

**CRESENCIO ANDRES AND PROCESO GUIMMAYEN, PETITIONERS, VS.
HON. BONIFACIO A. CACDAC, JR., IN HIS CAPACITY AS
JUDGE-DESIGNATE OF THE CIRCUIT CRIMINAL COURT, FIRST
JUDICIAL DISTRICT...**

G.R. No. L-45650. March 29, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for certiorari, prohibition and mandamus, with a prayer for the issuance of a writ of preliminary injunction, to annul and set aside the order of the respondent Judge dated December 15, 1976 which denied the petitioners' motion to quash the information filed in Criminal Case No. CCC-I-419 of the Circuit Criminal Court of the First Judicial District stationed at Tuguegarao, Cagayan, entitled: "People of the Philippines, plaintiff, versus Cresencio Andres, et al., accused," and to restrain the respondents from further proceeding with the trial of the said case.

The record shows that on January 27, 1965, an information was filed with the Court of First Instance of Cagayan, Aparri Branch, docketed therein as Criminal Case No. 3844-A, charging the herein petitioners Cresencio Andres and Proceso Guimmayen, and Ladislao Tacipit with the crime of Murder committed as follows:

"That on or about September 2, 1963, in the municipality of Abulug, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Cresencio Andres, Proceso Guimayen and Ladislao Tacipit, aimed with bolos and ice-pick, conspiring together and helping one another, with intent to kill, with treachery and evident premeditation and with abuse of superior strength, did then and there wilfully, unlawfully and feloniously assault, attack, stab and hack one Teofilo Ramos inflicting upon him several wounds in his body, which caused his death." [1]

For some reason not evident on the record, the case was transferred to Branch IV of the said Court, with seat at Sanchez Mira, Cagayan, where it was docketed as Criminal Case No. 37-A.

The arraignment of the accused was set for February 6, 1967. On that scheduled date, however, counsel for the accused moved for the postponement of the case upon the ground that the accused Ladislao Tacipit was not present. As a result, the hearing was transferred to February 28, 1967. [2] On that date, the accused were arraigned and all entered a plea of "Not Guilty." [3]

Thereafter, the case was set for trial. On the scheduled date of trial on March 5, 1968, however, counsel for the accused again moved for a postponement, stating that he was requesting the Office of the Provincial Fiscal of Cagayan for a reinvestigation of the case. [4] No mention is made of what action the court took upon the said motion. At any rate, the case was again called for hearing on November 25, 1968, but no trial was held as the same was postponed, by agreement of the parties, to January 4, 1969. But, no hearing was conducted on said date because Fiscal Alejandro Pulido asked "for a postponement of this trial of this case for the last time to March 6, 1969." [5]

On March 6, 1969, the case was provisionally dismissed per order of the court reading as follows:

"This case was committed on September 2, 1963. The complaint was filed in the municipal court of Abulug, on the 22nd day of September, 1964. The information was filed on January 27, 1965. Since that time this case has been scheduled several times for hearing and that several postponements were granted and several last time postponements were granted. In view of the manifestation of counsel for the accused that he is requesting for provisional dismissal of this case; that this case should not be pending for a very long time, this case is provisionally dismissed with the consent of the accused and their counsel.

"At the same time the Chief of Police of Abulug is directed to locate and contact the witnesses in order that the same maybe refiled as soon as the wit-nesses for the government are located."[6]

More than seven (7) years after the provisional dismissal of the case, or on or about May 31, 1976, a new information charging anew Cresencio Andres, Proceso Guimayen, and Ladislao Tacipit for the murder of Teofilo Ramos was filed before the Circuit Criminal Court of the First Judicial District stationed at Tuguegarao, Cagayan, which was docketed therein as Criminal Case No. CCC-I-419.[7]

Pleading double jeopardy, in that the provisional dismissal of Criminal Case No. 37-A of the Court of First Instance of Cagayan was in fact an acquittal, the herein petitioners Cresencio Andres and Proceso Guimayen moved to quash the information,[8] but the trial court denied the motion to quash for lack of factual and legal basis.[9] Hence, the present recourse. As prayed for, a temporary restraining order was issued on April 21, 1977, restraining the respondents from trying or conducting further proceedings in Criminal Case No. CCC-I-419.[10]

The petitioners claim that the order of March 6, 1969, which provisionally dismissed Criminal Case No. 37-A, predicated on the right of a defendant to a speedy trial and on the failure of the Government to prosecute, amounts to an acquittal and bars their second prosecution for the same offense in Criminal Case No. CCC-I-419, upon the ground of double jeopardy.

The petitioners further claim that they were denied their right to speedy trial for an unreasonably long period of time of more than eleven (11) years from September 22, 1964, when they were originally indicted in the Municipal Court of Abulug, Cagayan, up to May 31, 1976, when another information for the same offense was filed before the Circuit Criminal Court of Tuguegarao, Cagayan.

The rule on double jeopardy is contained in Article IV, Section 22 of the 1973 Constitution which provides that "no person shall be twice put in jeopardy of punishment for the same offense," and complemented by Section 9, Rule 117 of the Revised Rules of Court 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."

For legal jeopardy to exist, there should be (a) a valid complaint or information, (b) before a court of competent jurisdiction, and (c) the defendant had been arraigned and had pleaded to the complaint or information. When these three conditions are present, the acquittal or conviction of the defendant or the dismissal or termination of the case without his express consent constitutes *res adjudicata*, and is 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 therein.[11]

In the instant case, the posture taken by the herein petitioners that the provisional dismissal of Criminal Case No. 37-A is a bar to the subsequent filing of another information against them for the same offense on the ground that the petitioners would be placed in double jeopardy is not tenable. It should be noted that in the order of March 6, 1969 issued in Criminal Case No. 37-A, the accused and their counsel not only asked for, but also consented to, the provisional dismissal of the case. Their act operates as a waiver of their defense of double jeopardy in the second prosecution for the same offense. When a criminal case is dismissed upon the application and express consent of the accused and his counsel, the dismissal is not a bar to another prosecution for the same offense because his action in having the case dismissed constitutes a waiver of his constitutional prerogative against double jeopardy as he thereby prevents the court from proceeding to the trial on the merits and rendering judgment of conviction against him.[12]

"If the defendant wants to exercise his constitutional right to a speedy trial," according to the Court in the case of *Esmeña vs. Pogoy*,[13] "he should ask not for the dismissal, but for the trial of the case. After the prosecution's motion for postponement of 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."

There is, likewise, no merit in the contention that the petitioners were denied their right to a speedy trial. It has been held that: "The right to a speedy trial means one 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," and "is violated not only when unjustified postponements of the trial are asked for and secured, but also when, without cause or justifiable motive, a long period of time is allowed to elapse without his having his case tried." [14]

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 set 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. Incidentally, the trial set for January 4, 1969 was postponed, at the instance of the prosecution, to March 6, 1969, when the case was provisionally dismissed.

The delay in the refiling of the case more than seven (7) years after the provisional dismissal of the first case is not a delay in a trial amounting to a violation of a constitutional right since there was no trial to speak of as there was no indictment as yet. In the case of *Bermisa vs. Court of Appeals*, [15] where a criminal case was re-filed approximately four (4) years after its provisional dismissal with the consent of the accused and his counsel, the Court said:

"A review of the facts on record constrains us to rule that the right to a speedy trial is not invocable in this case. The delay in the refiling of the case was not a delay in trial amounting to a violation of a constitutional right. There was no trial to speak of, in the legal sense, as there was no indictment, as yet.

'It has been held that the right to speedy trial cannot be violated by delay between offense and indictment, though it can be violated by an inordinate delay in the return of the indictment after the arrest has been made.'

'Where a statute requiring indictment or information within a certain period after defendant is held to answer is treated as a legislative definition of the constitutional right, the right arises when defendant is held to answer by a magistrate, and the right has been held not violated by unwarranted delay in bringing him before a magistrate following arrest.'

"The criminal case at bar was provisionally dismissed with the consent of the accused and his counsel on June 2, 1965. Considering its nature, it was entered with a possibility of the filing of a subsequent suit. The case was refiled approximately four years thereafter, or on September 10, 1969, before another Branch of the same Court. That refiled was an act within the prerogative of the prosecution.

'In the absence of any statutory provision to the contrary, there is 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.'

"The right of an accused to a speedy trial is guaranteed to him by the Constitution but the same shall not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals. It secures rights to a defendant but it does not preclude the rights of public justice.

"In fact, the consent of petitioner to the dismissal constituted a waiver of his constitutional right not to be prosecuted for the same offense."

Under the circumstances, We see no grave abuse of discretion in the actuation of the respondent Judge.

WHEREFORE, the petition should be, as it is hereby, DISMISSED. The temporary restraining order heretofore issued is hereby LIFTED and SET ASIDE. With costs against the petitioners.

SO ORDERED.

Barredo, (Chairman), Aquino, De Castro, Ericta, and Escolin, JJ., concur. Abad Santos, J., on official leave.

[1] Rollo, p. 26.

[2] Id., p. 27.

[3] Id., p. 28.

[4] Id., p. 5, Petition, par. 4.

[5] Id., p. 29.

[6] Id., p. 30.

[7] Id., p. 31.

[8] Id., p. 33.

[9] Id., p. 76.

[10] Id., p. 96.

[11] 4 Moran Comments on the Rules of Court, p. 240.

[12] People vs. Salico, 84 Phil. 722. See also People vs. Hinauti, 105 Phil. 303.

[13] G.R. No. 54110, Feb. 20, 1981; 102 SCRA 861.

[14] Acebedo vs. Sarmiento, G.R. No. L-28025, December 6, 1970, 26 SCRA 247.

[15] G.R. No. L-32506, July 30, 1979, 92 SCRA 136.

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