

**EUGENIO CATILO, PETITIONER, VS. HONORABLE GAVINO S. ABAYA,
JUDGE OF THE COURT OF FIRST INSTANCE OF BATANGAS,
RESPONDENT.**

G.R. No. L-6921. May 14, 1954

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for certiorari with prohibition filed by petitioner Eugenio Catilo against respondent Hon. Gavino S. Abaya as Judge of the Court of First Instance of Batangas. The facts involved are not disputed.

Petitioner, a member of the Philippine Army attached to the 21st BCT was charged in the Court of First Instance of Batangas presided over by respondent Judge with kidnapping with murder in Criminal Case No. 698 of that Court. He was arraigned and the case was tried on July 15, 1953. After the prosecution had closed its evidence and rested its case, counsel for the defendant move for the dismissal of the case on the ground of lack of sufficient evidence. After a thorough discussion of the motion for dismissal the respondent Judge in open court dictated his order of July 15, 1953 (Annex "A") which we reproduce below:

"ORDER

"After the presentation of the evidence for the prosecution and after the Fiscal has submitted his case Atty. Remigio Perez of the defense presented a motion to dismiss based on the insufficiency of the evidence presented by the prosecution. This motion to dismiss. was fully discussed and forthwith the Court believes and so holds that said motion to dismiss is well taken because even if it cannot be discussed that there is a dead person and that this dead person was found before in company with the accused and his companions, there has not been presented in the presentation of evidence by the Fiscal even any slight proof that the herein accused was the author of the death in question and that the case against the accused herein is hereby dismissed with costs.

"DICTATED AND PROMULGATED IN OPEN COURT. SO ORDERED.

"Batangas, Batangas, July 15, 1953.

"GAVINO S. ABAYA
Judge"

According to the allegation of the petition which is not denied by the respondent in his answer but instead admitted by him, after dictating the aforequoted order, respondent had the defendant stand up, and then and there, the order of dismissal was duly promulgated in open court, and then addressing the accused, respondent Judge told him that he was a free man and could not again be prosecuted for the offense charged in the information. Then the court's session was adjourned.

It would appear, however, that on the same day the respondent Judge changed his mind about his order of

dismissal and issued the following order:

"ORDER

"The court, motu proprio, and due to some misrepresentation of facts, reconsiders its ruling given verbally this morning, dismissing the present case; and

"Acting on the Petition of the defense counsel for continuance of the trial of this case, the 27th day of this month is hereby set for the presentation of the evidence of the accused. SO ORDERED.

"Batangas, Batangas, July 15, 1953.

"Gavino S. Abaya
Judge"

The second paragraph of the aforequoted order presumably refers to a previous petition for continuance filed by the defense before the trial of the case but which petition was denied, after which, trial proceeded.

The defense received on July 17, 1953, a copy of the second order reconsidering the order of dismissal, and on July 20th it filed a written objection protesting against the reconsideration of the order of dismissal and the reinstatement of the case, on the ground that the defendant was being placed in double jeopardy. Failing to take action upon said objection, counsel for the defendant-petitioner filed a motion respectfully asking the respondent Judge to take immediate and favorable action on the written objection, and because the respondent still failed to take action, the defendant filed the present petition.

In representation of the respondent, the Provincial Fiscal in his answer claims that the respondent has the inherent power under the law to set aside his order of dismissal Annex "A"; that said order of dismissal is a conclusion of the court and does not contain the "kind of recitation of facts contemplated in our courts of justice by the Rules of Court"; that in issuing the order of dismissal Annex "A", the trial court abused its discretion as shown by the fact that later respondent being convinced that the prosecution has established a case against the accused, motu proprio set aside the order of dismissal; and that finally, since the court abused its discretion, said order of dismissal is void; consequently, double jeopardy does not attach.

From whatever angle we may view the order of dismissal Annex "A", the only conclusion possible is that it amounted to an acquittal. Whether said acquittal was due to some "misrepresentation of facts" as stated in the order of reconsideration, which alleged misrepresentation is vigorously denied by the defendant-petitioner, or to a misapprehension of the law or of the evidence presented by the prosecution, the fact is that it was a valid order or judgment of acquittal, and thereafter the respondent Judge himself advised the accused in open court that he was a free man and could not again be prosecuted for the same offense.

The inherent powers of a court to modify its order or decision, under section 5, Rule 124 of the Rules of Court claimed for the respondent to set aside his order of dismissal, does not extend to an order of dismissal which amounts to a judgment of acquittal in a criminal case; and the power of a court to modify a judgment or set it aside before it has become final or an appeal has been perfected, under section 7, Rule 116 of the Rules of Court, refers to a judgment of conviction and does not and cannot include a judgment of acquittal.

In conclusion, we hold that to continue the criminal case against the petitioner after he had already been acquitted would be putting him twice in jeopardy of punishment for the same offense. Therefore, the petition for certiorari with prohibition is hereby granted and the order of respondent reconsidering his order of dismissal Annex "A" is hereby set aside and he is hereby commanded to desist from further proceeding with the trial of criminal case No. 698, which case is now to be regarded as closed. No pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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