

**PEOPLE OF THE PHILIPPINES, REPRESENTED BY ROMIE V. BRAGA,
ASSISTANT PROVINCIAL FISCAL OF PANGASINAN, PETITIONER, VS.
HON. MAGNO B. PABLO, JUDGE OF THE COURT OF FIRST INSTANCE
OF...**

G.R. No. L-37271. June 25, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Before the Court of First Instance of Pangasinan, Branch XIII, Alaminos, Pangasinan, Rogelio Carace, Godofredo Carace, Gil Castrence, Rogelio Caranza and Damian Senit were charged with Homicide in an information filed on February 6, 1973, for the killing of Benjamin Atcha (Criminal Case No. 254-A).

Arraigned on March 29, 1973 before Hon. Magno B. Pablo, all the aforementioned accused pleaded not guilty. Hearing started on April 23, 1973 and was reset on May 3, 1973 after the presentation of state witness Pepito Ordonio, there being another case also scheduled for hearing.

On May 3, 1973, the prosecution moved for postponement, and without objection on the part of the defense, trial was postponed to May 29 and 30, 1973. One witness, Eudocia Caspi, and two witnesses, Irene Torino and Derico Tacadena, were presented on May 29 and 30, respectively.

Trial was reset for continuance on June 13 and 22, 1973. On June 13, 1973, only one witness, Santiago Atcha, was presented for lack of material time, and on June 22, 1973, Santiago Atcha was cross-examined, after which the prosecution moved for postponement, and without objection on the part of the defense, hearing was reset for July 17, 1973.

On July 17, 1973, for failure of its last witness, Dr. Francisco Q. Duque, to arrive, the prosecution moved for postponement on the ground that Dr. Duque is a vital and indispensable witness who would testify on the cause of death of the victim in this case, Benjamin Atcha.

The presiding judge, Hon. Magno B. Pablo, denied the motion for postponement and ordered the prosecution to proceed with the presentation of its evidence. The prosecuting fiscal asked for reconsideration of the order denying the motion for postponement, but the judge denied the motion for reconsideration, prompting the prosecution to file a second motion for reconsideration in writing, signed by both the fiscal and the private prosecutor, stating inter alia:

"4. That this is the first time that the prosecution is moving for a postpone-ment of this case on the ground of the absence of the last witness Dr. Francisco Q. Duque and it appears on the records that the subpoena sent to Dr. Duque was received by his secretary who may not have conveyed the same to Dr. Duque and the second time on the part of the prosecution since the beginning of the hearing on this case;

"5. That to serve the better ends of justice the prosecution should be given another opportunity at least to secure and resort to other processes to enable it to present Dr. Francisco Q. Duque at the next scheduled

hearing." (pp. 4-5, Rollo)

Presiding Judge Magno B. Pablo denied the written second motion for reconsideration. Forthwith, the prosecution asked for 10 days within which to elevate the question of the propriety of the denial of the second motion for reconsideration to the appellate court. What transpired on this request is recorded as follows:

"FISCAL:

'In view of the fact, and in view of the denial of this Honorable Court of our second motion for reconsideration, may we pray that we be given ten days within which to elevate this incident to the appellate court.

"COURT:

'Alright, you better elevate this to the appellate court if you think . . interrupted.

"ATTY. TAMAYO:

'May we pray that their petition be made in writing so that we could make our corresponding answer thereto, since the prosecution is elevating this incident to the appellate court, Your Honor.

"COURT:

'Well, it is up to the prosecution to do so, they may elevate this case of the appellate court.'

(Transcript p. 8, July 17, 1973, italics ours)

"ATTY AREOLA:

'Your Honor please, we have here a pending motion for continuance and in view of the denial of these motion for reconsideration, may we pray for ten days within which to elevate this case to the appellate court, Your Honor.

"COURT:

'Alright, you can do that, we do not have to preclude or prevent you in elevating this incident to the appellate court if you think that the Court exceeds his discretion or his authorities, in compelling the prosecution to proceed with the hearing of this case then the Court is willing to be corrected."

(Transcript pp. 10-11, July 17, 1973) (pp. 74-75, Rollo)

Despite the granting of the request for ten (10) days within which to elevate the incident of the denial of the motion for postponement, Judge Pablo granted a "Motion to Consider Prosecution's Case Rested and Motion to Dismiss" filed by the defense in the afternoon of the same day, July 17, 1973, in an order also dated July 17, 1973, acquitting all the accused for failure on the part of the prosecution to prove beyond reasonable doubt their guilt, with cost de oficio, without giving the prosecution time to file its opposition to the aforesaid motion, which the prosecution in fact filed promptly on July 18, 1973 after receipt of a copy of the defense motion of July 17, 1973.

On July 19, 1973, the presiding judge issued an order which reads:

"For the purpose of making the record straight, what has been stated in the third par. of the prosecution's OPPOSITION TO MOTION TO CONSIDER PROSECUTION'S CASE RESTED AND MOTION TO DISMISS, dated and filed July 18, 1973, at 1:45 P.M. to the effect that the court has given the prosecution ten days to elevate by certiorari to the appellate court, the order denying the prosecution's "SECOND MOTION FOR RECONSIDERATION" is not correct because such order is interlocutory, otherwise, the denial by the court of the prosecution's motion for continuance will be defeated." (p. 13, Rollo)

To the above order, the prosecuting fiscal immediately filed a motion for clarification and prayed that the court's order of July 18, 1973 be clarified, and that it issues an order expressly granting, as requested, the prosecution ten (10) days from July 17, 1973 within which to elevate the matter of the court's denial of the prosecution's motion for postponement of the hearing of the case.

The prosecution's motion for reconsideration filed on July 18, 1973 and its motion for clarification were both set for hearing on July 20, 1973. However, on July 19, 1973, the court issued an order amending *motu proprio* its order of July 17, 1973 by ordering "the dismissal of the case" instead of "the acquittal of the accused". And on July 20, 1973 when its motion for reconsideration was argued orally by the prosecuting fiscal, the court denied the motion without issuing any formal order.

Upon the foregoing facts, this petition for certiorari and mandamus was filed on August 10, 1973 with the following prayer:

"WHEREFORE IN VIEW OF ALL THE FORE-GOING CONSIDERATION, petitioner pray that this petition be given due course and a writ of certiorari and mandamus be issued ordering the proceedings herein complained of to be certified up for review and after due hearing let judgment be rendered:

- Declaring the orders of respondent Judge Magno B. Pablo dated July 17, and 19 denying the prosecution's motion for postponement, denying its motion for reconsideration and the order acquitting the accused or dismissing the case null and void;
- Ordering the respondent Judge Magno B. Pablo to proceed with the hearing of Crim. Case No. 254-A;
- Such other and further relief as are just and equitable under the premises." (p. 18, Rollo)

We are constrained to hold that the action of the respondent judge, Hon. Magno B. Pablo in issuing the orders denying the prosecution's motion for postponement and grant-ing the defense motion to consider the prosecution case rested and to dismiss the case, as tainted with grave abuse of discretion.

The motion for postponement was fully justified. It is based on the absence of Dr. Francisco Duque who is the last and a very vital prosecution witness, whose attendance was religiously sought by the prosecution by asking for the issuance of a subpoena each time the case was set for hearing. The respondent judge ought to know that it is Dr. Duque's testimony that will prove the causal relation between the wounds inflicted by the accused who assaulted the victim, and the latter's death. The alleged denial of the right to speedy trial as constitutionally granted to the accused was a flimsy ground for the court to deny the postponement as requested by the prosecution, much less to dismiss the case, without even a recital of the facts as established by the evidence already presented, which appears to have at least proved the commission of a crime by the accused against the victim, although perhaps a lesser one than the offense charged.

There are several actions which the respondent judge could and should have taken if he had wished to deal with the case considering the gravity of the crime charged, with fairness to both parties, as is demanded by his function of dispensing justice and equity. But he utterly failed to take such actions. Thus, he should have first given warning that there will definitely be no further postponement after that which he reasonably thought should be the last. He should also have ascertained whether Dr. Duque had personally known of the subpoena, so that if despite his personal knowledge thereof, he failed to come to court, his arrest may be ordered, as is the precise procedure enjoined upon the court to follow under Section 11, Rule 23 of the Rules of Court which provides:

"SEC. 11. Compelling attendance. - In case of failure to attend, the court or judge issuing the subpoena, upon proof of service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the province, or his deputy, to arrest the witness and bring him before the court or officer where his attendance is required, and

the costs of such warrant and seizure of such witness shall be paid by the witness if the court issuing it shall determine that his failure to answer the subpoena was willful and without just excuse." (p. 71, Rollo)

The authority of the court to order such arrest and to declare one, not obeying a subpoena, in contempt of court as provided in Section 12 of the same Rule, is deemed necessary for an effective and fair administration of justice and to impose due respect to the judicial process of which the courts are its most visibly majestic symbol. The court's failure to exercise sound discretion in denying the prosecution's motion for postponement is to Us palpable, in the light of the lack of objection on the part of the defense on the prosecution's second motion for postponement, as shown by the following recorded proceedings:

"COURT: (To Atty. Tamayo)

'Before we will proceed with the case, did you receive the written motion?

"ATTY. TAMAYO:

'Yes, Your Honor.

"COURT:

'What do you say to that?

"ATTY. TAMAYO:

'We submit to the discretion of the Honorable Court.

"COURT:

'You have any objection?

"ATTY. TAMAYO:

'We submit, Your Honor.'"

(Transcript p. 7, July 17, 1973). (pp. 71-72, Rollo).

The records also disclose that trial was never postponed due to the non-appearance of Dr. Duque. The first and only postponement sought on that ground was denied.

Having failed in exercising his rightful authority as indicated above, the respondent aggravated his indiscretion by not only denying the motion for postponement, but also in immediately granting the defense written motion to consider the prosecution's case rested, without giving the prosecution a chance to oppose the same, and without reviewing the evidence already presented for a proper assessment as to what crime has been committed by the accused of which they may properly be convicted thereunder, acquitted the said accused, although, realizing later the improvidence in his action, he amended his order of acquittal of the accused to that of dismissal of the case. It is in completely ignoring the evidence already presented, for no mention thereof was made in its order of July 17, 1973, dismissing the case, on motion of the defense, which in reality is a demurrer on the evidence, that the respondent judge committed a grave abuse of discretion for disregarding plain procedural requirement, not a mere error of judgment.

The order of dismissal, under the circumstances pointed out above, would amount to an acquittal because evidence had already been presented by the prosecution. An evaluation of said evidence is thus indispensably required, where, as in this case, the evidence presented even if the prosecution's case is considered submitted at a stage short of the presentation of its complete evidence, obviously suffices to prove a crime, even if a lesser one

than the offense charged. The dismissal was sought to be justified upon an invocation of, the right to speedy trial. Precisely, the respondent judge, allegedly, to avoid a violation thereof, denied further postponement. It is therefore, a palpable error to base the dismissal of the case, as the respondent judge did, on the ground of the violation of accused's right to speedy trial. If at all, the dismissal may be decreed by reason of the failure of the pro-se-cution to prove the guilt of the accused of any crime under the information, even on the basis of the evidence presented when its case was deemed submitted on motion of the defense. The respondent court, however, failed utterly to show this to be what actually obtained after the hearings held on at least six days, as the order of the respondent judge acquitting the accused, or dismissing the case, as he later amended his order, made no mention whatsoever of the evidence presented by the prosecution during the six times the case was set for hearing merely stating, by way of an obviously baseless conclusion, that the guilt of the accused has not been proved beyond reasonable doubt. The basis of the dismissal of the case is, therefore, both legally and factually incorrect. In his answer, the respondent judge stated that he dismissed the case on the strength of the following cases:

"After the prosecution's motion for postponement of the trial is denied and upon order of the Court, the Fiscal does not or cannot produce his evidence and consequently fails to prove the defendant's guilt, the Court upon defendant's motion shall dismiss the case, such dismissal amounting to an acquittal of the defendant." (Gandicela vs. Lutero, L-4069, May 21, 1951 and People vs. Diaz, L-6518, March 30, 1954).

"The Court below did not abuse its dis-cretion in refusing to grant any further postponement, and upon refusal or inability of the Fiscal to proceed, it did not err in dismissing the case." (People vs. Barroya, 61 Phil., 318, VI L. J. 825).

"The right to a speedy trial guaranteed by the Constitution was adopted and enforced upon considerations borne of past experiences and was intended to prevent the government from oppressing its citizens by allowing criminal prosecution suspended or hanging over them for an indefinite time, and thus incidentally forestall delays in the administration of justice. For the enforcement of this consti-tutional precept, judges are under obligation to proceed with reasonable dispatch in the trial of criminal cases". (Benavides vs. Hon. Maglanoc, CA-G. R. No. 28307, Jan. 31, 1961). (pp. 47-48, Rollo).

If as admitted by the respondent judge, he dismissed the case solely on the alleged violation of the accused's right of speedy trial, the records will show that there was no such violation, for on the day the case was last set for hearing on July 17, 1973, and because of the absence of the last witness of the prosecution, the latter moved for postponement, the court denied the motion precisely to protect the right to speedy trial from being violated despite that, as previously shown, even the defense did not insist on its objection to the second written motion for postponement leaving the matter to the sound discretion of the court. All previous hearings saw the prosecution presenting its witnesses in the most normal course of the proceedings. No delay whatsoever was complained of by the defense, for it left the matter of postponement as requested by the prosecution entirely to the court's discretion. As previously noted, there has been no single postponement based on the non-appearance of Dr. Duque the first one sought on that ground having been denied by the respondent judge who is, on that account now made a respondent in this instant petition. We hold that under the circumstances, the respondent judge gravely abused its discretion in not granting the postponement prayed for. As the Solicitor General has pointedly argued:

"Applications for continuance are addressed to the sound discretion of the court. This discretion should, however, be exercised in such a way as to subserve justice. In the case at bar, the denial of petitioner's motion would clearly result in a miscarriage of justice, especially consi-dering the fact that the prosecution had already established that the accused had inflicted blows on the deceased and all that remained to be proven was that death resulted from the assault. As this Court stated in a similar case:

'In passing upon applications for continuance in a criminal case, the court should bear in mind that it is the

guardian of the rights of the accused as well as those of the people at large, and should not unduly force him to trial, nor for light causes jeopardize the rights or interest of the public." (22 C.J.S. 742) (People. vs. Romero, 93 Phil. 128, 132) (pp. 72-73, Rollo)

It may be added that the right of the offended parties, who usually take active part in the trial, are equally entitled to the protection offered by the courts to the public at large when trying a criminal case.

Aside from this series of missteps and legal error committed by the respondent judge, which in their totality clearly constitute grave abuse of discretion, the records also show that the court, after denying the second motion for postponement filed in writing by the prosecution, granted, on request, the latter ten (10) days within which to elevate the matter of the denial of the aforesaid second motion for reconsideration. The respondent denies this fact, but We find the records demonstrably showing respondent's denial totally devoid of truth. His alleging that to grant said request would be to defeat his act of denying the motion for postponement seems only to show the erratic turn of his mind. There is nothing inconsistent between denying the motion for postponement and allowing the denial to be tested by a higher court where it is alleged that the respondent judge in denying postponement, committed a grave abuse of discretion. A judge who refuses to have his judicial acts tested in a higher court would be acting with tyranny, a judicial norm hardly proper of one exercising judicial function in the lower echelon of the judicial hierarchy.

While the respondent judge never raised the issue of double jeopardy, the private respondents may have in mind invoking the principle of double jeopardy, although not expressly, when they contend that the dismissal of this case amounts to an acquittal (p. 5, Memorandum for Private Respondents). The principle, however, may not be successfully invoked because the action of the respondent judge complained of in this petition being clearly one constituting grave abuse of discretion, same amounts to lack of jurisdiction which would prevent double jeopardy from attaching (People v. Cabero, 61 Phil 121; People v. Surtida, 43 SCRA 29; and People v. Navarro, 63 SCRA 264).

Moreover, in the cases where double jeopardy was sustained, dismissal was due to failure of the prosecution to present evidence, and after the dismissal, an entirely new information was filed for the same act or one included in the act previously charged. In this case, only one information was filed, and this petition is a mere incident of the criminal proceedings taking place in the court of respondent judge under that single information, in one continuous process, to question the legality of the judge's action in terminating the case, the way he did, which, as already intimated, was in grave abuse of discretion, amounting to lack or excess of jurisdiction. (See People v. Gomez, 20 SCRA 293; People v. Catolico, 38 SCRA 389; People v. Balisacan, 17 SCRA 1119).

FOR ALL THE FOREGOING, the order of the respondent judge dismissing Criminal Case No. 254-A of the Court of First Instance of Pangasinan, Branch XIII, Alaminos, Pangasinan is hereby set aside. The respondent judge is hereby ordered to set the case for further proceedings by having the accused therein arrested to face further trial subject to their right to bail, the prosecution to be given reasonable time and opportunity to complete the presentation of its evidence. No costs.

SO ORDERED.

Makasiar, Fernandez, and Guerrero, JJ., concur.

Teehankee, (Chairman), J., in the result.

Melencio-Herrera, J., took no part.

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