

ROMEO JACA, PETITIONER, VS. MANUEL BLANCO, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, RESPONDENT.

G.R. No. L-2792. May 23, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

Romeo Jaca was accused before the Court of First Instance of Iloilo of triple homicide thru reckless imprudence. After arraignment the case was called for trial at 8:06 in the morning of February 3, 1949, and counsel for the accused entered his appearance. The accused was also present. But as nobody appeared for the prosecution, the court then and there dismissed the case without prejudice. Four minutes later counsel for the private prosecution arrived, followed a little later by the City Fiscal together with the witnesses for the prosecution, and explained to the court that their tardiness was due to the fact that the chauffeur of the jeep in which they were riding was detained by a policeman for driving on the wrong side of the street. Satisfied with the explanation, the respondent judge set aside the order of dismissal and reset the case for trial on the following morning, February 4, 1949. On that date counsel for the accused asked for the postponement of the trial until February 16, and the respondent judge granted the request. In the meantime, that is to say, on February 5, 1949, counsel for the accused moved for the reconsideration of the order of the court setting aside its order of dismissal and reinstating the case, on the ground that the court had exceeded its jurisdiction in so doing.

That motion having been denied, the accused filed the present petition for certiorari, contending that by setting aside its order of dismissal and reinstating the case, the respondent judge placed him in double jeopardy inasmuch as he had been arraigned and the dismissal of the case was without his express consent.

The accused-petitioner relies upon section 9 of Rule 113, which reads as follows:

"Sec. 9. Former conviction or acquittal or former jeopardy.—When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."

We hold that the dismissal contemplated in the above-quoted section of the rule is a definite or unconditional dismissal which terminates the case, and not a dismissal without prejudice as in the present case. In the absence of any statutory provision to the contrary, we find no reason why the court may not, in the interest of justice, dismiss a criminal case provisionally, i.e., without prejudice to reinstating it before the order becomes final or to the subsequent filing of a new information for the same offense. If the accused should deem such conditional or provisional dismissal to be unjust and prejudicial to him because he has been deprived of his right to a speedy trial, as for instance where the case has dragged on for an unreasonably long time without his fault, he could and should object to such dismissal and insist that the case be heard and decided on the merits. Upon such objection

and insistence of the accused, if the prosecution does not present its evidence and if its failure to do so is unjustified, the court should dismiss the case for failure to prosecute. Such dismissal would come under the purview of section 9, Rule 113.

In the present case the information was filed on or after October 12, 1948; the accused, who was at liberty on bail, was arraigned on January 15, 1949, when the case was first set for trial; but the trial did not take place then because the respondent judge was in Manila, and although the private prosecutor appeared with his witnesses, neither the accused nor his attorney appeared. At the request of the private prosecutor the case was reset for trial on February 3, 1949, when the fiscal and the private prosecutor with their witnesses appeared four minutes after the case had been called. Both the accused and his attorney were present when the respondent judge dictated the order of dismissal without prejudice, but interposed no objection thereto. Under the circumstances we find no violation of any constitutional right of the accused by the respondent judge in reconsidering his previous order of dismissal a few minutes after it was dictated and in reinstating the case against the accused. The accused had been neither previously convicted nor acquitted, nor had the case against him been definitely dismissed since the dismissal was without prejudice. Had the respondent judge refused to vacate the order of dismissal under the circumstances, we think he would have committed a grave miscarriage of justice.

The petition is denied, with costs against the petitioner.

Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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