

RAYMUNDO BAESA, MARIANO BAESA, JACINTO BAESA, BEATO BAESA, VICTORIO BAESA, AND DOMINGO LOMEDA, PETITIONERS-APPELLEES, VS. THE PROVINCIAL FISCAL OF CAMARINES SUR, NAGA CITY, RESP...

G.R. No. L-30363. January 30, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal by respondent provincial fiscal from a decision of the Court of First Instance of Camarines Sur issuing a writ of mandamus as prayed for by petitioners,[1] (all accused as defendants in Criminal Case No. 7451 of the same court under an information for frustrated murder citing intervenor Joker Arroyo as the offended party) and ordering respondent fiscal "to abstain henceforth from proceeding against the respondents in Criminal Case No. 7451 of this Court" (referring to herein petitioners-appellees).

The appeal, which was first forwarded to the Court of Appeals was certified to this Court as not being within the appellate court's juris-diction and was docketed with this Court on March 26, 1969.

The record of the case below establishes the following factual background:

Petitioners were originally charged with the crime of frustrated murder upon complaint of Joker Arroyo for having attacked him on November 10, 1950, and the information filed by the fiscal was docketed on January 21, 1951 as Criminal Case No. 2059 of the lower court. Arraignment and trial were set for May 5, 1951, but there ensued a total of thirteen post-ponements thereof - four were made at the instance of the pro-secution, four were filed by the petitioners, two were made by the court, one upon joint motion of the parties and two others were made presumably for lack of time, and it is indicated that in these postponements, if the petitioners-accused were not the movants, they were either upon mutual agreement of the parties or upon action of the court *motu proprio* and when the prosecution was the movant, the petitioners-accused either expressly or impliedly acquiesced thereto.[2]

The reason for these repeated postponements appears to be that another criminal case for frustrated murder against three of the same petitioners, namely, Mariano, Raymundo and Victorio all surnamed Baesa and two others for an earlier attack on July 15, 1950 against the same complainant, interven-or-appellant Arroyo, and docketed as Criminal Case No. 1915, was already pending and being tried by the same court, pre-sided by the same judge, Honorable Jose T. Surtida. Thus, per order of the lower court issued in Case No. 2059 on March 5, 1954, "(U)pon joint petition of the prosecution and defense on the ground that there is an understanding between them to have this case set for trial after the termination of (Criminal) Case No. 1915 to which this instant case is related," it ordered that "(A)s prayed for, let trial of this case be held in abeyance pending the termination of Criminal Case No. 1915." [3]

The case nevertheless, continued to be set on the court's calendar until its last setting on June 5, 1956, on which date intervenor did not appear as the subpoena issued to him was not served, and the lower court, upon motion of the defense provisionally dismissed the case without the petitioners-accused ever having been arraigned

therein.[4]

Five years thereafter on October 4, 1961, at the instance of intervenor-appellant, respondent fiscal filed another information, for the same offense subject of the previous Criminal Case No. 2059, against the same accused, petitioners-appellees here-in. This second case was docketed as Criminal Case No. 7451 of the same lower court presided by the same judge. Petitioners having been duly arraigned on this second information and having all entered a plea of not guilty, then filed a motion to quash the information on the ground of double jeopardy. The lower court in its order of October 4, 1963, denied the motion holding that no jeopardy had been incurred in the previous case, as the accused had not been arraigned therein and "the dismissal of the previous case was made provisionally and upon the express request of the counsel for the accused." [5] The case was then set three times for trial on November 8, 1963, January 24, 1964 and June 15, 1964 and each setting was postponed at the instance of the petitioners-accused, the last setting being cancelled by the court on petitioners' manifestation that they had already filed on March 18, 1964, the present action for mandamus to restrain respondent fiscal from further prosecuting them in the said criminal case.

The present action was submitted by the parties for the lower court's decision on the pleadings. Petitioners contended that their constitutional right to a speedy trial had been denied them, citing the period of six years that the first case, No. 2059, had been pending before its provisional dismissal in 1956 and the lapse of five years after such provisional dismissal before the refiling of the second case in 1961 (which was almost eleven years from the filing of the original complaint although concededly well within the prescriptive period of the offense), and that the second case could not be treated and viewed independently and separately from the first case. Respondent contended that petitioners were in estoppel from invoking the right to speedy trial by virtue of their agreement to the postponements and deferment thereof, that such delay could not be invoked in the second case, and that any delay in the trial of the second case was attributable solely to petitioners.

Under date of July 30, 1964, the lower court rendered its decision under appeal, holding that "It is clear that a very long period of time was allowed to elapse without having the petitioners' (first) case tried. It is further clear that the unwarranted delay was without good cause or justifiable motive. It is furthermore clear that most of the many postponements were unjustified. There is, therefore, no doubt that the doctrine laid down by the Supreme Court in the above-cited two cases (*Conde vs. Rivera*[6] and *Kalaw vs. Apostol*[7]) apply with equal force and decisiveness to the instant case," and issued the writ of mandamus against the prosecution of petitioners-accused in the second case, likewise pending before it.

Respondent fiscal and intervenor filed their respective motions for reconsideration on the grounds, inter alia, that the lower court in this case had erroneously misappreciated the valid causes of the postponements of record in the first criminal case (granted by the same court therein), acquiesced in unqualifiedly by petitioners, which negated their claim of denial of their right to a speedy trial, that such right could not be invoked during the five-year interval between the provisional dismissal of the first case and the refiling of the second case, since there was no pending case where the right could be invoked and that the right to a speedy trial is necessarily relative and is waived, such as when the accused play an active role in securing several postponements and give their express conformity thereto and to the deferment and holding in abeyance of trial until the termination of a related case, in which cases the rights of public justice should not be precluded.

The lower court nevertheless denied reconsideration per its order of February 5, 1965, holding that "(E)ven granting that the number of postponements and their causes given by the respondent is the correct narration of facts of the case, still, it cannot be denied that thirteen postponements within a period of six years, without the accused having been arraigned nor tried once and the filing of the second information after the lapse of five years and four months from the date of the dismissal of the first case and almost eleven years from the filing of the original complaint, constitute an unwarranted delay and a violation of the constitutional right of the accused to a speedy trial." Hence, this appeal.

The Court finds that the writ of mandamus was erroneously issued by the lower court on jurisdictional and

procedu-ral grounds. The second criminal case, No. 7451, was already pending trial before the lower court, and any and all grounds for dismissal or defenses of the petitioners-accused as to the information against them, could be raised only in the said case before the court in which it was pending, which had exclusive jurisdiction over the subject-matter thereof, i.e. the offense charged in the information. Petitioners-accused did file in said criminal case their motion to quash on the ground of double jeopardy by virtue of the provisional dismissal in 1956 of the first case against them for the same offense, as well as im-pliedly on the ground of denial of their right to a speedy trial, invoking the cases of Conde and Kalaw.[8] As already stated, the lower court in its order of October 4, 1963 in the said cri-minal case denied their quashal motion, holding that there was no jeopardy since the accused had not been arraigned in the first case and its provisional dismissal was "upon the express request of counsel for the accused"[9] and virtually denying petitioners' claim of having been denied a speedy trial, since it ruled that they had to stand trial as charged in the case.

It is from such denial order of the lower court in the cri-minal case that petitioners could have sought recourse from a higher court through the special actions for a writ of certiorari, prohibition or mandamus. But petitioners could not improperly split, as it were, their defenses, as they have done here - just as a party cannot split his cause of action - and file a sepa-rate special civil action of mandamus on the ground of their being denied the right to a speedy trial. This would be undue interference with the proper conduct and governance of the criminal case.

The circumstance that such mandamus case was assigned to the same lower court presided by the same judge as in the pending criminal case, Judge Surtida, does not affect the application of the fundamental rule that to allow co-ordinate courts to interfere with each other's judgments or decrees would ob-viously lead to confusion and might seriously hinder the administration of justice.[10] A contrary rule would lead to serious mischievous consequences to the detriment of the orderly administration of justice. For instance, as seen from the case at bar, the same judge of the lower court would hold in the mandamus case that the 'unwarranted delay (in the first case) was without good cause or justifiable motive . . many of the postponements were unjustified" contrary to his own actuations as presiding judge in the first criminal case granting the said postponements and deferment thereof as being for good and justified cause. The same judge of the lower court would order in the mandamus case the dismissal of the pending criminal case against the accused, contrary to his own adverse order in said criminal case denying the accused's claim of double jeopardy and virtually rejecting their claim of denial of the right to speedy trial.

And in this appeal, from the lower court's decision in the mandamus case for dismissal of the criminal case, this Court would in effect be constrained to rule as to which of the lower court's conflicting actuations in the two cases was correct, having before it only the record of the appealed mandamus case - but not the record of the criminal case, which has not been elevated to this Court since none of the lower court's act-ions therein, including the order of denial of petitioners' quashal motion, has been questioned or challenged in this Court.

While the lower court apparently relied on Conde and Kalaw in taking cognizance of the mandamus case, where it was indicated that the remedy in the event of denial of the constitutional right to speedy trial is by habeas corpus if the accused were detained, or by certiorari, prohibition or mandamus for the final dismissal of the case,[11] it should be pointed out that such recourse to certiorari, prohibition or mandamus should be by a challenge of the proceedings themselves in the pending criminal case by elevating them to a higher court, as was done in said cases of Conde and Kalaw which were original actions of mandamus filed with this Court itself. A separate special action of mandamus filed with the court of first instance itself to review and set aside its own actuations or those of ano-ther court of co-ordinate jurisdiction in a pending criminal case may not be resorted to, as was done in the case at bar, since a court may not in effect mandamus itself.

Withal, the lower court appears to have properly denied the quashal motion in the criminal case, judging from the facts above stated and appearing in the record of the mandamus case, as the record of said criminal case is not before the Court. On the authority of *People vs. Obsania*[12] the provisional dismissal of the first case was properly held by the lower court, in the criminal case now pending, as not terminating the first case on the

merits such as to constitute double jeo-pardy, since the dismissal of the first case falls under the ruling enunciated in *People vs. Jabajab*[13] that while "(I)t is true that a person accused has a right to a speedy trial. x x x the defendant cannot agree to the repeated postponement of the trial of his cases and then when he finds the Government absent or unable to go to trial on any of the dates of hearing, take advantage of said absence and ask for the dismissal of his case."

The writ of mandamus issued by time lower court against respondent fiscal to refrain from further proceeding with the prosecution of Criminal Case No. 7451 of said court is set aside, and the trial thereof should now be held and terminated without further delay.

ACCORDINGLY, the decision and order appealed from are hereby reversed. Without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Barredo, Villamor, and Makasiar, JJ., concur.

Fernando, J., did not take part.

[1] In Sp. Civil Action No. 5766.

[2] See Order of February 5, 1965, Record, p. 98.

[3] Per the fiscal's statement in his motion for reconsideration, Rec., pp. 27, 37, "judgment in Criminal Case No. 1915 was promulgated on April 29, 1954, but the accused appealed."

[4] Record, p. 53.

[5] *Idem*.

[6] 45 Phil. 650 (1924).

[7] 64 Phil. 852 (1937).

[8] Record, p. 53.

[9] Citing *People vs. Togle*, 105 Phil. 126 (1959); *Gandicela vs. Lutero*, 88 Phil. 301 (1951).

[10] See *De Leon vs. Salvador*, L-30871, Dec. 28, 1970 and cases cited.

[11] See *Acebedo vs. Sarmiento*, L-28025, Dec. 16, 1970.

[12] 23 SCRA 1249 (June 29, 1968).

[13] 100 Phil. 307 (1956).

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