereof, at the defense's instance and sans any cogent reason therefor, shall no longer be accommodated."

At the June 23, 2005 hearing, the cross-examination on petitioner was concluded. A hearing was set on July 19, 2005 for the redirect examination of petitioner. Petitioner appeared on July 19, 2005 only to submit a copy of the Withdrawal of Appearance^[6] of Atty. Sedfrey A. Ordonez. Hence, the hearing was cancelled due to the absence of both the state prosecutor and petitioner's counsel. In an Urgent Motion dated July 2, 2005 filed by the private prosecutor, the prosecution moved that the collaborating counsel for petitioner, Atty. Lamberto Gonzales, Jr., be directed to take over for the defense so as not to delay the proceedings. However, on August 5, 2005, the trial court received a Notice of Withdrawal of Appearance filed by Atty. Lamberto A. Gonzales, Jr.

Petitioner then filed an *Ex Parte* Manifestation dated August 10, 2005, stating that he needed at least 60 days from receipt of the Order of the court approving the withdrawal of appearance of his former counsels, within which to secure the services of new counsel. In an Order^[7] dated August 11, 2005, the trial court ordered:

Both accused are, thus, directed to engage the services of another counsel to represent them in the trial of their cases, particularly on September 22, October 11 and 20, November 17 and December 1 and 13, 2005, all at 8:30 o'clock in the morning. The Court emphasizes that any intent to unduly delay the prosecution of these cases by the accused will not be countenanced.^[8]

On August 31, 2005, petitioner himself filed an Omnibus Motion stating that due to his difficulty in securing the services of new counsel, he was praying that (1) he be granted a period of 60 days from receipt of the Order of the court approving the withdrawal of appearance of his former counsels, within which to secure the services of new counsel; and (2) the hearings set for September 22, 2005, October 11, 2005, and October 20, 2005, all be cancelled, and future hearing dates be set after entry of appearance of his new counsel. Said motion was vehemently opposed by the prosecution.

On September 15, 2005, an Entry of Appearance^[9] of the law firm Chato & Vinzons-Chato was filed with the trial court, along with a Motion to Cancel the Hearing on September 22, 2005, due to counsel's need for more time to study the case and a conflict in schedule.

At the hearing on September 22, 2005, the trial court issued, in open court, an Order, the pertinent portion of which stated, thus:

As regards the "Motion to Cancel Hearing Date" scheduled on September 22, 2005 incorporated in the "Entry of Appearance" of the new defense counsel, the Court is inclined to DENY the same. As pointed out by the Private Prosecutor, Atty. Romero's motion to cancel today's hearing failed to attach proof of his alleged conflict of schedule. More so, his law firm could have sent another lawyer to represent its client.

As prayed for by the prosecution, the re-direct examination of accused Hilario P. Soriano has been waived. Let the presentation of another defense witness proceed on October 11 and 20, November 17, December 1 and 13, 2005, all at 8:30 o'clock in the morning, as previously scheduled.^[10]

Petitioner moved for reconsideration, but in an Order dated November 25, 2005, the trial court denied the same and affirmed the directive that petitioner's redirect examination be deemed waived.

On January 27, 2006, petitioner filed a petition for *certiorari* with the CA, alleging that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it deemed petitioner's redirect examination waived. The CA then issued the assailed Decision dated August 31, 2006, ruling that no grave abuse of discretion was committed by the trial court, because it had to ensure that deliberate delay on the part of one party would be avoided. Petitioner's motion for reconsideration of the Decision was denied in a Resolution dated November 7, 2006.

Hence, this petition for review on *certiorari* where the sole issue is whether the CA gravely erred in ruling that the trial court did not commit grave abuse of discretion in considering petitioner's redirect examination waived.

The petition must be struck down.

In *Ligeralde v. Patalinghug*,^[11] the Court reiterated the established definition of