

ALFREDO VENTURA Y YLARDE, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND DIRECTOR VICENTE RAVAL, BUREAU OF PRISONS, MUNTINLUPA, RIZAL, RESPONDENTS.*G.R. No. L-46576. November 06, 1978*

Ponente: FERNANDO, J.

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The crucial question in this application for a writ of habeas corpus filed by Alfredo Ventura y Ylarde arose from his continued confinement dating from May 27, 1968 after the filing of an information against him for double homicide with physical injuries with the Court of First Instance of Pangasinan.[1] Though admittedly he was subsequently convicted in a decision rendered on April 2, 1970, an appeal was duly perfected to the Court of Appeals.[2] The grievance set forth in his petition is that the pendency of such appeal all these years amounts to a denial of his constitutional right to the speedy disposition of the case against him, as his appeal could not be decided because the whereabouts of the stenographer, Mr. Jaime T. Cortez, who took down the stenographic notes of the proceedings, could not, until now, be located.[3] Further on this point, he alleged that a resolution of the Court of Appeals ordering the retaking of the testimonies of the witnesses, who had previously testified, with such stenographer Cortez taking down the notes, and directing the Judge of the Circuit Criminal Court of Pangasinan to give a new stenographer thirty (30) days within which to submit the transcript of stenographic notes after such retaking, had not reached the stage of compliance.[4] It is petitioner's submission: "The continuous detention of the herein petitioner notwithstanding the fact that he has perfected his appeal since April 12, 1970 is in wanton violation of his constitutional right as provided for under the Old and New Constitution, Sec. 16, Art. IV of the New Constitution, [being] reproduced hereunder for convenience and ready reference: 'All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.'"[5] His plea is that his release from detention be ordered by the issuance of a writ of habeas corpus.[6]

The application was filed on July 28, 1977. On August 3, 1977, there was a resolution from this Court reading as follows: "The Court [issued] the writ of habeas corpus returnable to this Court and required the respondents to make a [return] of the writ, not later than Tuesday, August 9, 1977. The hearing of this case is hereby [set] for Wednesday, August 10, 1977 at 10:30 a.m."[7] In view of an urgent motion for two days extension of time to file a return, it was not until August 11 that it was submitted. The then Acting Solicitor General Vicente Mendoza[8] narrated the steps taken by the Court of Appeals from September 1, 1971 up to July 28, 1977 when counsel for petitioner filed a motion to hold in abeyance the retaking of proceedings by such tribunal until this petition was resolved and alleged as a special defense that there was no denial of the constitutional right to a speedy trial. He referred to the test set forth in *Acevedo v. Sarmiento*,[9] stating that such a right "means one free from vexatious, capricious, and oppressive delays."

It was not until the following Friday, August 12, 1977, that the hearing took place. On the same day, this resolution was issued by this Court: "When this case was called for hearing this morning, Attys. Herenio Martinez and Angela Valenzuela appeared and argued for the petitioner while Solicitor Celso P. Ylagan appeared and

argued for the respondents. Thereafter the Court Resolved to require the petitioner to file an amended petition within ten (10) days from today." [10] An amended petition was duly filed on September 27, 1977. It did not by any means lend added strength to the petition with the commendable admission that in at least four orders, dating from June 28, 1974 to March 18, 1976, the Court of Appeals had taken the necessary steps, including an order for the arrest of the missing stenographer. [11] There was an insistence on the plea, however, that the circumstances disclosed the denial of the right to the speedy disposition of his case. [12]

It was not unexpected, therefore, that in the return of respondents, filed on November 9, 1977, it was stressed that the alleged denial of petitioner's right to the speedy disposition of his case was devoid of "basis in law or in fact, * * *". [13] After noting that respondents could in no way be held liable "for the failure of stenographer Cortez to submit" his transcription, [14] it stated: "Neither has the Court of Appeals been remiss in its duty to speedily dispose of the appeal; on the contrary, as adverted to in paragraph 6 of the petition, it issued a series of orders and resolutions for the purpose of completing the stenographic notes, and thus, promptly disposing of the case," citing fourteen resolutions of the Court of Appeals from September 1, 1971 to July 28, 1977 to expedite the disposition of the appeal and the order of arrest of such stenographer as well as his transfer to the PC Stockade at Camp Crame. [15] The special defense that he was confined by virtue of a valid order or judgment was reiterated as he had been admittedly convicted of double homicide with serious physical injuries. [16] It was likewise set forth that he could have obtained his provisional liberty by posting the required bail fixed by the Court of Appeals. [17]

The weakness of the petition is thus apparent. His release cannot be ordered.

1. For all its broad, latitudinarian, even, scope, the range of inquiry in a habeas corpus application is considerably narrowed, where the detention complained of may be traced to judicial action. For if "the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ does not lie." [18] There is, though, this exception. As set forth in *Gumabon v. Director of Prisons*: "Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention." [19] That doctrine goes back to *Conde v. Rivera*, [20] decided in 1924, a case involving the right to speedy trial the denial of which, according to Justice Malcolm, would entitle a person "restrained of his liberty [to sue out] a writ of 'habeas corpus to obtain his freedom.'" [21] The latest case in point is *Flores v. People*. [22]

2. There is plausibility in the view submitted by the Office of the Solicitor General that the constitutional right to the speedy disposition of one's case, [23] a new provision in the Constitution, can be viewed in the same light as the traditional right to a speedy trial. In the pleadings filed by it, reference was made to the standard set forth in *Acevedo v. Sarmiento* [24] as to its signifying "one free from vexatious, capricious, and oppressive delays." [25] The *Acevedo* opinion traced its origin to the same case of *Conde v. Rivera*, where Justice Malcolm announced categorically that the trial, to comply with what was ordained by the then organic law, the Philippine Autonomy Act, must be "free from vexatious, capricious, and oppressive delays." [26] Even a cursory reading of the steps taken by the Court of Appeals to assure that petitioner's appeal could be resolved in accordance with the evidence submitted before the lower court would indicate that all the necessary steps had been taken to assure that a definitive judgment could be reached. Admittedly, there is delay, but it is not that kind of a delay that could be considered either capricious or oppressive. Again, there is an element of vexation that must be suffered by petitioner, but certainly it does not amount to that degree of annoyance, provocation, or distress that would justify a nullification of the appropriate and regular steps that must be taken to assure that while the innocent should go unpunished, those found guilty must expiate for their offenses. Clearly then, there is no justification for the granting of petitioner's plea for liberty.

3. In the course of the hearing of this application, reference was made to the aforecited case of *Flores v. People* where this Court granted a petition for certiorari filed by Francisco Flores and nullified an order of the Court of Appeals^[27] denying a motion to dismiss on the ground that there was a failure to comply with the constitutional mandate of a speedy trial. It is not applicable. It could be distinguished. In that case, petitioner Flores was accused of robbery on December 31, 1951 and was found guilty on November 25, 1955. An appeal was taken in December of that year. There was at first a resolution on February 10, 1958 by the Court of Appeals, remanding the records of the case to the lower court for the rehearing of the testimony of a certain witness deemed material for the disposition of the appeal. Thereafter, on August 5, 1959, another resolution was issued by the Court of Appeals granting petitioner's motion to set aside the decision. The case was therefore returned to the lower court. There the matter appeared to have rested. No further progress in the proceeding was discernible. Accordingly, on May 10, 1965, there was a motion in the Court of Appeals for the dismissal of the case. It was based on the denial of the constitutional right to a speedy trial. When the Court of Appeals failed to grant such motion to dismiss, the matter was taken to this Tribunal. Our decision granting the petition for certiorari is based on the following consideration: "Petitioners can thus invoke the constitutional guarantee that the trial should be speedy. In the absence of any valid decision, the stage of trial has not been completed. In this case then, as of May 10, 1965, when they moved to dismiss in the Court of Appeals, petitioners could validly contend that they had not been accorded their right to be tried as promptly as circumstances permit. It was not the pendency in the Court of Appeals of their cases that should be deemed material. It is at times unavoidable that appellate tribunals cannot, even with due diligence, put an end to suits elevated to them. What is decisive is that with the setting aside of the previous decision in the resolution of August 5, 1959, petitioners could validly premise their plea for dismissal on this constitutional safeguard. That is the sole basis for the conclusion reached by us - considering the controlling doctrine announced with such emphasis by this Court time and time again."^[28] There is a decisive difference therefore. In *Flores*, to all intents and purposes, after the resolution of the Court of Appeals setting aside the decision, no trial was held. The information, it must be remembered, was filed as far back as December 31, 1951. When the dismissal of the case was sought in a motion of May 10, 1965, a period of fourteen years had elapsed. In this application for the writ of habeas corpus, it is the pendency of appeal from a decision, which on its face carries a presumption of validity, after a trial duly held, that is made the basis for petitioner's plea for liberty. There is thus a crucial difference. It is our ruling that at this stage, considering further all the circumstances previously set forth, there is in law no transgression of the asserted constitutional right to the speedy disposition of a criminal case.

4. At any rate, the return of the Office of the Solicitor General to the amended petition pointed out that while such appeal is pending, petitioner could secure his liberty by posting the required bail. If petitioner is of the view that the amount fixed should be reduced, there is no obstacle to his presenting a motion to that effect to the Court of Appeals which could act on the matter.

WHEREFORE, this petition for habeas corpus is dismissed.

Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

Barredo, J., concurs in a separate opinion.

[1] Petition, par. 2, Annex B.

[2] *Ibid*, par. 4; C.A. G.R. No. 11116-CA.

[3] *Ibid*, pars. 5 and 6(a).

- [4] Ibid, par. 6.
- [5] Ibid, par. 7.
- [6] Ibid, par. 9.
- [7] Resolution dated August 3, 1977.
- [8] He was assisted by Assistant Solicitor General Santiago M. Kapunan and Solicitor Celso P. Ylagan.
- [9] L-28025, December 16, 1970, 36 SCRA 247.
- [10] Resolution dated August 12, 1977.
- [11] Amended Petition, par. 6.
- [12] Ibid, pars. 7 and 8.
- [13] Return of respondents to amended petition, par. 3.
- [14] Ibid, par. 7(8).
- [15] Ibid, par. 7(c).
- [16] Ibid, Special and Affirmative Defenses, pars. B to F.
- [17] Ibid, Special and Affirmative Defenses, par. F.
- [18] Rule 102 of the Rules of Court, Section 4.
- [19] L-30026, January 30, 1931, 37 SCRA 420.
- [20] 45 Phil. 650.
- [21] Ibid, 652. Cf. *Harden v. Director of Prisons*, 81 Phil. 741 (1948); *Abriol v. Homeres*, 84 Phil. 525 (1949); *Chavez v. Court of Appeals*, L-29169, Aug. 19, 1968, 24 SCRA 663; *Celeste v. People*, L-24135, Jan. 30, 1970, 31 SCRA 391; *Gumabon v. Director of Prisons*, L-30026, Jan. 30, 1971, 37 SCRA 420.
- [22] L-25769, December 10, 1974, 61 SCRA 331.
- [23] According to Article IV, Section 16 of the present Constitution: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."
- [24] L-28025, December 16, 1970, 36 SCRA 247.
- [25] Ibid, 249.
- [26] 45 Phil. 650, 651.
- [27] CA G.R. No. 16641-R, *People v. Flores*.

[28] 61 SCRA 331, 336-337.

CONCURRING OPINION

BARREDO, J.:

I concur.

However, I would like to explain more in detail why I am satisfied that petitioner has not been denied his constitutional right to speedy disposition of his case, even as I feel that the steps revealed by the record to have been taken by the government authorities concerned towards the termination of petitioner's appeal within the period contemplated for the purpose in the fundamental law may still stand improvement. I shall, therefore, try to underline and essay on some relevant points I have perceived, in the hope that more appropriate exacting norms and procedures may be adopted that might, to my mind, solve or at least alleviate the perennial problem of unnecessary delay in the termination of criminal cases.

Petitioner was arrested due to the charge against him of double homicide with serious physical injuries way back on May 27, 1968, more than ten (10) years ago. It took about two years for his trial to be terminated with a judgment of conviction on April 2, 1970. He perfected his appeal on April 12, 1970. And until now, the same is not even ready for adjudication by the Court of Appeals, only because the transcript of the stenographic notes of some of the material witnesses of the prosecution have not yet been submitted by the stenographer who took them down. In other words, after more than eight (8) years since his appeal was elevated to the Court of Appeals, the records are still incomplete. The steps taken to either compel the stenographer to comply with his duty or have the testimonies of the witnesses concerned retaken have not so far borne fruit. And so, Our task now is to determine whether or not said steps are adequate enough for the purpose of complying with the constitutional right of petitioner to speedy disposition of his case under Section 16 of Article IV, the Bill of Rights, in the Constitution, if not under Section 19 thereof on speedy trial.

It is to me beyond question that eight (8) years of pendency of an appeal in a criminal case, unless reasonably explained with a clear showing of definite efficient action to expedite the same by all means available to the government authorities concerned, is intolerably oppressive and should entitle the accused therein to immediate release or acquittal, absent any fault on the part of the appellant in such delay, and I have no doubt that the appropriate remedy in such premises is habeas corpus. Importantly must it be borne in mind that aside from the right to speedy trial, an accused person is now entitled under the New Constitution of 1973 to speedy disposition of his case, which naturally includes that of the appeal proceedings. (Bill of Rights, Sections 16 and 19.)

As may be culled from the Memorandum of respondents, submitted by the Solicitor General, the following is what the records show indisputably happened to the appeal of petitioner in CA-G.R. No. 1116-CR in the Court of Appeals:

After the appeal was perfected on April 12, 1970, the corresponding records were accordingly elevated to the Court of Appeals, except the complete transcript of the stenographic notes of the proceedings in the trial court and the testimonies of the witnesses thereat. After more than one year and four months that said transcript had not been completed, or on September 1, 1971, the Court of Appeals required the stenographer concerned, Jaime T. Cortez, to show cause why he should not be fined "for failure to submit his TSN within the prescribed period as extended. Not getting any results, late the following month, or, on October 25, 1971, the Court of Appeals resolved to impose upon him a fine of P50.00 and to give him ten (10) days from notice within which to submit the lacking transcript. Still there was no result, and so, on July 30, 1972 or after nine (9) months of vain waiting, the fine was increased by One Hundred Pesos (P100.00) and another ten (10) days were granted for the submission of the transcript.

After more than a month, on September 4, 1972, another resolution was issued requiring him to show cause why he should not be arrested and detained, which again yielded no compliance. On January 27, 1973, that is, almost five months later, the corresponding arrest warrant was issued, and on February 13, 1973 a report was made that he had been arrested and detained in the municipality of Binmaley, Pangasinan. Since, in spite of his arrest, no transcript had been submitted after practically seven (7) months, an inquiry as to what had happened was addressed to the Clerk of Court of the trial court, and when said clerk did not report after three (3) months, he was required to show cause why he should not be punished for contempt for such failure. The clerk eventually reported that he had in fact personally gone to Binmaley to direct the stenographer to submit the required transcript, and he had no explanation why still, the stenographer had not complied. However, on December 18, 1973, Cortez himself filed a certification that he would submit the transcript in question not later than January 15, 1974. When this date came, still there was no transcript.

On April 18, 1974, the Court of Appeals gave Cortez a last chance to submit the transcript within thirty (30) days. Nothing came out of this resolution. Meanwhile, on June 28, 1974, Cortez was transferred from the custody of the police of Binmaley to that of Philippine Constabulary Stockade in Camp Crame, but on July 5, 1974, the Chief of Police of Binmaley reported that he was transferred to the provincial jail of Pangasinan as there was a case of infidelity in the custody of public documents filed against him. On July 29, 1974, he was given another thirty (30) days to comply, but on August 8, 1974, it was reported that he had been released on bail.

On October 15, 1974, Atty. Candido P. Barcelona for the defense asked for the issuance of another warrant of arrest, or, in the alternative, that the retaking of the testimonies of the witnesses concerned be ordered. On October 25, 1974, his arrest was ordered, but on January 25, 1975, the Constabulary reported he could not be located, hence, on February 5, 1975, the parties were -- but for the first time -- asked if they had copies, otherwise retaking would be ordered, and as none of them had, on April 10, 1975, the retaking requested was ordered to be done within sixty (60) days, with transcript of the corresponding stenographic notes to be submitted within thirty (30) days after the retaking. The trial court accordingly set the retaking on July 1, 2 and 3, 1975.

For one reason or another said retaking did not however go through. On October 25, 1975, the trial court returned the records to the Court of Appeals with the information that Cortez had promised to transcribe the notes in forty-five (45) days and to submit the same to the Court of Appeals. In fact, he asked for an extension of ninety (90) days, but he was given only thirty (30).

After the lapse of more than ninety (90) days, on February 9, 1976, the promised transcript had not yet been submitted. Another order for his arrest was issued, but it was reported on March 18, 1976 that he could not be contacted. And so, on August 6, 1976, the Constabulary was asked to shed light on what was happening. In the meanwhile, on October 1, 1976, the Court of Appeals issued another order for the retaking of the testimonies concerned again within sixty (60) days, the transcript of the notes thereof to be submitted after thirty (30) days. And, in fact, said retaking was set by the trial court for February 1, 2, 3 and 4, 1977. Nothing appears in the record as to why such retaking did not take place. What appears is that on March 14, 1974, the trial court postponed the retaking because the private prosecutor, Atty. Norberto Herrera gave the court the assurance that he might have some of said TSN with him. But tired of waiting, the defense informed the court that the instant petition would be filed.

I have taken pains to make a more or less complete recital of what happened with petitioner's appeal up to the filing of the instant remedy because I believe it is only in this way that everyone concerned, particularly those deeply involved in the protection of human rights and the faithful observance of the constitutional provisions guaranteeing them, will be able to understand why the petition herein can be justly denied. Indeed, it is quite obvious that the Court of Appeals who had the primary responsibility in the premises may be said to have done

everything that under existing loose standards and procedures it could do to expedite the proceedings. However, as I have indicated at the outset, I feel that there are some particular points that should be highlighted to the end that corresponding adjustments may be adopted in order that the concept of speedy disposition of criminal cases newly contemplated in the fundamental law of the land may be best approximated. Existing jurisprudence that somehow confine the right of the accused to speedy trial, and seemingly unconcerned about delay in the termination of his appeal is now a thing of the past. It has become the bounden duty of the courts to adjust the procedures presently observed, which are not really oriented to the most expeditious and fast completion of the records.

Fundamentally, the ideally speedy disposition or termination of judicial proceedings can be attained only if there is adequate coordination among all the parties concerned, namely, the men manning the courts and the litigants and the members of the Bar. The judges, parties, the clerks of court, the stenographers and the litigants and their counsels -- the prosecuting officers and the accused and counsel in criminal cases and the respective parties and their lawyers in civil cases -- have to work together, if the wheels of justice are to grind as expected by the new standards of speedy justice in the Constitution of our New Society. Taking the unfortunate incidents that have happened in petitioner's appeal as examples of what should not be, I believe it is best that there be definite standard procedures with set periods of time for each successive steps towards the completion of the necessary records.

In petitioner's appeal, it was not until after one (1) year and four (4) months, from April or May, 1970 to September, 1971 that the stenographer was warned by the Court of Appeals with disciplinary action for failure to submit the transcript in question. That period was more than a year too long. True it is that the court waited only for one month to impose upon him a fine of P50.00 and to give him ten (10) days to submit said transcript, but again, nine (9) months passed before another fine of P100 was imposed. Besides, while it took only thirty-four days to issue a warning that he would be arrested, it was almost five (5) months afterwards before the warrant was actually issued.

Withal, it is difficult to understand why inspite of being under detention for more than one (1) year and seven (7) months, the stenographer remained adamant in not complying with the orders of the court. Moreover, how was he released on bail, when there was the contempt arrest ordered by the Court of Appeals? The bail bond was for his case of infidelity, but that was different from the contempt case.

And then, it was only on February 5, 1975 that it occurred to the Court of Appeals to inquire from the parties if they had their own copies of the transcript. That was three (3) years and five (5) months too late, for that should have been done from the outset. On the other hand, the parties or their counsel -- the fiscal, private prosecutor or defense counsel -- should have volunteered the information earlier, if any of them did have any copy, but it was only on March 14, 1977, or practically after seven (7) years that Atty. Norberto Merrera, the private prosecutor, informed the trial court that he might have such copy, but up to now there is no showing as to whether or not he actually had such copy.

On October 25, 1974 another warrant of arrest was issued, but the stenographer concerned could not be found. In the meanwhile, the retaking of the corresponding testimonies was ordered on April 10, 1975 -- after five years of waiting. I believe this should have been done earlier. But worse, the records were returned by the trial court to the Court of Appeals because Cortez promised to submit the transcript within forty-five (45) days, which he failed to do notwithstanding an extension of thirty (30) days granted him. In fact, the ninety (90) additional days he asked expired without his being able to comply.

And so, another order to retake was issued on October 1, 1976. The trial court set said retaking for February 1, 2,

3 and 4, 1977, only to be cancelled upon information that, as already stated above, the private prosecutor might have a copy. Thus, when no such copy could be produced, the petitioner refused to go through another period of waiting and filed the present petition.

In other words, there is here the sorry spectacle of a court stenographer being able to stop the wheels of justice, with the government, more particularly the courts, being seemingly unable to meet the situation as expeditiously and adequately as its constitutional duty to secure to petitioner speedy termination of his cases demands. Certainly, the conduct of said stenographer, unexplainable or incomprehensible as it may appear to be, is no excuse, much less a justification, for Us to be fully satisfied with the steps taken by the courts below as related above. I believe it is Our duty as the Supreme Court having supervisory authority over the whole judiciary to see to it that any similar unfortunate experience is avoided.

To such end, I strongly feel there should be a set procedure providing for the step by step actions that should be taken when there is delay in the submission of transcripts of stenographic notes to the appellate courts. This chain of actions must operate automatically without the need of further resolutions of the Court, except when it comes to the issuance of warrants of arrests. The imposition of fines should be provided for in a general resolution, together with the authority of the corresponding cashiers of the courts concerned to make due deductions from the salaries of the delinquent stenographers. Extensions of time for submission of transcripts should not be given as a matter of course. The grounds therefor should be looked into with the assistance of the trial judges, and there should be a maximum of extensions. If notes have already been transcribed, one duly authenticated copy thereof should always be kept by the clerk of court, ready for any eventuality. The stenographers should be duly directed along these lines. All these and more should be done. To be sure, the Rules of Court contain provisions pertinent thereto, (Sec. 12, Rule 41; Sec. 7, Rule 122) but evidently, the omission of a fixed period therein, insofar as civil cases are concerned, and the broad expression "without unnecessary delay" in regard to criminal cases, cannot spur enough the stenographers and clerks concerned to be more concerned than they used to be under the Old Charter. In other words, a system should be devised by which the time needed to complete all records needed by the appellate court could be reduced to not more than a year or at the most eighteen (18) months. I feel this is not impossible. Indeed, if I have decided to concur in the denial of the instant petition, it is only because what has been done by the Court of Appeals and the other officials concerned conforms more or less with existing procedures, presumed to be reasonable. Besides, at the hearing of this case, the members of the Court gathered the impression that somehow the accused could have something to do with the stenographer's conduct disclosed above. In any event, it is high time everyone concerned woke up to the fact that unless drastic steps are taken in the right direction, things will be worse later. The Constitution enjoins We should do something more for the attainment of its ideals of justice and human rights. I know We can do it.

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