

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SERGIO BALADJAY, DEFENDANT-APPELLANT.

G.R. Nos. L-26915-18. March 30, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case on double jeopardy. The issue is whether the trial court's order reinstating four criminal cases, which it had provisionally dismissed because of the delay in prosecuting them and because the fiscal was not ready when the cases were called for hearing, placed the accused in double jeopardy.

Four criminal cases were filed against Sergio Baladjay and others in the municipal court (now city court) of Ozamiz City, to wit:

- (1) Criminal Case No. 3890 for illegal possession of instruments for committing counterfeiting or falsification allegedly committed on December 6, 1954 and filed also on December 6, 1954.
- (2) Criminal Case No. 3900 for estafa committed on June 5, 1953 and filed on December 24, 1954.
- (3) Criminal Case No. 3993 for estafa committed on August 14, 1953 and filed on January 3, 1955.
- (4) Criminal Case No. 4160 for theft committed on August 14, 1953 and filed on January 31, 1955 (p. 19, Rollo).

After the corresponding preliminary examination and waiver of the second stage of the preliminary investigation, the cases were elevated to the Court of First Instance. Only Baladjay was available for trial. His co-accused either were not arrested or had jumped bail. Baladjay pleaded not guilty upon arraignment. The four cases were heard jointly.

The hearing started on June 20, 1962. The prosecution presented two witnesses, Felipe Obregon and Narciso Martinez, and identified Exhibits A to E (p. 71, Rollo). No determined effort was made by the prosecution to finish with its evidence as shown by the fact that the trial court in its order of April 21, 1965 noted that "despite of the length of time since these cases have been (were) filed circa 1955, the prosecution is still unprepared".

In that same order the trial court granted the prosecution's motion for postponement "on condition that (if) when these cases are called again for hearing the prosecution will still not be pre-pared, the Court will take drastic action". So, the cases were reset for hearing on June 16, 17 and 18, 1965. Apparently, the prosecution was not ready on those dates and the hearing was again cancelled.

On January 24, 1966, when the four cases were called for hearing, accused was ready for trial but no one appeared for the prosecution. The city fiscal had sent a telegraphic motion for postponement. Judge Mariano A. Zosa issued four separate orders in open court dismissing the four cases "provisionally".

In the identical orders issued in Criminal Cases Nos. 3890 and 3900, Judge Zosa in dismissing the two cases noted that they had been pending since December 6, 1954 and the prosecution had done nothing to finish its

evidence; that the city fiscal was negligent and that accused Baladjay was ready for trial, opposed the post-ponement and moved for the dismissal of the cases.

In Criminal Case No. 3993, Judge Zosa provisionally dismissed the case because the delay in its prosecution was attributable to the "continued unpreparedness of the prosecution" and the fiscal's motion for postponement was flimsy. Judge Zosa noted that accused Baladjay was present and ready for trial.

In the fourth case, Criminal Case No. 4160, Judge Zosa provisionally dismissed the case because Baladjay insisted on his right to a speedy trial and he had opposed the fiscal's telegraphic motion for postponement.

The prosecution moved for the reconsideration of the four dismissal orders on the ground that on the date of hearing no assist-ant fiscal was available to appear thereat and that the city fiscal had to appear in a case in Ozamiz City and could not, therefore, appear in Oroquieta City. Baladjay opposed the motion.

Judge Zosa in his order dated April 20, 1966 reconsidered the four orders of dismissal and reinstated the four cases. He said that although the city fiscal was negligent, nevertheless, "in the interest of justice" the dismissal orders had to be reconsidered and the four cases should be regarded as "pending cases".

In turn, Baladjay moved for the reconsideration of the order reinstating the four cases. Judge Zosa denied the motion in his order of October 20, 1966. Baladjay appealed to this Court from that denial order and the preceding order reinstating the four cases. The records of the four cases were elevated to this Court.

On July 26, 1967, or after Baladjay had filed his appellant's brief, the Solicitor General filed a motion to dismiss on the ground that the orders under appeal are interlocutory and nonappealable and they could possibly be assailed by means of a petition for certiorari and prohibition but could not be brought to this Court by a mere notice of appeal.

The motion to dismiss was denied in a minute resolution dated August 1, 1967. The Solicitor General in his brief reiterated his contention that an appeal was not the proper remedy for assailing the lower court's interlocutory order reinstating the four criminal cases to the status of pending cases.

However, the Solicitor General conceded that "in the interest of justice" the appeal may be treated as an original action for certiorari. Indeed, Baladjay's 20-page brief with its 36-page appendix containing the trial court's orders and the motions for reconsideration and other pleadings may in itself be treated as a petition for certiorari and prohibition which presents squarely the issue of whether the trial court committed a grave abuse of discretion in reinstating the four criminal cases after it had dismissed them on the ground of failure to prosecute and the constitutional right of the accused to a speedy trial.

The prosecution's position is that Judge Zosa committed a grave abuse of discretion in dismissing the four cases, considering that the city fiscal could not appear at the hearing, as indicated in his telegraphic motion for postponement, because he had to appear in another case at Ozamiz City and the fiscal assigned to the case was in Manila because his ad interim appointment had lapsed. Hence, according to the prosecution, the dismissal orders were tantamount to a denial of its day in court and were, therefore, void (*People vs. Gomez*, L-23345, May 29, 1967, 20 SCRA 293).

The prosecution also contends that the dismissal orders did not place the accused in jeopardy because the dismissal was upon his own motion or with his consent. (Sec. 9, Rule 117, Rules of Court.)

We hold that the four dismissal orders, although provisional in character, which were issued upon motion of the accused (after the case had been pending for more than eleven years without the prosecution being able to finish the presentation of its evidence) and on the basis of his right to a speedy trial placed him in jeopardy. The

dismissal was equivalent to an acquittal. The reinstatement of the cases would place him in double jeopardy (*Esmeña vs. Pogoy*, G.R. No. 54110, February 20, 1981, 102 SCRA 861, 867).

"The rule that the dismissal of a criminal case upon de-fendant's motion will not be a bar to another prosecution for the same offense as said dismissal is not without the express con-sent of the defendant, has no application to a case where the dis-missal is predicated on the right of a defendant to a speedy trial.

"The 'provisional' dismissal of a criminal case for failure to prosecute x x x is not truly a dismissal but an acquittal be-cause the prosecution failed to prove the case when the time there-for came." (*Syllabi, People vs. Cloribel*, 120 Phil. 775 citing *People vs. Tacneng*, 105 Phil. 1298 and *People vs. Labatete*, 107 Phil. 697.)

A judgment of acquittal becomes final immediately after promulgation and cannot thus be recalled thereafter for correction or amendment (4 *Moran's Comments on the Rules of Court*, 1980 Ed. pp. 335-6).

It is relevant to note that because Baladjay was denied a speedy trial, he would even be entitled to relief in a mandamus proceeding to compel the dismissal of the informations (*Conde vs. Rivera*, 45 Phil. 650).

WHEREFORE, the lower court's order of April 20, 1966, reinstating the four criminal cases against Sergio Baladjay, is reversed and set aside and its four orders dated January 24, 1966, provisionally dismissing the said cases, are affirmed. No costs.

SO ORDERED.

Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur. Abad Santos, J., on leave. Barredo, J., (Chairman), disqualified because as Solicitor General he filed the People's brief.

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