

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE GIBSON A. ARAULA, PRESIDING JUDGE OF BRANCH II, COURT OF FIRST INSTANCE OF SOUTHERN LEYTE AT SAN JUAN, AND LIM LON SING,...

G.R. No. L-56492. January 30, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The issue to be resolved in this Certiorari and Mandamus petition with a prayer for Preliminary Injunction or a temporary Restraining Order, filed by the People of the Philippines, is whether or not respondent Judge Gibson A. Araula committed grave abuse of discretion amounting to excess of jurisdiction in ordering the provisional dismissal of the criminal case against herein private respondent Lim Lon Sing and, upon denial of the Motion for Reconsideration of said Order of dismissal, in considering said provisional dismissal as equivalent to acquittal.

On August 27, 1980, an Information for Attempted Murder was filed against private respondent Lim Lon Sing before the Court of First Instance of Southern Leyte, Branch II, presided by respondent Judge, docketed as Criminal Case No. 674.

At the arraignment on October 15, 1980, private respondent Lim Lon Sing pleaded not guilty. Provincial Fiscal Concepcion L. Gonzales, represented herein petitioner People at the time because she was the only Fiscal reappointed in Southern Leyte after the reorganization of the National Prosecution Service in August, 1980.

The case was calendared for initial hearing on November 20 and 21, 1980. By this time, Acting Assistant Provincial Fiscal Pedro Felicen, Jr., who was on temporary detail at Maasin, Southern Leyte, was reassigned to the Office of the Provincial Fiscal at San Juan, Southern Leyte.

In an Order dated November 18, 1980, respondent Judge reset the scheduled hearing to December 4, 1980, upon a telegraphic request for postponement sent by the defense counsel and a motion for postponement filed by the private prosecutor.

At the scheduled hearing on December 4, 1980, the private prosecutor, the complainant Rito B. Go, and other prosecution witnesses, appeared and manifested their readiness for trial. Acting Assistant Provincial Fiscal Felicen, however, failed to appear. Respondent Judge thereupon dictated in open Court his Order, dated December 4, 1980, provisionally dismissing the case, to wit:

"O R D E R

"When this case was called for trial the prosecution was not ready as the Fiscal, representing the prosecution, failed to appear. However, Atty. Porfirio P. Siayngco, representing the private prosecution, appeared but since the Fiscal is not around said private prosecutor has no personality to appear in this case. Upon manifestation of the accused through counsel for the provisional dismissal of this case on the ground that the accused is entitled to speedy trial as guaranteed by the Constitution and Rules of Court this case is hereby ordered provisionally

dismissed.

"SO ORDERED.

"GIVEN IN OPEN COURT this 4th Day of December, 1980, at San Juan, Southern Leyte."[1]

At 10:10 o'clock that same morning of December 4, 1980, while still holding sessions, respondent Judge received the following telegram, dated December 2, 1980, sent by Fiscal Felicen from his hometown of Salcedo, Eastern Samar:

"Dec. 2, 1980

HON. GIBSON ARAULA

JUDGE CFI BRANCH II

SAN JUAN SOUTHERN LEYTE

REQUESTING POSTPONEMENT CASES SET THIS WEEK AM SICK MEDICALLY ADVISED
COMPLETE REST AT LEAST THREE DAYS REGARDS

FISCAL FELICEN

(SGD) FOR PEDRO FELICEN JR.

Blk 2, Lot 10, P-1

V & G, Tacloban City

CRC TACLOBAN

Received: (Initialed)

Date: 12-3-80" [2]

Notwithstanding receipt thereof, respondent Judge did not modify nor recall the Order of provisional dismissal he had dictated previously.

Fiscal Felicen continued with his sick leave for the remaining part of December, 1980. But because of the impassable condition of the roads due to landslides and flooded river crossings he was able to return to San Juan, Southern Leyte, only on January 8, 1981. In his absence, there was no Fiscal present in the said place.

The day after his return, or on January 9, 1981 Fiscal Felicen filed a Motion for Reconsideration of the Order of dismissal of December 4, 1980 explaining: that from December 2, 1980 to December 19, 1980, he was sick and under medical treatment for chronic bronchitis at his hometown in Salcedo, Eastern Samar, as shown by a medical certificate which he had attached; that because there were no telegraph facilities in Salcedo, Eastern Samar, he sent a messenger to Tacloban City so that a telegraphic motion for postponement could be sent to the Court; that the telegram was, in fact, posted with CRC-TACLOBAN (Central Radio Communication) on December 3, 1980, received by CRC-SAN JUAN (Southern Leyte) at 9:20 a.m. on December 4, 1980, and delivered to respondent Court at 10:10 a.m., December 4, 1980, as shown by the original copy of the telegram on file on page 109, record of Criminal Case No. 590 (People vs. Francisco Padual), and carbon-original on file with CRC-SAN JUAN; that the private prosecutor was present when the case was initially called for trial on December 4, 1980; that as found

on preliminary investigation, there is a prima facie case against the accused, and the rash dismissal of the case amounted to a denial to the State of the fundamental requisite of due process of law.

In an Order dated February 24, 1981, respondent Judge denied the Motion for Reconsideration, the telegram sent by the Fiscal having been received after the Order of dismissal had been prepared and issued, and adding, *inter alia*:

"x x x

"There is no question that the accused is entitled to a speedy trial. And when he appeared on the date set for trial to answer the charges against him and found out that the prosecution was not ready he is entitled to the dismissal of the case if he insisted on the trial considering that the same is guaranteed by our rules. And in this case he insisted that the trial proceed. And finding the prosecution to be not ready asked for the dismissal of this case. Although the dismissal was provisional yet the court considers the same as acquitting the accused. The Court also notices that the Motion for Reconsideration was filed more than thirty (30) days after the prosecution was furnished a copy of the same. And this being so, the Motion for Reconsideration was filed beyond the reglementary period of thirty (30) days from notice.

"x x x"[3]

Hence, the present petition for Certiorari and Mandamus, citing as a ground for the temporary Restraining Order or Preliminary Injunction prayed for, that private respondent Lim Lon Sing was seeking clearance from the Commission on Immigration preparatory to his leaving the country using the Order of provisional dismissal dated December 4, 1980, and the Order of acquittal dated February 24, 1981, as bases.

In our Resolution of April 3, 1981, aside from requiring the filing of Comments by respondents and by the Solicitor General, we ordered the issuance of a temporary Restraining Order enjoining the enforcement of the questioned Orders of December 4, 1980 and February 24, 1981, and the private respondent from leaving the country. We also issued a Mandatory Order directing the Director General for Consular Affairs of the Ministry of Foreign Affairs to hold or recall the passport that may have been issued to private respondent, if any, and the Commissioner of Immigration not to allow his departure from the country without prior clearance from the Court.

After the Comments of private respondent and of the Solicitor General were submitted, we gave due course to the Petition on June 17, 1981 and dispensed with the filing of memoranda. Thereafter, respondent Judge also filed his Comment, which the Court "noted" in the Resolution of July 20, 1981.

We find that respondent Judge committed grave abuse of discretion amounting to lack of or excess of jurisdiction.

The Information for Attempted Murder was filed on August 27, 1980. Less than two months thereafter, or on October 15, 1980, private respondent was arraigned and he pleaded not guilty. The initial hearing was set on November 20 and 21, 1980, but was postponed upon telegraphic request for postponement sent by the defense counsel, and a motion for postponement filed by the private prosecutor. The initial hearing was reset to December 4, 1980 on which date the Fiscal was unable to attend due to the well-founded ground of illness.

From the filing of the Information up to the provisional dismissal of the case, only ninety-nine (99) days had elapsed. From the date of arraignment to the date of provisional dismissal, only forty-nine (49) days had passed. The accused cannot validly complain of denial of speedy trial and that he had been subjected to "vexatious, capricious, and oppressive delays." [4]

Grave abuse of discretion is further shown when respondent Judge refused to amend his Order of provisional dismissal after he received that same morning the telegraphic request for postponement sent by the prosecuting Fiscal, which contained an explanation for the latter's absence. After all, said Order of dismissal earlier dictated in

open Court would not have yet been reduced to writing and duly signed by respondent Judge by 10:10 o'clock in the morning when the telegram was received.

Upon learning of the Order of dismissal, the Fiscal immediately moved for reconsideration the day after. Respondent Judge denied it on the additional ground that the same was filed beyond the 30-day reglementary period. Again, respondent Judge's actuation was tainted with grave abuse of discretion. The records do not disclose the date of receipt by the Fiscal's Office of San Juan, Leyte, of the Order of December 4, 1980. Neither do the records show that copy of the Order was sent to the Office of the Provincial Fiscal in Maasin, Southern Leyte. Moreover, respondent Judge could not but have known that from December 2, 1980 to January 7, 1981, there was no resident Fiscal in San Juan, Southern Leyte, since the Fiscal's Office was located in the same floor as the Judge's Chambers and the Courtroom and was visible from the rostrum of the Court.[5] As it was, Fiscal Felicen was effectively notified of the Order of dismissal only on January 8, 1981, when he returned to work. Under the circumstances, respondent Judge should not have insisted on legal technicalities in maintaining his order of dismissal.[6] Such arbitrary refusal to reopen the case will be set aside to give the State its day in Court and an opportunity to prove the offense charged against the accused and to prevent miscarriage of justice when no substantial right of the accused would be prejudiced thereby.[7]

The right of an accused to a speedy trial, guaranteed by the Constitution, should not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals.[8] It secures rights to a defendant but it does not preclude the rights of public justice.[9]

Lastly, in his Order denying the Motion for Reconsideration, respondent Judge opined that "although the dismissal was provisional yet the Court considers the same as acquitting the accused." In his Comment, respondent Judge cites the recent Decision in *Esmeña vs. Pogoy* (Second Division) 102 SCRA 861 (February 20, 1981), wherein this Court ruled:

"The dismissal of a criminal case upon motion of the accused because the prosecution was not prepared for trial since the complainant and his witnesses did not appear at the trial is a dismissal equivalent to an acquittal that would bar further prosecution of the defendant for the same offense (*Salcedo vs. Mendoza*, L-49375, February 28, 1979, 88 SCRA 811; *Lagunilla vs. Hon. Reyes, etc. and Motas*, 111 Phil. 1020 citing *People vs. Tacneng*, 105 Phil. 1298 and *People vs. Robles*, 105 Phil. 1016. See *Taladua vs. Ochotorena*, L-25595, February 15, 1974, 55 SCRA 528; *Acebedo vs. Sarmiento*, L-28025, December 16, 1970, 36 SCRA 247; *Baesa vs. Provincial Fiscal of Camarines Sur*, L-30363, January 30, 1971, 37 SCRA 437; *People vs. Cloribel*, 120 Phil. 775; *People vs. Abaño*, 97 Phil. 28; *People vs. Labatete*, 107 Phil. 697)."

The ruling in the said *Esmeña* case is not invocable in the case at bar, the facts not being on all fours.

The *Esmeña* case had dragged on for more than six (6) months from the date of arraignment on January 23, 1979 until its provisional dismissal on August 16, 1979 without trial on the merits having begun and within which span of time the prosecution had asked for postponement of hearing for at least three (3) times once because the Fiscal had lost his record of the case. The case at bar was pending for less than two (2) months only from the date of arraignment on October 15, 1980 to its provisional dismissal on December 4, 1980, and it was the first postponement requested by the prosecuting Fiscal on the ground of his illness, which was denied by the Court. In the *Esmeña* case the prosecution was not prepared for trial since the complainant and his witnesses did not appear; in the case at bar, the complainant and private prosecutor were present and were ready for trial but the Fiscal was absent due to sickness. In the *Esmeña* case, "it (was) not very clear that the petitioners consented to the dismissal of the case"; herein, it was upon "manifestation" of the accused that the case was dismissed. In the *Esmeña* case, "the Solicitor General agree(d) with the petitioners that the revival of the case would place the accused in double jeopardy since the provisional dismissal of the case without their consent was in effect an acquittal"; in this case

the Solicitor General maintains that "dismissal is unwarranted, the accused not having been denied his constitutional right to the speedy disposition of his case." [10]

The dismissal of the case below was capricious. It deprived the prosecution of its day in Court and denied it due process. It was, thus, an invalid dismissal which would not constitute a proper basis for the claim of double jeopardy. In point is the ruling of this Court in *People vs. Gomez*, [11] reading:

"A purely capricious dismissal of an information, as herein involved, moreover, deprives the State of fair opportunity to prosecute and convict. It denies the prosecution its day in court. Accordingly, it is a dismissal without due process and, therefore, null and void. A dismissal invalid for lack of a fundamental prerequisite, such as due process, will not constitute a proper basis for the claim of double jeopardy (*People v. Balicasan*, L-26376, August 31, 1966, 17 SCRA 1119; *Tilghman v. Mago* (Fla) So. 2d 136; *McCleary v. Hudspeth*, 124 F. 2d 445)." [12]

WHEREFORE, we hereby set aside as null and void respondent Judge's Orders dated December 4, 1980 and February 24, 1981 in Criminal Case No. 674, and respondent Judge is hereby ordered to reinstate said criminal case against private respondent and allow petitioner to present evidence in support of the charge.

The Restraining Order issued in our Resolution of April 3, 1981 enjoining private respondent from leaving the country is hereby declared permanent during the pendency of the case and depending on its final outcome.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Plana, JJ., concur

[1] p. 25, Rollo.

[2] p. 24, Ibid.

[3] pp. 37-38, Ibid.

[4] *Bermisa vs. Court of Appeals*, 92 SCRA 136 (1979), citing *Kalaw vs. Apostol, et al.*, 64 Phil. 852 (1937). See also *Flores vs. People*, 61 SCRA 331 (1974), citing *Acebedo vs. Sarmiento*, 36 SCRA 247 (1970) and *Conde vs. Rivera*, 45 Phil. 650 (1924).

[5] p. 61, Rollo.

[6] *International Tobacco Co., Inc. vs. Yatco*, 103 Phil. 226 (1958).

[7] *People vs. Catolico*, L-31260, 43 SCRA 519 (1972), citing the joint decision in *People vs. Surtida, et al.* and *People vs. Ayson, et al.*, 43 SCRA 29 (1972).

[8] See *Bermisa vs. Court of Appeals*, supra.

[9] Ibid., citing *Mercado vs. CFI, et al.*, 66 Phil. 215 (1938) and *Gunabe, et al vs. Director of Prisons*, 77 Phil. 993 (1947).

[10] p. 66, Rollo.

[11] 20 SCRA 293 (1967).

[12] See also *People vs. Navarro*, 63 SCRA 264 (1975).

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