

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JOSE T. SURTIDA, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, NAGA CITY, SEBASTIAN ELGARIO AND AUREO...**

*G.R. No. L-24420. January 26, 1972*

Ponente: CONCEPCION, C.J.

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**CONCEPCION, C.J.:**

Appeals from two orders, one of dismissal and the other of acquittal upon the ground, in effect, of failure to prosecute. Hence, this joint decision.

L-24420 . Accused in two separate informations, filed with the Court of First Instance of Camarines Sur,[1] of the crimes of falsification of public documents and malversation of public funds, respectively, private respondents Sebastian Elgario and Aureo T. Villarico pleaded not guilty to said charges, whereupon the two cases were set for joint trial on February 15, 1962. The trial was postponed, on motion of Elgario, to March 19, 1962, later, at the court's initiative, to July 13, 1962, and, still later, at the instance of defense counsel, first to October 2, 1962, and then to November 8, 1962. For lack of material time, the trial scheduled for November 8, 1962 was postponed to December 12, 1962. From this date to June 19, 1964, the trial was deferred about nine (9) times, twice on motion of the defense, once by agreement of the parties, once at the behest of the prosecution, and the rest by the court, for lack of material time or absence of His Honor, the trial Judge.

The hearing slated for June 19, 1964 was cancelled, it having been declared official holiday, and rescheduled motu proprio by the court for June 24, 1964. Instead of the Provincial Fiscal, who was then unable to be present, a special counsel from his office appeared and informed the court that he (the Provincial Fiscal) had left for Manila, on June 17, 1964, to participate, as a Member of the Government Prosecutors' League of the Philippines, in the unveiling of Chief Justice Abad Santos' marker in Bataan, on June 19, 1964, and was expected to return to Naga on June 25, 1964. Adding that he could not handle the continuation of the trial, for he had no idea of what had transpired in previous hearings, the special counsel begged, therefore, that the scheduled hearing be postponed. On motion of the defendants, the lower court denied this request and provisionally dismissed the two cases "because of the inability of the prosecution to proceed." The Provincial Fiscal seasonably sought, thereafter, a reconsideration of the order of dismissal and the reinstatement of said cases. The court having denied the motion, as well as another one for reconsideration of the order denying the same, the prosecution filed this petition for review on certiorari.

L-24688 . On motion of respondents herein, Jose D. Ayson and Leonora Arceo, as defendants in criminal case No. 5026 of the Court of First Instance of Pampanga, on April 29, 1964, said court remanded the case to the City Fiscal of Angeles City for further investigation. This never took place, however, owing to petitions for postponement of the defense and the failure of its counsel to appear at the reinvestigation scheduled to take place on September 15, 1964. Accordingly, the City Fiscal forwarded the case, for trial on the merits, to said court,

which, on October 5, 1964, set the case for arraignment on November 3, 1964. This proceeding was, on motion of the defense, postponed to November 4, 1964, on which date the accused entered the plea of not guilty, and the case was set for trial on January 5, 1965 and later reset for February 18, 1965, at 8:30 a.m. When the case was then called for trial, at San Fernando, Pampanga, neither the offended party nor the public and private prosecutors were present. Thereupon, the accused were acquitted, upon the ground that they are entitled to a speedy trial. Having arrived with his witnesses 30 minutes later, or at 9:00 a.m., the public prosecutor forthwith filed a motion for reconsideration, which was denied. Hence, this appeal by the prosecution.

The main issue in both cases is the propriety and validity of the appealed orders, one dismissing provisionally the two criminal cases involved in L-24420, the prosecution having been unable, on June 19, 1964, to continue with the presentation of its evidence, and the other acquitting the defendants in L-24688, upon the ground that they are entitled to a speedy trial. Upon a review of the records, it is clear to Us that the lower courts had, not only erred, but, also, committed a grave abuse of discretion, amounting to a denial of due process, in issuing the orders appealed from, which should, consequently, be set aside and annulled.

It appears that, since the continuation of the trial of the criminal cases involved in L-24420, set for June 19, 1964, could not be held, said date having been declared an official holiday, the trial was re-scheduled for June 24, 1964. No notice thereof was, however, sent to the Provincial Fiscal who handled said cases personally. Hence, he can not be blamed for his absence on June 24, 1964. Just the same, upon learning, on that date, that the case would then be called, his office sent a special counsel who explained that the Provincial Fiscal had left since June 17, 1964, not knowing that the case would be called on June 24, 1964, and that he (special counsel) was in no position to take charge of the prosecution, not being posted on the evidence introduced at the previous hearings. Apart from the fact that said explanation and this request are inherently reasonable, the arbitrary nature of the order appealed from, denying the motion for postponement of the special counsel, becomes more apparent when we consider that not less than five (5) previous motions of the defense for postponement of the trial had been favorably entertained by the lower court. Then, again, in his motion for reconsideration of the order provisionally dismissing the cases, the Provincial Fiscal alleged, and it is not denied, that the evidence theretofore introduced by the prosecution sufficed to establish, at least, a *prima facie* case.

As regards L-24688, the order of acquittal appealed from was issued in open court on February 18, 1965, when the case was called for trial at 8:30 a.m., and the public and private prosecutors, as well as the offended party, were not present. Prior thereto, the trial on the merits had been postponed several times at the request of the accused. Indeed, when it was first called for trial on April 18, 1964, the case was, on motion of defense counsel, remanded to the City Fiscal of Angeles City for reinvestigation. Eventually, however, said officer had to give up the idea of reinvesti-gating the case owing – in the language of His Honor the trial Judge - to "the methodical failure of the accused to appear in the reinvestigation of this case by the City Fiscal of Angeles \* \* \*." This officer, accordingly, forwarded the records of the case, for trial on the merits, to the court of first instance, which set the case for arraignment on November 3, 1964. The arraignment was postponed, however, to November 4, 1964, on motion of the accused. Upon his arraignment, on the latter date, the case was set for trial on January 5, 1965, which was, later, postponed to February 18, 1965, upon the request of the defense, with the conformity of the offended party. Although the prosecution and its witnesses were 30 minutes late in appearing before the court on February 18, 1965, their delay was sufficiently explained in the prosecution's motion for reconsideration. The City Fiscal had to wait for his witnesses in Angeles City, and the heavy traffic, on the way therefrom to San Fernando, had unduly slowed down their trip thereto. Considering that said motion for reconsideration was filed immediately after the issuance of the order of acquittal, and that the delay in the trial of the case had been due mainly to the accused, the latter could not validly complain of a denial of speedy trial had the lower court granted the special counsel's motion for postponement.

The case of *People vs. Cloribel*,<sup>[2]</sup> cited by His Honor, the trial Judge, in its order of March 12, 1965, denying the City Fiscal's motion for reconsideration, is not in point. The *Cloribel* case had been pending for almost four (4) years, whereas the case at bar was less than a year, since it was docketed,<sup>[3]</sup> when the order appealed from was issued. The delay in the *Cloribel* case was imputable to both the accused and the prosecution. In the present case, it was due principally to the defendants. When the *Cloribel* case was first called for trial and the prosecutor did not appear, the lower court "put off the hearing and waited for an hour to give the Government lawyers time to appear. It was only after they failed to appear a second time that" the Judge a quo "entered the order \* \* complained of." When the case under consideration was called for trial, on February 18, 1965, at 8:30 a.m., and no one appeared for the prosecution, the accused were forthwith acquitted. The office of the prosecutor in the *Cloribel* case was in Manila, where the lower court is. The office of the prosecutor in this case was in Angeles City, whereas the trial court was in San Fernando, Pampanga.

The cases in point are *International Tobacco Co., Inc. vs. Hon. N. Yatco*<sup>[4]</sup> and *People vs. Jaramilla*.<sup>[5]</sup> In the first case, it was held:

"As could be seen, the dismissal was, according to the respondent Judge, due to lack of interest of the petitioner because its representative Pedro T. Mendiola failed to appear on July 10, 1956 when the claim was called for hearing. It, however, appears that Pedro T. Mendiola arrived in court moments after the order of dismissal was dictated in open court and that, upon learning it, immediately moved the Court verbally that the dismissal be reconsidered and following the suggestion of the court a formal petition reiterating his verbal motion for reconsideration was filed. Petitioner, therefore, never lost interest in the claim - \* \* \*. We do not overlook that the failure of Pedro T. Mendiola to appear on the very hour and date set for hearing of the claim in question may authorize the court to dismiss it; but after the dismissal, when a formal motion for reconsideration was filed on well-founded ground, the respondent Judge should not have resorted to legal technicalities in maintaining his order of dismissal, \* \* \*." <sup>[6]</sup>

The facts in the second case were as follows:

"Abraham Jaranilla was charged before the Justice of the Peace Court of Sta. Cruz, Ilocos Sur with less serious physical injuries in an information filed by the provincial fiscal. After trial, the accused was convicted and sentenced to 10 days of arresto mayor and to pay the costs. He appealed in due time to the court of first instance.

"After the papers had been forwarded to the latter court, the provincial fiscal filed a petition stating that he found sufficient reason to prosecute the case and asked that it be included in the court calendar. The case was set for hearing on September 26, 1951. On the same date, the accused asked for postponement on the ground that he had not yet secured the services of a lawyer to defend him. The postponement was granted and the case was again set for hearing on November 15, 1951. The accused again asked for postponement and again it was granted, the hearing having been set on February 24, 1953. On this date, when the case was called for hearing, neither the provincial fiscal, nor any of his assistants, appeared, whereupon the trial court issued an order dismissing the case for lack of interest on the part of the prosecution, with cost de oficio.

"On the same day, counsel for the offended party filed a motion for reconsideration. The motion was denied. On March 5, 1953, the provincial fiscal in turn filed a motion for reconsideration wherein he explained his failure to appear, ratifying at the same time the motion for reconsideration filed by the private prosecutor. On March 14, 1953, the accused entered a special appearance with the only purpose of opposing said motion for reconsideration. On the same date, the trial court denied the motion for lack of merit, and from this order the provincial fiscal has appealed. The case is now before us for the reason that, as certified by the Court of Appeals, the appeal involves a question of jurisdiction."

Commenting thereon, this Court said:

"The only ground on which the order of dismissal was predicated is the alleged 'lack of interest on the part of the prosecution' in view of the failure of the provincial fiscal, or any of his assistants, to appear when the case was last set for trial at the instance of the accused. And, as we have stated, the trial court denied the motion for reconsideration filed both by the provincial fiscal and the private prosecutor. Considering that the explanations given by the provincial fiscal in his motion are reasonable, it is now contended by the Solicitor General that the lower court abused its discretion in not reopening the case to give the government an opportunity to prove the offense charged against the accused.

"We find merit in this claim. The explanation offered by the provincial fiscal of his failure to appear and of his assistants on the date of the trial was that on that date he was in Manila because of an official business he had taken up with the Department of Justice; that, on the other hand, his assistant Laya had gone to Zambales, upon previous permission, to see a close relative who was seriously ill, while special counsel Valdez was sick, as evidenced by a telegram he sent to the clerk of court. It does not appear that this explanation was untrue or was merely advanced as an excuse to justify the absence of the government prosecutors. Nor can such failure be considered as an indication of their lack of interest in prosecuting the case it appearing that they were present in the previous hearings. When we consider that the trial judge readily granted the two-motions for postponement put in by the defense it would seem to be unusually harsh to dismiss the case outright for the single failure of the prosecutors to appear at the last hearing without giving them an opportunity to explain their failure. It is for this reason that we believe that the court has been unfair to the prosecution and, therefore, such an act should be corrected to prevent miscarriage of justice."

At this juncture, it is well to point out that the private respondents in L-24420 may not justifiably plead double jeopardy, since the dismissal of the criminal cases against them is "provisional" and, hence, does not bar a subsequent prosecution for the same offense. We quote from *Republic vs. Agoncillo*:<sup>[7]</sup>

"3. Nonetheless, the reliance by defendants, now appellees, on this constitutional right is misplaced. It is true jeopardy had attached with a valid complaint having been filed in a court of competent jurisdiction and defendants having been thereafter arraigned and pleaded. It had not terminated, though. There was neither conviction nor acquittal. There was thereafter a dismissal without prejudice. Defendants knew, or ought to have known, that the complaint could thus be filed again. They could have objected; they did not. Had they stood fast on what they conceived to be their rights as defendants, things might have been different. Matters could have definitely ended then and there. The jeopardy clause could have been thereafter appropriately invoked. The dismissal would have been unconditional in character. That is not however how things developed. What transpired instead was a dismissal clearly without prejudice. At the very least, defendants were in estoppel.<sup>[8]</sup>

"So it has been held repeatedly by this Court. In *Jaca vs. Blanco*, Justice Ozaeta, who penned the opinion, after setting forth Sec. 9 of Rule 113, now Sec. 9 of Rule 117, stated: 'We hold that the dismissal contemplated in the above-quoted section of the rule is a definite or unconditional dismissal which terminates the case, and not a dismissal without prejudice as in the present case. In the absence of any statutory provision to the contrary, we find no reason why the court may not, in the interest of justice, dismiss a criminal case provisionally, i.e., without prejudice to reinstating it before the order becomes final or to the subsequent filing of a new information for the same offense. If the accused should deem such conditional or provisional dismissal to be unjust and prejudicial to him because he has been deprived of his right to a speedy trial, as for instance where the case has dragged on for an unreasonably long time without his fault, he could and should object to such dismissal and insist that the case be heard and decided on the merits. Upon such objection and insistence of the accused, if the prosecution does not present its evidence and if its failure to do so is unjustified, the court should dismiss the case for failure to prosecute. Such dismissal would come under the purview of section 9, Rule 113.' Then came *Co Te Hue vs. Encarnacion*, where this Court, through Justice Bautista Angelo, after referring to *People vs. Romero*, declared: 'There is more weighty reason to uphold the theory of reinstatement in the present case than in that of *Romero* considering the particularity that the dismissal was provisional in

character. In our opinion that is not the dismissal contemplated by the rule that has the effect of barring a subsequent prosecution."

It should be noted, in this connection, that the private respondents in L-24420 did not merely fail to object to the provisional dismissal ordered by the lower court. The latter acted as it did on motion of said respondents.

Neither does the order of acquittal involved in L-24688 justify the plea of double jeopardy. In *People vs. Balisacan*,<sup>[9]</sup> We postulated:

"Furthermore, \* \*, the court a quo decided the case upon the merits without giving the prosecution any opportunity to present its evidence or even to rebut the testimony of the defendant. In doing so, it clearly acted without due process of law. And for lack of this fundamental prerequisite, its action is perforce null and void. The acquittal, therefore, being a nullity for want of due process, is no acquittal at all, and thus can not constitute a proper basis for a claim of former jeopardy."<sup>[10]</sup>

To the same effect is *People vs. Gomez*,<sup>[11]</sup> from which We quote:

"Accordingly, respondents' second argument on double jeopardy would be in point only if their first – on validity (not simply correctness) of the dismissal order – proves tenable.

"Now the record shows the dismissal order to have been capriciously issued. All the delay prior to the first date set for trial, which lasted almost ten months after the filing of the information, was caused by the defendants who presented several motions to quash and for bills of particulars, which, as respondent Judge later conceded, were 'devoid of serious legal bases' and premised only on 'trivial ground.' The prosecution manifestation that it was not ready for trial on said first day amounted to a motion for postponement. It was the first postponement asked for by the prosecution, predicated upon reasonable ground. Since the reason given for the dismissal order was the delay that so far attended the case, and since said delay was attributable to the defense rather than to the prosecution, the dismissal was totally devoid of reason. Specially is this true, considering that previously, respondent Judge granted several motions for postponement of arraignment presented by the defendants, and even Richards' motion to leave for the United States before he was finally arraigned upon his return (Respondent Judge's Answer, p. 7). Furthermore, defense moves resulted in about ten months delay. And the prosecution's first request for postponement was denied, altho one of the accused also requested for postponement. The dismissal was therefore purely capricious. It amounted to grave abuse of discretion tantamount to excess of jurisdiction. Such a dismissal order, made sua sponte, for no proper reason at all, is void for being issued without authority. And being void, it cannot terminate the proceedings. The same jeopardy that attached continues, the cause not having been terminated, thereby rendering the defense of double jeopardy without merit.

"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."<sup>[12]</sup>

WHEREFORE, the orders appealed from are hereby set aside and annulled and these cases remanded to the respective courts of origin for further proceedings not inconsistent with this decision, with the costs of this instance against the private respondents in L-24420 and defendants-appellees in L-24688.

### **IT IS SO ORDERED.**

Reyes, J. B. L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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[1] As Criminal Cases Nos. 7120 and 7121 thereof.

[2] L-20314, August 31, 1964.

[3] On April 6, 1964.

[4] 103 Phil. 226, 230.

[5] 97 Phil. 880, 881-883.

[6] Italics ours.

[7] L-27257, August 31, 1971.

[8] Italics ours.

[9] L-26376, August 31, 1966.

[10] Italics ours.

[11] L-22345, May 29, 1967.

[12] Italics ours.

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