

**BONIFACIO L. SOLIS, CENON C. SOLIS, AND DELFIN SOLIS,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, AND HONORABLE
JAIME R. AGLORO, IN HIS CAPACITY AS JUDGE, COURT OF FIRST
INSTANC...**

G.R. No. L-42485. July 31, 1978

Ponente: FERNANDO, J.

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FERNANDO, J.:

This case is an aftermath of *Solis v. Agloro* decided in 1975.[1] That was a certiorari and prohibition proceeding; the three petitioners therein, the very same persons who are now before this Court again, assailed the revival of a criminal case for murder, provisionally dismissed by respondent Judge Jaime R. Agloro. It was their contention that there was a violation of the constitutional provision against being twice put in jeopardy of punishment for the same offense.[2] As it was clear that the case was dismissed provisionally with the consent of petitioners, this Court ruled that there was no infringement of such constitutional right.[3] Consequently, such petition was dismissed. It was squarely held that the revival of the criminal case was not tainted by any legal infirmity. Petitioners, still loathe to go to trial and face the charge against them, would now insist anew that when respondent Judge, after such revival, continued to hear the case, he was guilty of a jurisdictional misstep. It was alleged that there was a need for a new information, which would likewise require that another preliminary investigation be undertaken, with the intimation that otherwise there would be a denial of procedural due process. In the answer of the Solicitor General, it was pointed out that prior to the filing of such criminal case, they were already accorded such preliminary investigation. It was further contended that this Court, having in the aforesaid decision sustained the power of respondent Judge to continue with the trial after the provisional dismissal, ruled definitely that the revival of the criminal case was proper and valid in all respects. It is thus a closed matter, this Court having spoken with finality. The doctrine of the law of the case squarely calls for application. It is quite apparent, therefore, that this second attempt to prevent the continuation of the prosecution of petitioners is likewise doomed to futility.

The earlier decision in *Solis v. Agloro* succinctly set forth the facts thus: "An information for murder was filed against petitioners on September 9, 1971. They were arraigned on October 8, 1971 and they entered not guilty pleas. The trial was set for August 7, 1972, then successively postponed to October 2, 1972, October 30, 1972, and * * * November 24, 1972, the failure of the prosecution witnesses to appear despite their being notified resulting in the hearings not being held. On the last date mentioned, November 24, 1972, there was a reiteration by petitioners of their objection to any further postponement, based on the ground of the infringement of their constitutional right to speedy trial. As a result, respondent Judge issued a provisional order of dismissal wherein there was express mention of defense counsel announcing 'the readiness of the accused to give their express conformity to the provisional dismissal of this case. The prosecuting Fiscal submitted the matter to the sound discretion of the Court.' Further: 'The Court called for the accused and asked them singly and individually, whether they are willing to have this case dismissed with their express conformity, explaining to them that such

dismissal will mean possible revival of this case against them, to which each answered in the affirmative.' On September 24, 1974, respondent People of the Philippines filed a motion to revive the case. There was an opposition on the part of petitioners, based on the alleged disregard of their right against being twice put in jeopardy of punishment. Then came on May 7, 1974 the challenged order of respondent Judge granting their motion to revive the case." [4] The decision, as above noted, was against the petitioners, their certiorari suit being dismissed for lack of merit. [5] When, however, respondent Judge set the criminal case for hearing, counsel for petitioners filed a motion to quash and even went to the extent of asserting that notwithstanding the decision of this Court, the provisional dismissal was impressed with finality. [6] It was not unexpected, therefore, for respondent Judge to deny such motion to quash and the motion for reconsideration thereafter submitted. [7]

Hence, this new petition, which, as noted at the outset, is clearly devoid of merit.

1. The contention of petitioners that the revival of this criminal case against them gave rise to the jurisdictional question in the absence of a new preliminary investigation is far-fetched and implausible. It is not impressed at all with a procedural due process aspect. It was made clear by the then Chief Justice Concepcion in *People v. Casiano* [8] that even the absence of a preliminary investigation "did not impair the validity of the information or otherwise rendered it defective, much less did it affect the jurisdiction of the court of first instance * * *." [9] *Zacarias v. Cruz*, [10] with Justice Sanchez as ponente, reiterated such a doctrine in language well-nigh similar: "To be underscored here is that the absence of a preliminary investigation does not impair the validity of a criminal information, does not otherwise render it defective, does not affect the jurisdiction of the court over the case." [11] It is true that as held in *People v. Sierra*, [12] there could be exceptional cases where the lack thereof could be characterized as arbitrary or oppressive. This is not, however, the situation here present. The memorandum of the Solicitor General stressed other aspects which clearly would indicate that the plea of having been denied a preliminary investigation should fall on deaf ears. Thus: "Verily, petitioners were already afforded a preliminary investigation in the Municipal Court of Lobo, Batangas, and to insist on another one would be merely to ask for what is a *fait accompli*. This is not to discount the obvious fact that petitioners, by virtue of their actuations, have rendered themselves under estoppel to raise this issue at this late hour. It must be emphasized that petitioners raised the issue of alleged lack of a preliminary investigation only after they had pleaded to the information in the trial court. As a consequence, they are deemed to have waived preliminary investigation, assuming they were entitled to one." [13]

2. The petition, moreover, suffers from an infirmity equally fatal in character. The doctrine of the law of the case is an insurmountable obstacle. The issue of whether or not respondent Judge could continue with the trial after the provisional dismissal of the case was squarely raised and squarely decided in the first petition filed by the very same parties in the first *Solis v. Agloro* petition. This Court left no doubt that respondent Judge not only could but should proceed with the hearing on the very same information filed against petitioners as the accused. There is no legal basis for them to raise the question anew. The pretext that another ground could call for a ruling final in character being set aside is too flimsy and far-fetched to be entertained. *People v. Olarte* [14] cannot be any clearer. In the categorical language of Justice J.B.L. Reyes, who spoke for the Court: "Suffice it to say that our ruling in Case L-13027, rendered on the first appeal, constitutes the law of the case, and, even if erroneous, it may no longer be disturbed or modified since it has become final long ago." [15] Substitute certiorari for appeal, the previous action for this Court being of that character, and the language of *Olarte* fits this second attempt to delay further the hearing of the criminal case. That step, to repeat, is bereft of support in law. To lend it approval would result in repudiating the well-settled principle of the binding force of the law of the case. That would be to disregard a host of decisions notable for their number and unanimity. [16] This Court certainly will not be a party to such a scheme.

WHEREFORE, the petition for certiorari is dismissed. The trial of Criminal Case No. 145 (II-II), must be resumed forthwith in the Court of First Instance of Batangas, Branch II, formerly presided by respondent Judge Jaime R. Agloro. This decision is immediately executory. Costs against petitioners.

Barredo, Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] L-39254, June 20, 1975, 64 SCRA 370.

[2] Article IV, Section 22 of the Constitution states: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." The provision is a reiteration of Article III, Section 1, par. 20 of the 1935 Constitution.

[3] This Court cited the following decisions in support of such a ruling: *Jaca v. Blanco*, 86 Phil. 452 (1950); *People v. Romero*, 89 Phil. 672 (1951); *Co Te Hue v. Encarnacion*, 94 Phil. 258 (1954); *Republic v. Agoncillo*, L-27257, Aug. 31, 1971, 40 SCRA 579; *People v. Surtida*, L-24420, Jan. 26, 1972, 43 SCRA 29; *Taladua v. Ochotorena*, L-25595, Feb. 15, 1974, 55 SCRA 528.

[4] 64 SCRA 372.

[5] *Ibid*, 378.

[6] Petition, pars. 6, 9.

[7] *Ibid*, pars. 8, 10.

[8] 111 Phil. 73 (1961).

[9] *Ibid*, 79. Cf. *People v. Figueroa*, L-24273, April 30, 1969, 27 SCRA 1239.

[10] L-25899, November 29, 1969, 30 SCRA 728.

[11] *Ibid*, 731.

[12] L-27613, August 30, 1972, 46 SCRA 717.

[13] Memorandum of Solicitor General, 14.

[14] L-22465, February 28, 1967, 19 SCRA 494.

[15] *Ibid*, 498.

[16] Cf. *Sanchez v. Court of Industrial Relations*, L-26932, March 28, 1969, 27 SCRA 490; *Masa v. Baes*, L-29784, May 21, 1969, 28 SCRA 263; *Neria v. Vivo*, L-26611, Sept. 30, 1969, 29 SCRA 701; *Dy Pac Pakiao Workers Union v. Dy Pac and Co.*, L-27377, March 31, 1971, 38 SCRA 263; *Palad v. Governor of Quezon Province*, L-24302, Aug. 18, 1972, 46 SCRA 354; *Rodriguez v. Director of Prisons*, L-35386, Sept. 28, 1972, 47 SCRA 153; *Mangayao v. De Guzman*, L-24787, Feb. 22, 1974, 55 SCRA 540.

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