

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. ALFREDO CATOLICO, DISTRICT JUDGE, COURT OF FIRST INSTANCE OF CAVITE, BRANCH III, RENATO HORTAL, ALIAS RENE, AND FELIPE CRUZ, ...

G.R. No. L-31260. February 29, 1972

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Original action for certiorari with preliminary mandatory injunction against respondent judge's orders denying the State's timely motion for the reinstatement and trial of a criminal case of robbery in band after a verbal order of provisional dismissal and causing the immediate release of the respondents-accused even before his said verbal order of dismissal could be reduced to writing and duly signed.

The undisputed facts of the case are related in the verified petition of the provincial fiscal, as follows:

The criminal information charging respondents Renato Hortal and Felipe Cruz and six other still unidentified persons with robbery in band committed at midnight of June 17, 1969 at Carmona, Cavite, was filed with respondent court under date of August 1, 1969.[1]

Respondents-accused were placed under detention, having failed to post bail in the recommended amount of P10,000.00 each. The case was set for trial for the first time on October 13, 1969 but trial could not be held on this date because of the absence of the offended parties and their witnesses.

Respondent court then ordered the deputy sheriff to proceed to the residence of the complainants and personally serve them with the court's subpoena requiring their appearance at the trial as reset for the next day, October 14, 1969 at 8:30 a.m.

The provincial fiscal appeared at the scheduled day and hour in lieu of the assistant fiscal in charge who was not available, and noticing that the complainants and prosecution witnesses were not yet in court, moved that the case be called at 10:00 a.m. of the same day.

When the case was thus called at 10:00 a.m., the complainants and their witnesses were not in court and the provincial fiscal was constrained to ask for a provisional dismissal. Respondent court verified from respondents-accused, assisted by their counsel, that they were expressly consenting to such provisional dismissal.

Within minutes after respondent court dictated the order of provisional dismissal, the complainants and other prosecution witnesses arrived in the courtroom. Upon noticing their presence, the provincial fiscal immediately moved for a reconsideration of the provisional dismissal order and having learned that they had been delayed by engine trouble, manifested to respondent court said reason for their delay.[2]

Respondent court, however, asked for the defense counsel, who, however, "all of a sudden * * * disappeared * * * in only a matter of seconds, perhaps," according to the petition. The provincial fiscal urged the court to act

favorably on his motion to lift the provisional dismissal order but respondent court ruled that "having been dictated in open court it automatically inured in favor of the herein accused" and that the State's remedy "should be the refiling of the same case."

The provincial fiscal orally moved respondent court to reconsider its verbal order of denial, "contending that the court is expected to dispense justice not only for the accused but also for the complainants, and explaining that within less than two or three minutes after the order of provisional dismissal was dictated in open court, and before the court could adjourn, the prosecution witnesses arrived" and that no substantial rights of the accused would be prejudiced by such reconsideration.

Respondent court likewise verbally denied reconsideration and caused the issuance by the clerk of court of the release order then and there, even before its verbal order of provisional dismissal could be reduced to writing and duly signed. The court thereby abruptly lost custody over the persons of the two respondents-accused, who were not permanent residents of the resettlement area at Carmona, Cavite, where the robbery charged against them had taken place.

The above-cited actions of respondent court in provisionally dismissing the case, denying the State's motion to lift the provisional dismissal and denying the reconsideration are set forth in three orders all dated October 14, 1969 bearing respondent judge's signature, which, however, were received by the provincial fiscal only ten days later on October 24, 1969.[3]

The petition at bar was therefore filed on November 27, 1969. The Court on December 4, 1969 issued summons to respondents as well as the writ of preliminary mandatory injunction, as prayed for, commanding respondent court to reinstate the criminal case against respondents-accused and to issue a warrant for their arrest.

No answer having been filed by respondents, hearing of the case was set for March 20, 1970. When the hearing was called as scheduled, Provincial Fiscal Narciso D. Salcedo appeared for the petitioner, and there being no appearance for respondents, the case was deemed submitted for decision.

On the basis of the above-recited facts, the Court finds that respondent court acted with grave abuse of discretion tantamount to excess of jurisdiction and that its questioned orders should accordingly be annulled and set aside.

In the recent cases of *People vs. Surtida*[4] and *People vs. Anson*,[5] jointly decided on January 26, 1972, the Chief Justice, speaking for the Court, reiterated the long-standing doctrine that a trial court may not arbitrarily deny a timely and well-founded motion of the prosecution for reconsideration of an order of dismissal and that such arbitrary refusal to reopen the case will be set aside to give the State its day in court and an opportunity to prove the offense charged against the accused and to prevent miscarriage of justice, when no substantial right of the accused would be prejudiced thereby.

In *Surtida*, the Court set aside the trial court's provisional order of dismissal upon the provincial fiscal's inability to appear at the date of the hearing on June 24, 1964 (as rescheduled by the trial court *motu proprio* and without due notice to the provincial fiscal, when the regularly scheduled hearing slated for June 19, 1964 was cancelled due to said date having been declared an official holiday) and its orders denying the prosecution's motion for postponement and seasonable motion for reconsideration of such denial.

In *Ayson*, the Court likewise set aside the order of acquittal as issued in open court on February 18, 1965 when the case was called for trial at 8:30 a.m. and the public and private prosecutors and the offended party were not present. The Court held, after noting that trial on the merits had been postponed several times in the past at the instance of the accused, but that the trial court had precipitously acquitted the accused on the ground of their right to a speedy trial notwithstanding the arrival 30 minutes later of the fiscal with his witnesses, that the trial court

"committed a grave abuse of discretion, amounting to a denial of due process" in issuing its order of acquittal and denying reinstatement of the case. The Court stressed that "although the prosecution and its witnesses were 30 minutes late in appearing before the court on February 18, 1965, their delay was sufficiently explained in the prosecution's motion for reconsideration. The City Fiscal had to wait for his witnesses in Angeles City, and the heavy traffic, on the way therefrom to San Fernando, had unduly slowed down their trip thereto. Considering that said motion for reconsideration was filed immediately after the issuance of the order of acquittal, and that the delay in the trial of the case had been due mainly to the accused, the latter could not validly complain of a denial of speedy trial had the lower court granted the special counsel's motion for postponement."

The Court therein expressly reaffirmed the principle enunciated in *International Tobacco Co. Inc. vs. Yatco*,^[6] wherein it was held that "(A)s could be seen, the dismissal was, according to the respondent Judge, due to lack of interest of the petitioner because its representative Pedro T. Mendiola failed to appear on July 10, 1956 when the claim was called for hearing. It, however, appears that Pedro T. Mendiola arrived in court moments after the order of dismissal was dictated in open court and that, upon learning it, immediately moved the Court verbally that the dismissal be reconsidered and following the suggestion of the court a formal petition reiterating his verbal motion for reconsideration was filed. Petitioner, therefore, never lost interest in the claim — * * *. We do not overlook that the failure of Pedro T. Mendiola to appear on the very hour and date set for hearing of the claim in question may authorize the court to dismiss it; but after the dismissal, when a formal motion for reconsideration was filed on well-founded ground, the respondent Judge should not have resorted to legal technicalities in maintaining his order of dismissal, * * *."

Likewise expressly reaffirmed by the Court therein was the teaching of *People vs. Jaramilla*^[7] in annulling the trial court's dismissal order for alleged "lack of interest on the part of the prosecution" due to the fiscal's non-appearance at the trial, despite a telegram timely sent to the clerk of court explaining the reason therefor. The Court ruled that "(N)or can such failure be considered as an indication of their lack of interest in prosecuting the case it appearing that they were present in the previous hearings. When we consider that the trial judge readily granted the two motions for postponement put in by the defense it would seem to be unusually harsh to dismiss the case outright for the single failure of the prosecutors to appear at the last hearing without giving them an opportunity to explain their failure. It is for this reason that we believe that the court has been unfair to the prosecution and, therefore, such an act should be corrected to prevent miscarriage of justice."

The Court furthermore cited once again its admonition in *People vs. Gomez*^[8] that "(A) purely capricious dismissal of an information, as herein involved, moreover, deprives the State of fair opportunity to prosecute and convict. It denies the prosecution its day in court. Accordingly, it is a dismissal without due process and, therefore, null and void. A dismissal invalid for lack of a fundamental prerequisite, such as due process, will not constitute a proper basis for the claim of double jeopardy."

In the present case, a timely motion to reinstate the provisionally dismissed case was made within 2 or 3 minutes after respondent judge had dictated in open court his order of dismissal and the offended parties and their witnesses, who had been delayed by engine trouble and had to change vehicles, then arrived.

No substantial rights of the accused would be prejudiced by rescinding the verbal order of provisional dismissal. The verbal order had not yet been put in writing and duly signed by respondent judge, and hence could be withdrawn or set aside so that it would produce no legal force and effect.^[9]

Respondent court failed to take into account that accused-respondents were not permanent residents of the resettlement area at Carmona where the robbery took place, and were without means to put up bail and hence were under detention. For it to order their immediate release from custody even though its verbal orders of

dismissal and denial of reinstatement of the case were yet to be duly reduced to writing and signed, was an unauthorized and arbitrary procedure. Its peremptory denial of the timely motion to reinstate the case has put the State to needless great expense and trouble, to say the least, to cause again the apprehension of respondents-accused — if the police agencies succeed in finding them — when they could very well have been made to face trial then and there on October 14, 1969, as scheduled.

Although respondents filed no answer, it is apposite to cite the Court's rejection anew in *Loseo vs. Inting*[10] of the accused's stock contention in such cases that the fiscal should allow the dismissal to stand and just exercise the reservation to refile the case. The Court through Mr. Justice Dizon, there pointed out that "(P)etitioner's contention in this appeal — that the City Fiscal of Davao, instead of asking the City Court of Davao to set aside the order of dismissal, should have allowed it to stand, without prejudice to his re-filing the case with the same court immediately, is a technicality that does not promote the speedy and inexpensive administration of justice. We have heretofore repeatedly held that technicalities, when instead of promoting the speedy administration of justice delay it, are not looked with the speedy administration of justice delay it, are not looked with favor. More so in this case where it appears that the setting aside of the order of dismissal caused petitioner no substantial prejudice admitting as he does that he could have been made to face the same charge all over again in a separate action."

WHEREFORE, the writ of certiorari is granted and the three orders of respondent court all dated October 14, 1969 are hereby annulled and declared without legal effect. The writ of preliminary mandatory injunction heretofore issued is made permanent and respondent court is further ordered to proceed to the prompt trial of the reinstated criminal case (No. N-2296) and thereafter render judgment thereon in accordance with law. With costs against private respondents.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, concur.

[1] Docketed as Criminal Case No. N-2296, entitled "People of the Phil. vs. Renato Hortal alias Rene and Felipe Cruz."

[2] The joint affidavit of the three complainants, corroborated by the affidavit of Oligario Manlambus who had been instructed by Lt. Andaya of the PC detachment to bring them and their witnesses in a PC Jeep for the trial, both executed on the same day, October 14, 1969, have been submitted with the petition, as Annexes D and E. The complainants therein relate that they were notified of the trial only at 4:30 p.m. of the preceding day; that they left Carmona at 7:30 a.m. for the courthouse but were delayed by the bad roads and engine trouble with the PC Jeep, after which they transferred to the private jeep of Lt. Andaya, which likewise developed engine trouble afterwards; and that they met respondents' lawyer hurrying out of the court building as they entered, while the case "was still the subject matter of the discussion between the presiding judge and the provincial fiscal."

[3] Annexes A, B and C, petition.

[4] L-24420.

[5] L-24688.

[6] 103 Phil. 226, 230 (Mar. 28, 1958).

[7] 97 Phil. 880 (Nov. 18, 1955).

[8] 20 SCRA 293 (May 29, 1967).

[9] Cabarroguis vs. San Diego, 6 SCRA 866, (Nov. 30, 1962) citing Rule 116, section 2 (now Rule 120, section 2 of the Revised Rules of Court) and ruling that "'the judgment' and the order of dismissal in question, if completed, had such effect — 'must be written * * * personally and directly prepared by the judge and signed by him * * *.'"

[10] 39 SCRA 448 (June 10, 1971).

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