

**WILSON SERINO, PETITIONER, VS. HON. MARIANO A. ZOSA,
PRESIDING JUDGE, BRANCH 3, COURT OF FIRST INSTANCE OF
MISAMIS OCCIDENTAL AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

G.R. No. L-33116. August 31, 1971

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/684f6eae39e7/>

MAKALINTAL, J.:

This is a petition for certiorari with pre-liminary injunction. The petitioner, Wilson Serino, was charged with murder for the death of one Jose Maghuyop, under an information filed by the Assistant Provincial Fiscal of Misamis Occidental with Branch III of the Court of First Instance of said province, presided by now respondent Judge Mariano A. Zosa. After several postponements of the trial, petitioner having been arraigned and having entered a plea of not guilty, the case was called for hearing on December 9, 1970.

The transcript of the stenographic notes taken of the proceedings, certified by the court stenographer-recorder, reads as follows:

"This case was called for trial at about 8:40 on December 9, 1970 and thereafter -

ASST. FISCAL CELSO CONOL: Appearing for the pro-secution, Your Honor. We are ready and that our move is to delegate the handling of our witnesses to the Private Prose-cutor, Ex-Fiscal Diosdado Bacolod, without, however, re-linquishing our control over the same.

ATTY. DIOSDADO BACOLOD: Appearing as private prosecutor, Your Honor.

ATTY. ALARIC P. ACOSTA: For the defense, we are ready, Your Honor.

COURT: We have to finish first the last evidence for the defendant in civil case No. 2762; and will call this case after.

ATTY. BACOLOD: We agree, Your Honor.

(The trial of the civil case proceeded)

After the trial of civil case and at about 10:30 A.M. the same date, this case was again called and –

ATTY. ACOSTA: We are ready, Your Honor.

COURT: Where are the pro-secution? (Nobody appeared) Go to Fiscal's office and notify them. (Bailiff went outside and after few minutes):

BAILIFF: Fiscal Conol is in the other sala and Atty. Bacolod is not there.

COURT: Order: For failure of the prosecution to appear this morning, this case is dismissed with costs de oficio; and the can-cellation of the bail bond posted for the provisional release of the accused.

In the afternoon of the same day, December 9, 1970, the Assistant Provincial Fiscal and the private pro-secutor filed a motion for reconsideration of the order of dismissal, alleging that after the court announced that it would first hear the civil case before it and then call the criminal case later they withdrew from the courtroom, the Fiscal heading for the courtroom of Branch I to handle another case there, and the private prosecutor for the office of Assistant Provincial Fiscal George L. Siton to interview a witness who had arrived late, both of them "expecting that the court bailiff would notify (them) as soon as the trial of the civil case was terminated." They returned to the session hall of respondent Judge after ten o'clock the same morning, only to find that the case had already been dismissed.

The motion for reconsideration was supported by the affidavits of the court bailiff and of the chief clerk of the Provincial Fiscal's office. The bailiff affirmed that he was instructed by respondent Judge to look for Fiscal Celso Conol, whom he found in another sala conducting the direct examination of a witness in a criminal case then being tried there; that the Fiscal told him to look for the private prosecutor, Attorney Diosdado Bacolod, but that he did not do so because the instruction he had received from the Judge was only to look for the Fiscal. The chief clerk, on his part, affirmed that when the bailiff came to him and inquired as to the whereabouts of Fiscal Conol, the private prosecutor was actually in the room of Assistant Fiscal Siton, but that he did not volunteer such information because the bailiff did not ask him about it.

Respondent Judge, in an order dated December 14, 1970, granted the motion for reconsideration "in the interest of justice," set aside the previous order of dismissal and reinstated the case. It is from that order of December 14 that the accused, Wilson Serino, came up to this Court on certiorari, claiming that under the decisions of this Court^[1] the dismissal of the case, made unconditionally and without reservation, was equivalent to an acquittal, which "became final immediately after promulgation and could no longer be recalled for correction or reconsideration, with or without good reason." In essence, the ground on which the petition is based is that the reinstatement of the case placed the petitioner in double jeopardy for the same offense.

The basis of the dismissal of the case in *Lagunilla vs. Reyes* was the apparent lack of interest on the part of the complainant to prosecute the case, counterpoised by the constitutional right of the accused to a speedy trial. It there appeared that when the case was called the Fiscal asked for postponement on the ground that the complainant and his witnesses were not present although they had been duly notified of the trial. The accused thereupon moved for dismissal, but the court waited until later in the morning and granted the motion only when it became obvious that they would not show up at all. This Court, in holding that the dismissal was proper and that it had the effect of an acquittal, reviewed previous decisions on the point and said:

"In the case of *Gandicela vs. Hon. Lutero*, L-4069, May 21, 1951, we held that if the prosecution asks for the postponement of the hearing and the court believes that the hearing cannot be postponed without violating the right of the accused to a speedy trial, the court should deny the postponement and proceed with the trial, and if the fiscal fails to prove the defendant's guilt beyond a reasonable doubt, the court, upon the motion of the defendant, should dismiss the case; and that this dismissal is not in reality a dismissal in the general sense but an acquittal based on the failure of the prosecution to prove the defendant's guilt, which bars another prosecution for the same offense.

"Later, in the case of *People vs. Diaz*, L-6518, March 30, 1954, wherein the prosecution was not even present at the trial, we reiterated the *Gandicela* ruling, pointing out that there was more reason to dismiss the case upon the instance of the accused because the prosecution was not even present on the day of the trial so as to be in a position to proceed with the presentation of evidence to prove the guilt of the accused, and that said dismissal should likewise be regarded as an acquittal.

Still later, in *People v. Tacneng*, L-12082, April 30, 1959, wherein the prosecution, after asking for several postponements, confessed to the court that it was not ready for trial because none of its witnesses had

appeared, and the accused, invoking his constitutional right to a speedy trial, asked for dismissal, and the court dismissed the case, we also ruled that such dismissal amounted to an acquittal.

Finally, in the case of *People vs. Robles*, L-12761, June 29, 1959, where-in the court ordered dismissal of the case upon the motion of the accused because the prosecution was still not prepared for trial after several post-ponements, we again held that the dismissal was tantamount to an acquittal that would bar further prosecution of the accused for the same offense."

The case at bar presents a different set of facts. The prosecution was ready to enter into trial, as the transcript of the proceedings hereinabove quoted reveals. Both the Assistant Provincial Fiscal and the private prosecutor were readily available, having merely stepped out of the courtroom when the Judge announced that he would first finish the trial of another case. What prompted the Judge to dismiss the case, as stated by him in his subsequent order of reconsideration, was that "when (he) asked for the prosecution panel to come to court for trial, he was told to wait for them," and that he considered the same an "assault on the dignity of the court." This is not borne out by the transcript of record; but assuming that the statement was true it serves only to emphasize the groundless and precipitate character of the order of dismissal. The assault on the court's dignity would have justified a citation for contempt, but certainly not the outright dismissal of the case, considering that there had been no violation of the right of the accused to a speedy trial and that, consistently with such right, the plea of the complainant for redress as well as the paramount interests of justice were no less entitled to protection from the court. Respondent Judge must have realized this when he recalled his order of dismissal and reinstated the case; and we hold that under the circumstances he did so correctly since the said order did not amount to an acquittal, having been issued in disregard of the requirements of due process.

In the case of *People vs. Hon. Amado Gomez et al.*, 20 SCRA 293, May 29, 1967, notice of the trial of a criminal case in the Cebu Court of First Instance was not served upon the Special Prosecutor who was actively handling the said case. An Assistant Fiscal appeared and manifested that he was not ready because the records were with the Special Prosecutor, who was even then attending to another case in Tacloban City. The Fiscal's request for postponement was denied and the case was dismissed. It was the first such request made by the prosecution, after a considerable delay in the trial due to several legal maneuvers on the part of the defense. This Court, speaking through Mr. Justice Jose P. Bengzon, said that the dismissal was purely capricious, a grave abuse of discretion amounting to excess of jurisdiction, and held:

"A purely capricious dismissal of an information as herein involved, moreover, deprives the State of fair opportunity to prosecute and convict. It denies the prosecution its day in court. Accordingly, it is a dismissal without due process and, therefore, null and void. A dismissal invalid for lack of a fundamental requisite, such as due process, will not constitute a proper basis for the claim of double jeopardy (*People vs. Balisacan* L-26376, August 31, 1966, *Tilghman v. Mago* [Fla.] 82 So. 2d 136; *MacCleary v. Hudspeth*, 124 F. 2d 445)

Under the circumstances of the present case there is reason to hold, even more than in the case just cited, that the order of dismissal issued by respondent Judge was null and void for lack of due process, and hence was correctly set aside by him thereafter.

Wherefore, the writ prayed for is denied and the preliminary injunction is dissolved, without pronouncement as to costs.

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

[1] *Lagunilla vs. Reyes*, 1 SCRA 1367 and cases therein cited.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.