

**PEOPLE OF THE PHILIPPINES, ANTONIO TEJADA, AND
FELICITACION VDA. DE GRAMAJE, PETITIONERS, VS. HON. ALFONSO
P. DONESA, FORMERLY DISTRICT JUDGE OF THE COURT OF FIRST
INSTANCE OF A...**

G.R. No. L-24162. January 13, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

The specific legal question in this petition for certiorari is whether an order of then respondent Judge dismissing after the presentation of the evidence of the prosecution an information imputing to the private respondent Lapaz Tuanquin the crime of homicide and serious physical injuries through reckless imprudence, a dismissal which in law has the effect of an acquittal, may be nullified on the ground that it was issued after he was appointed and thereafter qualified as Judge of another district. It is contended that he lacked authority to do so. To avoid the operation of the well-settled principle that a dismissal having the effect of an acquittal cannot be the subject of an appeal or of a certiorari proceeding,[1] reliance is placed in the well-prepared petition as well as memorandum submitted by the then Provincial Fiscal, now Governor, Juvenal Guerrero, on the provision of the Rules of Court that would empower a judge to sign a decision outside of his province only if the case were "totally heard by him"[2] it being alleged that as of the time the order of dismissal was signed, there was still pending a motion for the translation into English of one of the exhibits presented by the prosecution. Considering that no less than the constitutional right of an accused not to be twice put in jeopardy calls for deference,[3] it is not an easy burden for petitioner in its task of persuading this Court that the particular rule of court invoked is susceptible to the interpretation that even after the prosecution had rested its case, with a motion to dismiss on the ground of insufficiency of evidence sustained, it could be maintained that the case had not as yet been "totally heard" just because one of the exhibits had not been translated. To do so would certainly raise a constitutional question of the gravest character, with such dismissal amounting to an acquittal. This should be avoided, unless there be peremptory reasons for so ruling. Moreover there are previous pronouncements of this Court that militate against the stand of petitioner. Accordingly, this petition for certiorari is dismissed.

The facts are undisputed. As shown in the petition: "That on March 7, 1962, an information was filed charging the respondent, Lapaz Tuanquin with Homicide and Serious Physical Injuries through reckless imprudence for the death of the late Evaristo Gramaje and hospitalization of Antonio Tejada on December 23, 1960, said information docketed as Criminal Case No. 266 of the Court of First Instance of Abra, then presided over by herein respondent judge; That after presentation of its evidence, the prosecution * * * rested its case on October 15, 1963, whereupon, the accused * * * immediately made known her desire to file a motion to dismiss; That on April 23, 1964, respondent Lapaz Tuanquin, through her lawyers, filed a motion to dismiss, and on August 7, 1964, petitioner People of the Philippines, filed its opposition to the motion to dismiss, and on August 12, 1964, a motion to reopen the case for purposes of having some exhibits translated from the Ilocano dialect to English was submitted, * * *; That while respondent judge was still the presiding judge of the Court of First Instance of Abra,

he was nominated to his present position, which nomination was subsequently confirmed by the Commission on Appointments, and he qualified as District Judge of Cavite to preside at Branch IV of the Court of Tagaytay City on July 13, 1964, long before the opposition to the motion to dismiss and motion to reopen the case were filed, * * *; That on January 12, 1965, respondent judge issued an order dismissing Criminal Case No. 266 on the flimsy ground that the prosecution failed to present one witness, a witness whose presentation was made unnecessary in view of the admission of the accused-respondent as evidenced by her sworn statement and submitted during the course of presentation of evidence by the prosecution, * * * [4] The order of dismissal is dated November 27, 1964.[5]

It was not surprising therefore that on the above facts respondent could plausibly maintain that this petition is devoid of merit. To lend affirmance to the view that a case was not "totally heard" under the circumstances disclosed, after the prosecution had rested its case and the defense had presented a motion to dismiss, thereafter sustained, would be to negate the intent of the rule,[6] which is a restatement of the former statutory provision on the subject.[7] Much less then is such a restrictive interpretation warranted considering that as has been made mentioned of, the dismissal order amounted to an acquittal. No less therefore than the constitutional right not to be twice put in jeopardy is a bar to the success of this petition.

- A principle that holds undisputed sway ever since *United States v. Yam Tung Way*,[8] a 1911 decision, is that a dismissal ordered after the termination of the presentation of the evidence for the prosecution has the force and effect of an acquittal. As was set forth in the opinion of Justice Carson: "Defendant was regularly arraigned, pleaded not guilty, put upon his trial by the calling of the government's witnesses against him, and thereafter discharged by the trial court. It is true that the court made no express finding as to whether the defendant did or did not commit the specific acts set out in the information, and that the dismissal of the information was based on the court's conclusion of law that there being no copyright law in force in these Islands, the acts which it is alleged were committed by the defendant do not constitute the crime with which he was charged, nor any other offense defined and penalized by law. But the reasoning and authority of the opinion of the Supreme Court of the United States in the case of *Kepner v. United States*, * * * is conclusively against the right of appeal by the government from a judgment discharging the defendant in a criminal case after he has been brought to trial, whether defendant was acquitted on the merits or whether defendant's discharge was based upon the trial court's conclusion of law that the trial had failed for some reason to establish the guilt of the defendant as charged." [9] This ruling was cited with approval in *People v. Bringas*,[10] the first case to be decided on this point under the present Constitution. As was restated in *Gandicela v. Lutero*,[11] in the event of the failure of the prosecution "to prove the defendant's guilt beyond reasonable doubt, the Court, upon the motion of the defendant, shall dismiss the case. Such dismissal is not in reality a mere dismissal although it is generally so called, but an acquittal of the defendant because of the prosecution's failure to prove the guilt of the defendant, and it will be a bar to another prosecution for the same offense even though it was ordered by the Court upon motion or with the express consent of the defendant, in exactly the same way as a judgment of acquittal * * *." [12] This doctrine has been repeatedly adhered to. [13] Such a principle, moreover, possesses an amplitude of scope. Witness this excerpt from Justice Labrador in *People v. Labatete*: [14] "We again call attention to the fact that judges should be careful in the use of the term 'dismissal' and not use the term in cases where there has been a trial on the merits and the court finds that the evidence is insufficient, in which case the judgment that should be entered is one of acquittal, not merely of dismissal. Even where the fiscal fails to prosecute and the judge 'dismisses' the case, the termination is not real dismissal but acquittal because the prosecution failed to prove the case when the time therefor came." [15] Such a dismissal then, as pointed out by Justice Endencia, in *People v. Cabarles*, [16] is that it "cannot be appealed from." [17] To do so, according to Justice Gutierrez David, in *People v. Bao*, [18] would thus be to do "violence to the constitutional provision on double jeopardy." [19] There is a 1970 decision, the opinion penned by Justice Dizon

in *City Fiscal of Cebu v. Kintanar*,^[20] which shows the continuing vitality of such a doctrine. Thus: "It appears that on March 18, 1969, an information was filed with the City Court of Cebu against Atty. Eleno Andales (Criminal Case No. R-29686) charging him with driving or operating motor vehicle No. V-1026 (1967) along Manalili and Magallanes streets, Cebu City, 'with a delinquent driver's license in the morning of March 18, 1968. Said defendant having entered a plea of not guilty, the case was called for trial before the respondent judge. After the prosecution has rested its case, the defendant moved for dismissal upon the ground that the prosecution evidence was not sufficient to establish the offense charged in the information. Thereafter, finding the motion for dismissal well taken, the Court dismissed the case on December 26, 1969. After the denial of the second motion for reconsideration filed by petitioner fiscal, he filed the present petition for certiorari.'^[21] The conclusion followed: "The petition must be dismissed upon the ground, firstly, that whatever error was committed by the respondent judge, was not an error of jurisdiction but one of judgment; secondly, the order of dismissal—considering the circumstances mentioned heretofore — amounted to and was, in effect, an acquittal — not reviewable neither by appeal nor by certiorari."^[22]

- Even if this Court were freed from the compulsion that deference to the constitutional right against being twice put in jeopardy requires, still certiorari against the order of dismissal would not lie. As was pointed out in the memorandum of respondent, the holding in *Baguinguito v. Rivera*^[23] precludes a successful outcome for this petition. There it was shown that on May 28, 1930, after the submission of proof by both parties, who were present in person or by attorney, the court declared the trial terminated. Afterwards came this portion of the opinion of Justice Street, speaking for the Court: "The attorney for the plaintiffs then requested that a period of twenty-five days be allowed for the presentation of his written argument, and a like period was asked by the attorney for the appellees. The court, however, conceded a period of fifteen days only to all. This announcement met the approval of all concerned, except De Guia who was present in person and objected. Upon these facts the point is now made that the hearing of the cause on the date mentioned was incomplete and that, * * * the court had no jurisdiction to prepare the judgment later. The point, in our opinion, is not well taken. Section 13 of Act No. 867 of the Philippine Commission authorizes the judge to prepare his judgment after leaving the province where the case is tried, 'if the case was heard and duly argued or an opportunity given for argument to the parties or their counsel in the proper province.' Under the facts above stated it must be considered that the parties waived the opportunity to present an oral argument at the time the case was submitted; and the fact that they were permitted to file written memorandums later did not render the hearing incomplete. The submission of the memorandums was not, properly speaking, a part of the hearing or trial as understood in the provision cited."^[24] Nor did the *Baguinguito* decision break new ground. As far back as 1905, in *United States v. Baluyot*,^[25] it was already made clear that Section 13 of Act 867 was applicable to criminal as well as to civil cases. The reason for discretionary authority thus granted a judge was made clear by Justice Malcolm in *Delfino v. Paredes*.^[26] Thus: "Obviously, the public interest and the speedy administration of justice will be best served if the judge who heard the evidence renders the decision. It might well happen that the full extent of the six months' period would be used by the trial judge to receive the evidence, giving him no opportunity to promulgate decisions, with the result that all the mountain of evidence would be left for the perusal of a judge who did not hear the witnesses — a result which should be dodged, if it be legally feasible."^[27] As emphasized by him: "The law does not mean to authorize a judge to try a case and then deprive him of the power to render his decision after he has taken cognizance of it."^[28]

- It is to be admitted that a serious jurisdictional question would have arisen if the doctrine in *People v. Soria*,^[29] were deemed controlling. There, this Court, through Justice J.B.L. Reyes, ruled: "It may be noted therefrom that the signing or writing of judgments outside the territorial jurisdiction of the court where the cases are pending, is allowed when the judge leaves the province by transfer or assignment to another court of equal jurisdiction,' or 'expiration of his temporary assignment' In other words, the rule contemplates of a temporary occupancy by the

judge of either the post he has left or of the one he is going to assume." [30] Under such a doctrine, respondent Judge certainly would be devoid of jurisdiction to issue the challenged order of dismissal. It should not, however, be made to apply. The Soria decision was promulgated on March 1, 1968. The two cases cited therein, *Ong Siu v. Paredes* [31] and *Jimenez v. Republic*, [32] were respectively decided on July 26, 1966 and January 31, 1968. The order of dismissal here was issued on November 27, 1964. Since, realistically, a judicial decision speaks as of the date it is handed down, Soria ought not to be given retroactive force and effect. For to do so, in a situation like the present, would amount to a deprivation of constitutional right which certainly is objectionable and should not be allowed. That is why, in whatever manner viewed, this petition cannot prosper.

WHEREFORE, this petition for certiorari is dismissed, without pronouncement as to costs.

[1] Cf. *City Fiscal of Cebu v. Kintanar*, L-31842, April 30, 1970, 32 SCRA 601.

[2] Section 9 of Rule 135 reads as follows: "Signing judgments out of province.— Whenever a judge appointed or assigned in any province or branch of a Court of First Instance in a province shall leave the province by transfer or assignment to another court of equal jurisdiction, or by expiration of his temporary assignment, without having decided a case totally heard by him and which was argued or an opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case any where within the Philippines. He shall send the same by registered mail to the clerk of the court where the case was heard or argued to be filed therein as of the date when the same was received by the clerk, in the same manner as if he had been present in court to direct the filing of the judgment. If a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who has partly heard the case, if no other judge had heard the case in part, to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction."

[3] According to Article III, Sec. 1 paragraph 20 of the Constitution: "No person shall be twice put in jeopardy of punishment for the same offense."

[4] Petition, pars. 3-7.

[5] Annex E of the Petition.

[6] Section 9 of Rule 135.

[7] Section 13 of Act 867 (1903).

[8] 21 Phil. 67.

[9] *Ibid.*, 70. The latest case in point is *Republic v. Agoncillo*, L-27257, August 31, 1971, 40 SCRA 579.

[10] 70 Phil. 528 (1940).

[11] 88 Phil. 299 (1951).

[12] *Ibid.*, 307.

[13] *People v. Bangalao*, 94 Phil. 354 (1954); *People v. Diaz*, 94 Phil. 714 (1954); *Catilo v. Abaya*, 94 Phil. 1014 (1954); *People v. Opemia*, 98 Phil. 698 (1956).

[14] 107 Phil. 697 (1960).

[15] Ibid., 705-706.

[16] 102 Phil. 926 (1958).

[17] Ibid., 928.

[18] 106 Phil. 243(1959).

[19] Ibid., 246.

[20] L-31842, April 30, 1970, 32 SCRA 601. Cf. *People v. Obsania*, L-24447, June 29, 1968, 23 SCRA 1249 and *People v. Acosta*, L-23657, October 29, 1968, 25 SCRA 823.

[21] Ibid., 602.

[22] Ibid.

[23] 56 Phil. 423 (1931).

[24] Ibid., 431. It is to be noted that in support of the above ruling, *Aliño v. Villamor*, 2 Phil. 234 (1903) was cited.

[25] 5 Phil. 129.

[26] 48 Phil. 645(1926).

[27] Ibid.; 649.

[28] Ibid. Cf. *Cordero and Alcazar v. Villaruz and Borromeo*, 46 Phil. 473 (1924); *Roa v. Director of Lands*, 46 Phil. 862 (1923); and *People v. Mitra*, 108 Phil. 788(1960).

[29] L-25175, March 15, 1968, 22 SCRA 948.

[30] Ibid., 952.

[31] L-21638, July 26, 1966, 17 SCRA 661.

[32] L-24529, February 17, 1968, 22 SCRA 622.

SEPARATE OPINION

TEEHANKEE, J.,

The decisive issue raised in the petition at bar is whether or not respondent judge, who as district judge of the court of first instance of Abra presided the trial of the criminal case against private respondent La Paz Tuanquin for homicide and serious physical injuries through reckless imprudence and received the evidence for the prosecution (during the period between March, 7, 1962 when the information was filed and April 23, 1964, when said respondent filed a motion to dismiss for insufficiency of the evidence) had authority and jurisdiction after his appointment and qualification on July 13, 1964 as district judge of another court, the court of first instance of Cavite with station at Tagaytay City, to act on the said motion to dismiss and issue on January 12, 1965 from his court in Tagaytay City the challenged order dated November 21, 1964 ordering the dismissal of the criminal case against respondent-accused for "not having been proved beyond reasonable doubt" and ordering the cancellation of her bail bond.

I concur in the result of the main opinion of Mr. Justice Fernando, but believe that such result should not be reached on the principal ground of double jeopardy as therein invoked but rather by meeting frontally the fundamental issue of respondent judge's authority and jurisdiction to still act on and grant the motion to dismiss bearing on the sufficiency of the prosecution's evidence to establish beyond reasonable doubt respondent's guilt submitted to him in the Abra court after and notwithstanding his appointment and assumption of the office of district judge of the Cavite court (by virtue of said dismissal motion having been submitted to him and his having "totally heard" the case before his subsequent appointment and permanent transfer to the Cavite court of first instance.)

If respondent judge had such authority, then the dismissal of the criminal case was valid and bars and present petition as the accused cannot be placed twice in jeopardy for the same offense. Otherwise, the dismissal would be null and void and the petition should be granted, since jeopardy could not then be invoked by the accused.

The applicable statutory provision is found in Section 51 of the Judiciary Act of 1948, as amended, which provides as follows:

"SEC. 51. Detail of judge to another district or province. — Whenever a judge stationed in any province or branch of a court in a province shall certify to the Secretary of Justice that the condition of the docket in his court is such as to require the assistance of an additional judge, or when there is any vacancy in any court, or branch of a court in a province, the Secretary of Justice may, in the interest of justice, with the approval of the Supreme Court and for a period of not more than three, months for each time, assign any judge of any court or province whose docket permits his temporary absence from said court, to hold sessions in the court needing such assistance or where such vacancy exists. No judge so detailed shall take cognizance of any case when any of the parties thereto objects and the objection is sustained by the Supreme Court.

"Whenever a judge appointed or assigned in any province or branch of a court in a province shall leave the province by transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the Court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment: Provided, however, That if a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who has partly heard the case to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction. (RA Nos. 1186 and 1404.)"[1]

Under the Court's prevailing interpretation in the case of *People vs. Soria*[2] and cases therein cited, the petition would have had to be granted, since the Court held therein that "the signing or writing of judgments outside the territorial jurisdiction of the court where the cases are pending, is allowed when the judge leaves the province 'by transfer or assignment to another court of equal jurisdiction,' or 'by expiration of his temporary assignment'[3] In other words, the rule contemplates of a temporary occupancy by the judge of either the post he has left or of the one he is going to assume," reiterating that "in similar cases, decisions promulgated after the judge who penned the same had been appointed and had qualified to another court were declared not valid and without any effect." [4]

It is submitted that the fact that these cases were not invoked or discussed at all in the petition at bar, since they were not yet in existence at the time of the submittal for decision on May 24, 1965 of the case at bar does not warrant by-passing them sub silentio in the present case.

Rather, I believe in the contrary interpretation now adopted by the Court that a district judge who has left the

court of his original assignment or appointment by permanent (not merely temporary) transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel may lawfully prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment, as duly provided by Section 51 of the Judiciary Act above-quoted.

The only qualification that I would add — for purposes of avoiding any unnecessary conflict in case another judge has already been appointed to his former court and the same is no longer vacant or unoccupied (although in the case at bar, it appears that respondent judge's former court remained vacant) — is that inline with the statutory proviso therein governing cases "heard only in part, " as well as with the first paragraph of the cited section providing for detail of judges, the interested parties should obtain from this Court the corresponding authorization for the permanently transferred judge who heard in toto the case and the evidence to render the decision thereon, in the same manner as temporarily transferred or assigned judges on detail.

The present decision signifies the abandonment and overturning of the contrary ruling in the case of *People vs. Soria* and other cases therein cited, *supra* — which should be so stated plainly for the guidance of the bench and bar as well as of litigants in general.

Compelling considerations support such abandonment of *Soria* and a reversion to the old rulings cited in the main opinion that the public interest and the speedy administration of justice will be best served if the judge who heard the evidence (although he may have been permanently transferred to another province or station) renders the decision rather than to leave a mountain of evidence and transcripts for the perusal and appreciation of a new judge totally unfamiliar with the case and who did not have the opportunity of hearing the witnesses and observing their deportment for purposes of gauging their credibility and appraising their testimony.

Again, there seems to be no valid reason to authorize a permanently transferred judge who has heard the case only in part, upon petition of any of the parties and upon recommendation of the respective or incumbent district judge, 4tto continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction" pursuant to the proviso in the second paragraph of Section 51 of the Judiciary Act, *supra*, but to withhold such authorization to decide the case from the same permanently transferred judge who has "totally heard" the case.

Finally, the statute, Section 51, *supra*, uses practically the same words at the beginning and at the end of the second paragraph, viz, the case of a judge who heard the case in toto leaving the province "by transfer or assignment to another court of equal jurisdiction" and the case of a judge who may continue hearing a case heard only in part and to decide it "notwithstanding his transfer or appointment to another court of equal jurisdiction." I see no valid basis for *Soria*'s distinction that would give two entirely different and contradictory meanings to the same word and hold that "transfer" in cases heard in toto should be limited to temporary transfers to be applicable, while it would refer and apply also to permanent transfers in cases "heard only in part." There is no room for making such a distinction, since the law does not so distinguish nor indicate any such intent.

ACCORDINGLY, I vote for the dismissal of the petition at bar for the reasons and considerations above stated.

Zaldivar, J. concurs.

Makalintal, Makasiar, Esguerra, and Ruiz Castro, JJ, concur in both opinions,

Antonio, J. concurs in the main and concurring opinion for the latter serves to clarify the rule.

Concepcion and Barredo, JJ, did not take part.

[1] The second paragraph as above quoted is reproduced in Section 9 of Rule 135 of the Rules of Court, and is quoted in fn. 2 of the main opinion. Italics supplied.

[2] 22 SCRA 948 (1968); italics supplied.

[3] This alternative phrase "by expiration of his temporary assignment" is found only in Rule 135, Sec. 9 but not in Sec. 51 of the Judiciary Act which prevails and solely refers to the judge leaving the province permanently "by transfer or assignment to another court of equal jurisdiction." See quoted text.

[4] Citing *Ong Siu vs. Parades*, G.R. No. L-21638, July 26, 1966, and cases cited therein; *Jimenez vs. Republic*, L-24529, January 31, 1968.

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