

ARTHUR MEDINA Y YUMUL, PETITIONER, VS. MARCELO F. OROZCO, JR., ACTING CITY WARDEN OF CALOOCAN CITY, RESPONDENT.*G.R. No. L-26723. December 22, 1966*

Ponente: SANCHEZ, J.

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On application for habeas corpus. The facts are: At about 12:00 p.m. on November 7, 1965, petitioner Arthur Medina y Yumul was arrested and thereafter incarcerated in the Caloocan City jail, allegedly as one of those responsible for the death of one Marcelo Sangalang y Diwa which occurred on October 31, 1965 in said city. At about 9:00 o'clock in the morning of the same day, November 7, 1965, the case against Medina and two others for Sangalang's murder was referred to a fiscal, who forthwith conducted a preliminary investigation in petitioner's presence. At about 3:40 p.m. on November 10, 1965, an information for murder was filed against petitioner Arthur Medina y Yumul, and Antonio Olivar y Flores and Alexander Enriquez y Raginio in the Caloocan branch of the Court of First Instance of Rizal, docketed as Criminal Case No. C-1197 of said court. By court order, they were promptly committed to jail. Arraigned, Medina and his co-accused stood trial—which has not yet terminated.

- First to be considered is the charge of arbitrary detention. Petitioner claims violation of Article 125 of the Revised Penal Code. The crime—for which petitioner is detained—is murder, a capital offense. The arresting officer's duty under the law^[1] was either to deliver him to the proper judicial authorities within 18 hours, or thereafter release him. The fact however is that he was not released. From the time of petitioner's arrest at 12:00 o'clock p.m. on November 7, to 3:40 p.m. on November 10 when the information against him for murder actually was in court, over 75 hours have elapsed. But, stock should be taken of the fact that November 7 was a Sunday; November 8 was declared an official holiday; and November 9 (election day) was also an official holiday. In these three no-office days, it was not an easy matter for a fiscal to look for his clerk and stenographer, draft the information and search for the Judge to have him act thereon, and get the clerk of court to open the courthouse, docket the case and have the order of commitment prepared. And then, where to locate and the certainty of locating those officers and employees could very well compound the fiscal's difficulties. These are considerations sufficient enough to deter us from declaring that Arthur Medina was arbitrarily detained. For, he was brought to court on the very first office day following arrest.^[2]

- Nor could discharge from custody, by now, be justified even on the assumption that detention was originally arbitrary.

Petitioner at present is jailed because of the court's order of commitment of November 10, 1965 upon a murder indictment. No bail was provided for him, because he is charged with a capital offense. Such detention remains uninfected by the alleged previous arbitrary detention. Because, detention under a valid information is one thing, arbitrary detention anterior thereto another. They are separate concepts. Simply because at the inception detention was wrong is no reason for letting petitioner go scot-free after the serious charge of murder has been clamped upon him and his detention ordered by the court. The first is illegal; but the second is not.^[3] Thus, the petition for habeas corpus came too late.^[4]

- As unavailing is petitioner's claim that no preliminary investigation was conducted by the fiscal before the criminal charge against him was registered in court. Other than that averment in the petition herein, petitioner has nothing whatsoever to show for it. Upon the other hand, the assertion that such investigation was made on the very day of petitioner's arrest and in his presence, is confirmed by the fact that on November 12, 1965 he moved the office of the city fiscal for a reinvestigation of his case. And that re-investigation was held on December 1, 1965. Thereafter, the case against him proceeded to trial. Add to all of these the legal presumption of regularity in the performance of official duties,[5] and the question of lack of preliminary investigation is well nailed down.

- Besides, the proper forum before which absence of preliminary investigation should be ventilated is the Court of First Instance, not this Court. Reason is not wanting for this view. Absence of preliminary investigation does not go to the jurisdiction of the court but merely to the regularity of the proceedings. It could even be waived. Indeed, it is frequently waived.[6] These are matters properly to be inquired into by the trial court, not an appellate court.

- The cry of deprivation of a speedy trial merits but scant consideration. The arraignment of petitioner set for December 1, 1965 was postponed to December 20, 1965, thence to February 28, 1966, to March 14, 1966, all on petition of counsel for the accused, including petitioner. Then, on April 14, 1966, petitioner's counsel moved to reset the date of hearing on the merits. And again, the hearing scheduled on July 26, 1966 was transferred to September 6, 1966 on motion of defendant Alexander Enriquez with the conformity of petitioner's counsel. Finally, on motion of petitioner's counsel, the hearing on September 6, 1966 was recalendared for December 6, 1966. In this factual environment, we do not see denial to petitioner of the right to speedy trial. Delay of his own making cannot be oppressive to him.[7]

FOR THE REASONS GIVEN, the petition herein to set petitioner Arthur Medina y Yumul at liberty is hereby denied. Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Ruiz Castro, JJ., concur.

[1] Article 125, Revised Penal Code, in relation to Section 17, Rule 113, Rules of Court.

[2] U. S. vs. Vicentillo, 19 Phil. 118, 119; Sayo, et al. vs. Chief of Police, et al., 80 Phil. 859, 870; Aquino, The Revised Penal Code, 1961 ed.. Vol. II, p. 820, citing People vs. Acacio, 60 Phil. 1030.

[3] People vs. Mabong, 100 Phil. 1069, 1070-1072, citing Gunabe, et al. vs. Director of Prisons, 77 Phil. 993, 995.

[4] Matsura, et al. vs. Director of Prisons, 77 Phil. 1050, 1051-1052.

[5] Section 5(m), Rule 131, Rules of Court.

[6] People vs. Oliveria, 67 Phil. 427, 429-430; Bustos vs. Lucero, etc., 81 Phil. 640, 644.

[7] Navarro, in his treatise on the Law of Criminal Procedure, 1960 ed., p. 310, says: "The right to speedy trial may be waived by 'not object- ing to postponements or other delays of the trial.'" Footnote: "Gunabe vs. Director of Prisons, supra. People vs. Jabajab, 53 O.G. No. 3, 632, 633-634 (1956), where postponements were due to agreements of both parties; Manabat vs. Provincial Warden, G.R. No. L-6483, November 27, 1963, postponements requested by the defense." "The waiver is even clearer when the accused himself or his counsel asks for the postponements. The accused is entitled to remedial action only when the delays are due to the prosecution". Footnote: "Id., distinguishing this case from those of Conde. See People vs. Goode, [G. R. No. L-6358, May 25, 1955]; Velasquez vs. Director of Prisons, 77 Phil. 983, 985 (1947), the delay being due to the

destruction of records and the failure of the petitioner to move for re constitution of the records; *Manabat vs. Provincial Warden*, *supra*, defendant escaped and asked for postponements; *Rebotoc vs. Benitez*, 71 Phil. 408, 413-414 (1941)."

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