

ELMER D. COMIA, PETITIONER, VS. [PEOPLE OF THE PHILIPPINES, REGIONAL TRIAL COURT, BRANCH 43, ROXAS, ORIENTAL MINDORO, AND GEORGE D. COMIA, RESPONDENTS.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Orders dated January 17, 2013[2] and February 14, 2013[3] of the Regional Trial Court (RTC), Fourth Judicial Region, Branch 43, Roxas, Oriental Mindoro, in Criminal Case No. R-1572 for Attempted Murder, entitled “People of the Philippines, Plaintiff, vs. Elmer Comia y Delos Santos and John Doe, Accused.”, the dispositive portions of which read:

Order dated January 17, 2013:

“ACCORDINGLY, this case is hereby revived and let the same be set for hearing.”

SO ORDERED.[4]”

Order dated February 14, 2013:

“ACCORDINGLY, the motion for reconsideration on the Order of this court is DENIED. Let this case be set for trial on April 11, 2013.

SO ORDERED.[5]”

The facts are:

On November 19, 2008, petitioner Elmer D. Comia (Elmer for brevity), was charged with Attempted Murder, penalized under Article 248 in relation to Article 6 of the Revised Penal Code, committed as follows:

“xxx That on or about the 3[rd] day of September 2008, at around 10:15 o'clock in the evening, at Barangay Bagumbayan, Municipality of Roxas, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully, and feloniously assault and shoot GEORGE COMIA y DELOS SANTOS, but missed, thus both accused commenced the commission of the crime of Murder directly by overt acts but failed to perform all the acts of execution which should have produced the felony by reason of some cause other than their own spontaneous desistance, to the damage and prejudice of said GEORGE COMIA y DELOS SANTOS. Xxx”

However, during the hearing held on October 26, 2010 the associate provincial prosecutor was constraint to move for the provisional dismissal of the criminal case, after he manifested in open court that private respondent George D. Comia (George for brevity) could not be contacted per return of subpoena and there is uncertainty as to when he could come to court to testify.[6] Petitioner Elmer gave his conformity and the case was provisionally dismissed.[7] Meanwhile, Atty. Gaudencio S. Sadicon (Atty. Sadicon for brevity) entered his appearance[8] as

counsel for private respondent George on October 27, 2010. The lower court noted his representation and was informed of the provisional dismissal of the case.[9] On November 26, 2012, private respondent George filed a Motion to Revive the Case,[10] contending that he was not properly notified of the provisional dismissal thereof. He explained that the notice after the fact of the provisional dismissal furnished to Atty. Sadicon was insufficient since the law[11] requires that a prior notice be sent to private respondent George to carry out such dismissal. He claimed that this prior notice requirement was necessary for the application of the time bar rule[12] stated under Section 8, Rule 117 of the Revised Rules of Criminal Procedure, without it the provisional dismissal of the case remained temporary and subject to the prosecution's motion for revival. Furthermore, he maintained that the revival of the criminal case would not cause prejudice to petitioner Elmer nor would it led to any vexatious delay in the prosecution of the case. Petitioner Elmer, on the other hand, opposed private respondent George's motion and commented[13] that the motion was filed beyond the two (2)-year period of revival allowed by the Rules.[14] He also pointed out that private respondent George was always absent during the trial of the case and that the latter neglected to inform the court as well as his counsel of his new address, giving the impression that he lost interest in pursuing the case.[15] He surmised that due to these actions, the provincial prosecutor correctly moved for the provisional dismissal of the case in consideration of his right to a speedy trial.[16] On January 17, 2013, the lower court issued the assailed Order and revived the criminal case.[17] Petitioner Elmer filed a Motion for Reconsideration[18] which was denied by the lower court.[19]

Hence, this petition raising the following assignment of errors:[20]

I.

PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REVIVED THE CASE BEYOND THE TIME BAR OF TWO YEARS PROVIDED BY SECTION 8, RULE 117 OF THE RULES OF COURT.

II.

PUBLIC RESPONDENT COMMITTED GRAVE ERROR WHEN IT RULED THAT PRIVATE RESPONDENT CAME TO KNOW OF THE ORDER OF DISMISSAL ONLY ON OCTOBER 18, 2012 DESPITE THE FACT THAT IT WAS THE PUBLIC PROSECUTOR WHO ASKED FOR THE PROVISIONAL DISMISSAL OF THE INFORMATION AND THAT PRIVATE COMPLAINANT WAS REPRESENTED BY A PRIVATE COUNSEL WHO ENTERED HIS APPEARANCE ON OCTOBER 27, 2010 AND WAS FURNISHED A COPY OF THE ORDER OF DISMISSAL.

III.

PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION WHEN IT FAILED TO CONSIDER AND APPLY THE RIGHT OF PETITIONER TO SPEEDY TRIAL.

The petition is without merit.

Section 8, Rule 117 of the Revised Rules of Criminal Procedure provides for the provisional dismissal of a criminal case as well as the period within which to revive the same, to wit:

“Sec. 8. Provisional dismissal. - A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been

revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after the issuance of the order without the case having been revived.”

Significantly, the time bar rule found in the second paragraph of the above provision applies only when the following requisites are present:

- The prosecution with the express conformity of the accused or the accused moves for a provisional (sin perjuicio) dismissal of the case; or both the prosecution and the accused move for a provisional dismissal of the case;
- The offended party is notified of the motion for a provisional dismissal of the case;
- The court issues an order granting the motion and dismissing the case provisionally;
- The public prosecutor is served with a copy of the order of provisional dismissal of the case.

In this case, it is apparent that the time bar rule does not apply as there is no showing that a notice prior to the provisional dismissal of the criminal case was sent to private respondent George. The records clearly show this procedural misstep when the motion for the provisional dismissal of the criminal case, which was made in open court at the hearing held on October 26, 2010 and in the absence of the private respondent George, was approved by the lower court on the same day, without any notice given to the latter.[21] The fact that the motion for provisional dismissal was made at the instance of the associate provincial prosecutor or the fact that Atty. Sadicon, as counsel for private respondent George, was informed of the lower court's order of provisional dismissal will not suffice to comply with the said requirement. The law unequivocally mandates that notice should be given to the offended party to effect the provisional dismissal of the criminal case.[22] Thus, there is a need to clearly establish that private respondent George was properly appraised of the provisional dismissal thereof so as not to deprive him of his right to due process as well as to protect his interest.[23] Jurisprudence further instructs that the essential requirements of Section 8, Rule 117 are condition sine qua non for the application of the time bar rule, thus the absence of one requirement necessarily negates its application.[24]

Petitioner Elmer's argument that his right to a speedy trial is violated by the revival of the criminal case is misplaced. Judicial proceedings do not exist in a vacuum, thus a sensible assessment of their conduct must consider several factors, rather than a mere mathematical calculation of periods that have elapsed between stages.[25] Jurisprudence declares that certain delays are allowed by law and are excluded from the computation of the time within which trial must commence.[26] This is in recognition of the basic principle that the concept of speedy trial is a “relative term and a flexible concept.[27]” The courts are therefore tasked to maintain a delicate balance between the demands of due process and the strictures of speedy trial, on the one hand, and, on the other, the right of the State to prosecute crimes and rid society of criminals.[28] In criminal cases, the accused is entitled to justice and fairness, so is the State.[29] It is therefore paramount that the judge's action must not impair the substantial rights of the accused nor the right of the State and the offended party to due process of law.[30] Indeed, for justice to prevail, the scales must be balance.[31] Justice is not to be dispensed for the accused alone.[32] The interests of society and the offended parties which have been wronged must be equally considered.[33] Although a speedy determination of an action implies a speedy trial, speed is not the chief objective of a trial.[34] The primordial consideration is to make sure that the ends of justice and fairness are

served, this is more important than a race to end the trial.[35]

Concomitantly, “there is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[36]” Applying this definition to the foregoing incidents, it hardly illustrates how the lower court committed grave abuse of discretion, as there is nothing arbitrary in its issuance of the assailed orders. It is well-settled that a Petition for Certiorari against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested.[37] Otherwise, the lack of a proper showing thereof inevitably leads to the denial of the petition.

WHEREFORE, premises considered, the petition is DENIED. The Orders dated January 17, 2013 and February 14, 2013 of the Regional Trial Court, Branch 43, Roxas, Oriental Mindoro, in Criminal Case No. R-1572 for Attempted Murder, are hereby AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Bruselas, Jr., A.D., and Gaerlan, S.H., JJ., concur.

[*] Rollo, pp. 40, 41-42, 43 (As per Amended Petition for Certiorari)

[1] Rollo, pp. 3-14, 43-54 (Note: The petition was later amended to implead the People of the Philippines and private complainant George D. Comia as indispensable parties in compliance with this Court's Resolution dated April 23, 2013)

[2] Rollo, p. 16

[3] Rollo, p. 17

[4] Rollo, p. 16

[5] Rollo, p. 17

[6] Rollo, p. 26

[7] Rollo, p. 26

[8] Rollo, pp. 27-28

[9] Rollo, p. 29

[10] Rollo, pp. 30-36

[11] Section 8, Rule 117 of the Revised Rules on Criminal Procedure states:

“Sec. 8. Provisional dismissal. - A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party. xxx”

[12] Section 8, Rule 117 of the Revised Rules on Criminal Procedure states:

“Sec. 8. Provisional dismissal. - xxx The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after the issuance of the order without the case having been revived. xxx”

[13] Rollo, pp. 37-39

[14] Supra, footnote 12

[15] Rollo, p. 38

[16] Rollo, p. 38

[17] Supra, footnote 2

[18] Rollo, pp. 18-20

[19] Supra, footnote 3

[20] Rollo, p. 6

[21] Rollo, p. 26

[22] Supra, footnote 11

[23] The case of *People of the Philippines, The Secretary of Justice, Director General of the Philippine National Police, Chief State Prosecutor Jovencito Zuño, State Prosecutors Peter L. Ong and Ruben A. Zacarias; Second Assistant City Prosecutor Conrado M. Jamolin and City Prosecutor of Quezon City Claro Arellano vs. Panfilo M. Lacson* (G. R. No. 149453, April 1, 2003) held that:

“In the case at bar, even if the respondent's motion for a determination of probable cause and examination of witnesses may be considered for the nonce as his motion for a provisional dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689, however, the heirs of the victims were not notified thereof prior to the hearing on said motion on March 22, 1999. It must be stressed that the respondent filed his motion only on March 17, 1999 and set it for hearing on March 22, 1999 or barely five days from the filing thereof. Although the public prosecutor was served with a copy of the motion, the records do not show that notices thereof were separately given to the heirs of the victims or that subpoenae were issued to and received by them, including those who executed their affidavits of desistance who were residents of Dipolog City or Piñan, Zamboanga del Norte or Palompon, Leyte. There is as well no proof in the records that the public prosecutor notified the heirs of the victims of said motion or of the hearing thereof on March 22, 1999. Although Atty. Valdez entered his appearance as private prosecutor, he did so only for some but not all the close kins of the victims, xxx who executed their respective affidavits of desistance. xxx There is no proof on record that all the heirs of the victims were served with copies of the resolution of Judge Agnir, Jr. dismissing the said cases. In fine, there never was any attempt on the part of the trial court, the public prosecutor and/or the private prosecutor to notify all the heirs of the victims of the respondent's motion and the hearing thereon and of the resolution of Judge Agnir, Jr. dismissing said cases. The said heirs were thus deprived of their right to be heard on the respondent's motion and to protect their interests either in the trial court or in the appellate court. xxx”

[24] *People of the Philippines, et al. vs. Panfilo M. Lacson* (G. R. No. 149453, April 1, 2003)

[25] *John Joseph Lumanlaw y Bulinao vs. Hon. Eduardo B. Peralta, Jr.*, in his capacity as Acting Presiding Judge, Regional Trial Court (Branch 13), Manila (G. R. No. 164953, February 13, 2006)

[26] Id.

[27] Id.

[28] Id.

[29] People of the Philippines, et al. vs. Panfilo M. Lacson (G. R. No. 149453, April 1, 2003)

[30] Id.

[31] Id.

[32[] Id.

[33] Id.

[34] Thelma Yniguez, et al. vs. Court of Appeals, et al. (G. R. No. 79766, August 10, 1989)

[35] Id.

[36] People of the Philippines vs. The Sandiganbayan, et al. (G. R. No. 156394, January 21, 2005)

[37] Ceferina Lopez Tan vs. Spouse Apolinar P. Antazo and Genoveva O. Antazo (G. R. No. 187208, February 23, 2011)

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