

DAVID ACEBEDO Y DALMAN, PETITIONER, VS. HON. MALCOLM G. SARMIENTO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF PAMPANGA AND THE PROV. FISCAL OF PAMPANGA, RESPONDENTS.*G.R. No. L-28025. December 16, 1970*

Ponente: FERNANDO, J.

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This Court not so long ago reaffirmed the doctrine that where a dismissal of a criminal prosecution amounts to an acquittal, even if arising from a motion presented by the accused, the ban on being twice put in jeopardy may be invoked, especially where such dismissal was predicated on the right to a speedy trial.[1] The specific question then that this certiorari and prohibition proceeding presents is whether on the undisputed facts, an order of dismissal given in open court by respondent Judge falls within the operation of the above principle, precluding its reconsideration later as the defense of double jeopardy would be available. Here respondent Judge did reconsider, and his actuation is now assailed as a grave abuse of discretion. As will be made apparent, petitioner has the law on his side. The writs should be granted.

It was shown that on August 3, 1959, respondent Provincial Fiscal filed in the Court of First Instance of Pampanga a criminal information for damage to property through reckless imprudence against petitioner and a certain Chi Chan Tan. As there were no further proceedings in the meantime, petitioner on May 19, 1965 moved to dismiss the criminal charge. Respondent Judge was not in agreement as shown by his order of denial of July 10, 1965. Then, after two more years, came the trial with the complainant having testified on direct examination but not having as yet been fully cross-examined. At the continuation of the trial set for June 7, 1967 such witness did not show up. The provincial fiscal moved for postponement. Counsel for petitioner, however, not only objected but sought the dismissal of the case based on the right of the accused to speedy trial. Respondent Judge this time acceded, but would likewise base his order of dismissal, orally given, on the cross-examination of complainant not having started as yet. Later that same day, respondent Judge did reconsider the order and reinstated the case, his action being due to its being shown that the cross-examination of the complainant had already started.

On the above facts, there can be no dispute as to the applicable law. It is not to be lost sight of that the petition on its face had more than its fair share of plausibility, thus eliciting an affirmative response to the plea for a writ of preliminary injunction, duly issued by this Court. For it was all too evident that petitioner could rely on his constitutional right to a speedy trial. For more than six years the threat of his being subjected to a penal liability did hang over his head, with the prosecution failing to take any step to have the matter heard. He did ask that the case be dismissed, but respondent Judge turned him down. When the trial did at long last take place after two more years and again postponement was sought as the complainant was not available for cross-examination, petitioner, as could have been expected, did again seek to put an end to his travail with a motion for dismissal grounded once more on the undeniable fact that he was not accorded the speedy trial that was his due. This time respondent Judge was quite receptive – and about time too. The order of dismissal given in open court had then the effect of an acquittal. For the respondent Judge to give vent to a change of heart with his reconsideration was

to subject petitioner to the risk of being put in jeopardy once more. Nor could respondent Judge's allegation that he could do so as he acted under a misapprehension be impressed with the quality of persuasiveness. The decisive fact was the absence of that speedy trial guaranteed by the Constitution. This petition then, to repeat, possesses merit.

1. The right to a speedy trial means one free from vexatious, capricious and oppressive delays, its salutary objective being to assure that an innocent person may be freed from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatever legitimate defenses he may interpose.[2] The remedy in the event of a non-observance of this right is by habeas corpus if the accused were restrained of his liberty, or by certiorari, prohibition, or mandamus for the final dismissal of the case.[3]

In the first Supreme Court decision after the Constitution took effect, an appeal from a judgment of conviction, it was shown that the criminal case had been dragging on for almost five years. When the trial did finally take place, it was tainted by irregularities. While ordinarily the remedy would have been to remand the case again for a new trial, the appealed decision of conviction was set aside and the accused acquitted. Such a judgment was called for according to the opinion penned by Justice Laurel, if this constitutional right were to be accorded respect and deference. Thus: "The Government should be the last to set an example of delay and oppression in the administration of justice and it is the moral and legal obligation of this court to see that the criminal proceedings against the accused came to an end and that they be immediately discharged from the custody of the law." [4]

Conformably to the above ruling as well as the earlier case of *Conde v. Rivera*, [5] the dismissal of a second information for frustrated homicide was ordered by the Supreme Court on a showing that the first information had been dismissed after a lapse of one year and seven months from the time the original complaint was filed during which time on the three occasions the case was set for trial, the private prosecutor twice asked for postponements and once the trial court itself cancelled the entire calendar for the month it was supposed to have been heard. As pointed out in such decision: "The right of the accused to have a speedy trial is violated not only when unjustified postponements of the trial are asked for and secured, but also when, without good cause or justifiable motive, a long period of time is allowed to elapse without having his case tried." [6] It did not matter that in this case the postponements were sought and obtained by the private prosecution, although with the consent and approval of the fiscal. Nor was there a waiver and abandonment of the right to a speedy trial when there was a failure on the part of the accused to urge that the case be heard. "Such a waiver or abandonment may be presumed only when the postponement of the trial has been sought and obtained [by him]." [7] A finding that there was an infringement of this right was predicated on an accused having been criminally prosecuted for an alleged abuse of chastity in a justice of the peace court as a result of which he was arrested three times, each time having to post a bond for his provisional liberty. Mandamus to compel the trial judge to dismiss the case was under the circumstances the appropriate remedy. [8]

In *Mercado v. Santos*, [9] the second occasion Justice Laurel had to write the opinion for the Supreme Court in a case of this nature, the transgression of this constitutional mandate came about with petitioner having in a space of twenty months been arrested four times on the charge of falsifying his deceased wife's will, the first two complaints having been subsequently withdrawn only to be refiled a third time and thereafter dismissed after due investigation by the justice of the peace. Undeterred the provincial fiscal filed a motion for reinvestigation favorably acted on by the Court of First Instance which finally ordered that the case be heard on the merits. At this stage the accused moved to dismiss but was rebuffed. He sought the aid of the Court of Appeals in a petition for certiorari but did not prevail. It was then that the matter was elevated to the Supreme Court which reversed the Court of Appeals, the accused "being entitled to have the criminal proceedings against him quashed." It was

stressed in Justice Laurel's opinion: "An accused person is entitled to a trial at the earliest opportunity. * * * He cannot be pressed by delaying the commencement of trial for an unreasonable length of time. If the proceedings ending trial are deferred, the trial itself is necessarily delayed. It is not to be supposed, of course, that the Constitution intends to remove from the prosecution every reasonable opportunity to prepare for trial. Impossibilities cannot be expected or extra-ordinary efforts required on the part of the prosecutor or the court." [10] The opinion likewise considered as not decisive the fact that the provincial fiscal did not intervene until an information was filed charging the accused with the crime of falsification the third time. Thus: "The Constitution does not say that the right to a speedy trial may be availed of only where the prosecution for crime is commenced and undertaken by the fiscal. It does not exclude from its operation cases commenced by private individuals. Where once a person is prosecuted criminally, he is entitled to a speedy trial, irrespective of the nature of the offense or the manner in which it is authorized to be commenced." [11]

2. More specifically, this Court has consistently adhered to the view that a dismissal based on the denial of the right to speedy trial amounts to an acquittal. Necessarily, any further attempt at continuing the prosecution or starting a new one would fall within the prohibition against an accused being twice put in jeopardy. The extensive opinion of Justice Castro in *People v. Obsania* noted earlier made reference to four Philippine decisions, *People v. Diaz*, [12] *People v. Abaño*, [13] *People v. Robles*, [14] and *People v. Cloribel*, [15] In all of the above cases, this Court left no doubt that a dismissal of the case, though at the instance of the defendant grounded on the disregard of his right to a speedy trial was tantamount to an acquittal. In *People v. Diaz*, it was shown that the case was set for hearing twice and the prosecution without asking for postponement or giving any explanation failed to appear. In *People v. Abaño*, the facts disclosed that there were three postponements. Thereafter, at the time the resumption of the trial was scheduled, the complaining witness as in this case was absent; this Court held that respondent Judge was justified in dismissing the case upon motion of the defense and that the annulment or setting aside of the order of dismissal would place the accused twice in jeopardy of punishment for the same offense. *People v. Robles* likewise presented a picture of witnesses for the prosecution not being available, with the lower court after having transferred the hearings on several occasions denying the last plea for postponement and dismissing the case. Such order of dismissal, according to this Court "is not provisional in character but one which is tantamount to acquittal that would bar further prosecution of the accused for the same offense." [16] This is a summary of the *Cloribel* case as set forth in the above opinion of Justice Castro: "In *Cloribel*, the case dragged for three years and eleven months, that is, from September 27, 1958 when the information was filed to August 15, 1962 when it was called for trial, after numerous post-ponements, mostly at the instance of the prosecution. On the latter date, the prosecution failed to appear for trial, and upon motion of defendants, the case was dismissed. This Court held 'that the dismissal here complained of was not truly a 'dismissal' but an acquittal. For it was entered upon the defendants' insistence on their constitutional right to speedy trial and by reason of the prosecution's failure to appear on the date of trial.' [17] (Italics supplied.)" There is no escaping the conclusion then that petitioner here has clearly made out a case of an acquittal arising from the order of dismissal given in open court.

3. Respondent Judge would rely on *Cabarroguis v. San Diego* [18] to lend support to the reconsideration of his order of dismissal. The case is not applicable; the factual setting is different. The order of dismissal set aside in that case arose from the belief of the court that the crime of estafa was not committed as the liability was civil in character. At no stage then was there a plea that the accused was denied his right to a speedy trial. The reconsideration was granted as there was documentary evidence to show that the intention to defraud on the part of the accused could be shown. Under such circumstances, this Court saw no grave abuse of discretion in the actuation of the trial judge. To repeat, the proceeding now before this Court is any-thing but that. Petitioner not once but twice did seek to have the prosecution for damage to property against him terminated as the matter was

pending for at least six years, the first time he sought to put an end to it. When at last, the trial stage was reached, the complaining witness testified on direct examination but made no appearance when his cross-examination was to be continued. A clear case of a denial of the right to a speedy trial was thus made out. There was an order of dismissal that amounted to an acquittal. No reconsideration could therefore be had without offending the provision on double jeopardy.

WHEREFORE, the writ of certiorari is granted annulling the order of respondent Judge of June 7, 1967 reconsidering his order of dismissal and reinstating the criminal case against petitioner. The writ of prohibition is likewise granted, respondent Judge and respondent Provincial Fiscal of Pampanga being restrained and precluded from continuing with this case against petitioner, now adjudged definitely dismissed: The writ of preliminary injunction issued is made permanent.

Reyes, Acting C.J., Makalintal, Zaldivar, Castro, Teehankee, Barredo, and Villamor, JJ., concur.
Dizon and Makasiar, JJ., on official leave.

[1] *People v. Obsania*, G.R. No. L-24447, June 29, 1968, 23 SCRA 1249. In the exhaustive opinion penned by Justice Castro, *People v. Diaz*, 94 Phil. 714 (1954); *People v. Abaño* 97 Phil. 28 (1955); *People v. Robles*, 105 Phil. 1016 (1959) and *People v. Cloribel*, G.R. No. L-20314, Aug. 31, 1964, 11 SCRA 805 were cited in support of such a view.

[2] Cf. Justice Malcolm's words in a pre--Commonwealth leading case: "Aurelia Conde, like all other accused persons; has a right to a speedy trial in order that if innocent she may go free, and she has been deprived of that right in defiance of law. * * * By the use of reasonable diligence, the prosecution could have settled upon the appropriate information, could have attended to the formal preliminary examination, and could have prepared the case for a trial free from vexatious, capricious, and oppressive delays." *Conde v. Rivera*, 45 Phil. 650 at p. 651 (1924).

[3] *Kalaw v. Apostol*, 64 Phil. 852 (1937) citing the *Conde v. Rivera* decision.

[4] *People v. Castañeda*, 63 Phil. 480, at p. 486 (1936).

[5] 45 Phil. 650 (1924).

[6] *Kalaw v. Apostol*, 64 Phil. 852 at pp. 858-859 (1937).

[7] *Ibid*, at p. 859.

[8] *Esguerra v. De la Costa*, 66 Phil. 134 (1938).

[9] 66 Phil. 215 (1938).

[10] *Ibid*, at pp. 234-235.

[11] *Ibid*, at p. 234.

[12] 94 Phil. 714 (1954).

[13] 97 Phil. 28 (1955).

[14] 105 Phil. 1016 (1959).

[15] G.R. No. L-20314, August 31, 1964, 11 SCRA 805.

[16] 105 Phil. 1016, 1021 (1959).

[17] People v. Obsania, G.R. No. L-24447, June 29, 1968, 23 SCRA 1249, 1273.

[18] G.R. No. L-19517, November 30, 1962, 6 SCRA 866.

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