

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. DEMETRIO JARDIN, ACCUSED-APPELLEE.

G.R. Nos. L-33037-42. August 17, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Two constitutional rights – speedy trial and freedom from double jeopardy – are interposed as defenses by the accused in this petition for review on certiorari.

The petitioner asks us to review and annul the orders of the Court of First Instance of Quezon, Branch V, which dismissed the criminal cases against accused Demetrio Jardin because his constitutional right to speedy trial was allegedly violated.

The criminal prosecutions originated from a letter-complaint of the Provincial Auditor of Quezon requesting the Provincial Fiscal to file the necessary criminal action under Article 217 of the Revised Penal Code against Demetrio Jardin for malversation of public funds thru falsification of public documents on six counts.

The cases were assigned to Assistant Fiscal Meliton V. Angeles who set them for preliminary investigation. The accused moved to postpone the preliminary investigation twice. On the third time that the investigation was re-set, the accused and his counsel failed to appear.

On the fourth resetting, the accused and his counsel again failed to appear. In spite of their absence, the preliminary investigation was conducted and shortly afterwards, six informations were filed against the accused before the Court of First Instance of Quezon, Branch II, docketed as Criminal Cases Nos. 16052 (0043-M), 16053 (0044-M), 16054 (0045-M), 16055 (0046-M), 16056 (0047-M), and 16057 (0048-M). The arraignment was set for May 9, 1967.

The records show that from May 9, 1967, the arraignment was re-set for June 6; then re-set for June 26; then from August 16, the same was re-set for September 5, all because of the motions for postponement filed at the instance of the accused. (Original records [0043-M] pp. 54, 61, 66 and 69).

When the arraignment of the accused was called on September 5, 1967, counsel for the accused verbally moved for reinvestigation on the ground that the accused was not given the opportunity to present his defense during the preliminary investigation. This was granted by the court and the first reinvestigation was set on November 24, 1967. On this date, however, the Investigating Fiscal *motu proprio* postponed said reinvestigation due to the non--appearance of accused and his counsel and re-set the date for December 21, 1967.

A series of postponements was again filed by the accused causing further delays of the reinvestigation. On June 27, 1968, accused and his counsel appeared together but requested for a period of fifteen (15) days within which to file a memorandum.

In view of the expiration of the 15-day period, the investigating Fiscal filed a manifestation before the court that

the records of these cases he returned and the trial on the merits of the same be set.

The court without acting on said manifestation, issued an order transferring the six (6) cases to the new branch (Branch V) of the Court of First Instance at Mauban, Quezon. Upon receipt by the latter of the records of these cases, the arraignment and trial were set for December 3, 1968.

On the latter date, the counsel for the accused sought again the postponement of the arraignment and this was followed by more postponements, all at the instance of the accused. (Original records, [0043-M], pp. 90, 93, 120 and 125).

On March 31, 1969, counsel for the accused moved for the postponement of the arraignment and requested the court that the records be returned again to the Office of the Fiscal for further reinvestigation. This was granted and the reinvestigation was again set for May 5, 1969. The accused and his counsel, however, failed to appear and thus, the said reinvestigation was re-set for June 2, 1969. On this date, counsel for accused requested that he be given five (5) days within which to file a written sworn statement of the accused which would constitute the defense of the latter, subject to the cross-examination of the Investigating Fiscal.

Considering the fact that the period to file such sworn statement had already expired without anything being filed, the records of the cases were returned to the court which set said cases for arraignment and trial on September 2, 1970. On this date, the accused again moved for postponement.

When these cases were called for arraignment on September 8, 1970, Demetrio Jardin, pleaded not guilty to the crime as charged, after which he re-requested that the trial be postponed and re-set for September 29, 1970.

On September 29, 1970, the trial scheduled on that day was postponed again on motion of counsel for the accused. The trial was re-set for October 12, 1970, with notice to both parties.

On October 12, 1970, when the said criminal cases were called for hearing, no one appeared for the prosecution, except a state witness, Mr. Cesar Alcala of the Provincial Auditor's office who remained silent during the proceedings.

Invoking his client's constitutional right to speedy trial and seizing the opportunity to take advantage of the prosecution's failure to appear on that day, the defense counsel moved for the dismissal of the cases. The respondent court granted the oral motion for dismissal "for reasons of constitutional rights of the accused Demetrio Jardin."

Two questions are now raised by the People in this appeal:

I. Considering the factual setting in the criminal cases at bar, was the respondent Court correct in dismissing the cases and in predicating the dismissal on the right of the defendant to a speedy trial?

II. Does the present appeal place the respondent accused in double jeopardy?

The respondent court committed a grave abuse of discretion in dismissing the cases and in basing the dismissal on the constitutional right of the accused to speedy trial. The right to a speedy trial means that the accused is free from vexatious, capricious, and oppressive delays, its salutary objective being to assure that an innocent person may be free from 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 defense he may interpose. (See *Andres v. Cacdac*, 113 SCRA 216)

From a perusal of the facts, it is readily seen that all the delays in the prosecution of the cases were caused by the accused himself. All the postponements of proceedings were made at his instance and for his behalf. Hence, the

constitutional right to a speedy trial afforded to an accused by our Constitution cannot be invoked. From the start of the preliminary investigation of the cases up to the trial on the merits, the accused always managed to delay the proceedings through postponements and requests for reinvestigation. It would, therefore, be a mockery of the criminal justice system if the accused would be allowed to benefit from his own wrongdoings or tactical maneuvers intended to frustrate the administration of justice. By his own deliberate acts, he is deemed to have waived or abandoned his right to a speedy trial. In the case of *Andres v. Cacdac*, 113 SCRA 216, we ruled:

"In this case, however, there was a waiver or abandonment of the right to a speedy trial in the first case when the herein petitioners sought and obtained several postponements of the trial: first, when they asked for the deferment of the arraignment because the accused Ladislao Tacipit was not present; second, when they asked for the postponement of the trial for March 5, 1968 upon the ground that they have requested the Provincial Fiscal of Cagayan for a reinvestigation of the case; and finally, when they agreed, with the prosecution, to postpone the hearing set for November 28, 1968 to January 4, 1969." x x x.

The dismissal of the criminal cases against the accused by the respondent court on the ground that his right to speedy trial had been violated was devoid of factual and legal basis. The order denying the motion for reconsideration is similarly in firm. There being no basis for the questioned orders, they are consequently null and void.

Would a reinstatement of the dismissed cases place the accused in double jeopardy?

In order that the protection against double jeopardy may inure to the benefit of an accused, the following requisites must be present in the first prosecution: (a) a valid complaint or information; (b) a competent court; (c) the defendant had pleaded to the charge; and (d) the defendant was acquitted, or convicted, or the case against him was dismissed or otherwise terminated without his express consent. (Rule 117, Section 9, Rules of Court; *People v. Ledesma*, 73 SCRA 77). The last requisite assumes a valid acquittal presupposes a valid judgment by a court of competent jurisdiction. Since in the instant cases, the dismissal was void for having been issued without legal basis, it follows that the acquittal brought about by the dismissal is also void. Hence, no jeopardy can attach from such acquittal. The act of respondent judge in dismissing the cases amounted to lack of jurisdiction which would prevent double jeopardy from attaching. In the case of *People v. Court of Appeals* (101, SCRA 450) we ruled:

"Private respondents further argue that a judgment of acquittal ends the case which cannot be appealed nor reopened, otherwise, they would be put twice in jeopardy for the same offense. That is the general rule and presupposes a valid judgment. As earlier pointed out, however, respondent Courts' Resolution of acquittal was a void judgment for having been issued without jurisdiction. No double jeopardy attaches, therefore. A void judgment is, in legal effect, no judgment at all. (*Comia v. Nicolas*, 29 SCRA 492 [1969]) By it, no rights are divested. Through it, no rights can be attained. Being worthless, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. (*Gomez v. Concepcion*, 47 Phil. 717, 722 [1925]; *Chavez v. Court of Appeals*, 24 SCRA 663, 685 [1968]; *Paredes v. Moya*, 61 SCRA 526, [1974])." x x x.

We also note that the dismissal of the criminal cases was upon motion and with the express consent of respondent *Demetrio Jardin*. For double jeopardy to attach, the general rule is that the dismissal of the case must be without the express consent of the accused. (*People v. Salico*, 84 Phil. 722; *People v. Obsania*, 23 SCRA 1249; *People v. Pilpa*, 79 SCRA 81; and *People v. Cuevo*, 104 SCRA 312).

If the accused had been denied his right to speedy trial or if some other basic right had been impaired, the doctrine of waiver of the right to invoke double jeopardy would not apply even if the accused had expressly moved for the termination of proceedings. In the instant case, however, the defendant had deliberately used all the available dilatory tactics he could utilize and abused the principle that the accused must be given every opportunity to

disprove the criminal charge. The doctrine of double jeopardy was never intended for this purpose.

Even as we rule that the lower court acted with grave abuse of discretion, we also rebuke the attorneys for both the defense and the prosecution and to a certain extent, the court itself because of the breach of duties to the courts and to the administration of justice apparent in this case.

The duties of an attorney found in Rule 138, Section 20 include:

xxx xxx xxx

(d) To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor, x x x

xxx xxx xxx

(g) Not to encourage either the commencement or the continuance of an action or proceeding, or delay any man's cause, from any corrupt motive or interest.

xxx xxx xxx

The dilatory tactics of the defense counsel and the failure of both the judge and the fiscal to take effective counter measures to obviate the delaying acts constitute obstruction of justice.

As aptly stated:

12.09 Obstructing the administration of justice

An attorney as an officer of the court is called upon to assist in the due administration of justice. Like the court itself, he is an instrument to advance its cause. (*Surigao Mineral Reservation Board v. Cloribel*, G. R. No. 11071, Jan. 9, 1972, 31 SCRA 1; *In re Climaco*, G.R. Adm. Case No. 134-J, Jan. 21, 1974, 55 SCRA 107) For this reason, any act on the part of a lawyer that obstructs, perverts or impedes the administration of justice constitutes misconduct and justifies disciplinary action against him. (*Cantorne v. Ducasin*, 57 Phil. 23 [1932]; *De los Santos v. Sagalongos*, 69 Phil. 406 [1940]).

Acts which amount to obstruction in the administration of justice may take many forms. They include such acts as instructing a complaining witness in a criminal action not to appear at the scheduled hearing so that the case against the client, the accused, would be dismissed, (*Cantorne v. Ducasin*, supra) asking a client to plead guilty to a crime which the lawyer knows his client did not commit, (*Nueno v. Santos*, 58 Phil. 557 [1933]) advising a client who is detained for a crime to escape from prison, (*Cf. Medina v. Yan*, G.R. No. 30978, Sept. 30, 1974) employing dilatory tactics to frustrate satisfaction of clearly valid claims, (*Pajares v. Abad Santos*, G.R. No. 29543, Nov. 29, 1969, 30 SCRA 748) prosecuting clearly frivolous cases or appeals to drain the resources of the other party and compel him to submit out of exhaustion (*Samar Mining Co. v. Arnado*, G. R. No. 22304, July 30, 1968) and filing multiple petitions or complaints for a cause that has been previously rejected in the false expectation of getting favorable action. (*Gabriel v. Court of Appeals*, G.R. No. 43757, July 30, 1976, 72 SCRA 173; *Ramos v. Potenciano*, G. R. No. 27104, Dec. 20, 1976, 74 SCRA 345; *Macias v. Uy Kim*, G. R. No. 31174, May 30, 1972, 45 SCRA 251) Acts of this or similar nature are grounds for disciplinary action." (*Agpalo*, Legal Ethics, U.P. Law Center, 1980 Edition, pp. 405-406)

The invocation of constitutional rights by the private respondent is without merit.

WHEREFORE, the petition is GRANTED and the questioned orders of the respondent court are hereby SET ASIDE. Criminal Cases Nos. 0043-M, 0044-M, 0045-M, 0046-M, 0047-M, and 0048-M are reinstated and the proper regional trial court is ordered to proceed with all deliberate speed in these cases.

SO ORDERED.

Melencio-Herrera and Vasquez, JJ., concur.

Teehankee, Acting C.J., no part.

Plana, J., in the result.

Relova, J., for the reason that the dismissal was with the express consent of the accused, he was not in jeopardy.

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