

**CENON C. SOLIS, DELFIN SOLIS, AND BONIFACIO L. SOLIS,
PETITIONERS VS. HON. JAIME R. AGLORO, IN HIS CAPACITY AS
JUDGE, COURT OF FIRST INSTANCE OF BATANGAS, SECOND
BRANCH; AND PEO...**

G.R. No. L-39254. June 20, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

The stress in this certiorari and prohibition proceeding against respondent Judge Jaime R. Agloro is the alleged transgression of the constitutional rights of petitioners,[1] the accused in an information for murder,[2] to speedy trial[3] and to be free from being twice put in jeopardy of punishment for the same offense,[4] when respondent Judge in his order of May 7, 1974 granted the motion of the other respondent, the People of the Philippines, to revive the aforesaid criminal case which had been provisionally dismissed. The recital of facts in the petition insofar as the issue of speedy trial is concerned lends plausibility for the grant of the remedy sought. With the comment, however, of the Solicitor General, representing the respondents, it does seem that the case for petitioners is not as strong as the vigorous advocacy of their counsel would make it appear. As to the claim that there was a violation of the constitutional guarantee against being twice put in jeopardy, the admission that the case was dismissed provisionally with the consent of petitioners deprives it of any persuasive force. There is thus no legal basis for the allegation that there was a grave abuse of discretion on the part of respondent Judge. We cannot accede to the plea that the remedy of certiorari and prohibition lies.

An information for murder was filed against petitioners on September 9, 1971.[5] They were arraigned on October 18, 1971 and they entered not guilty pleas.[6] The trial was set for August 7, 1972, then successively postponed to October 2, 1972, October 30, 1972, and on November 24, 1972, the failure of the prosecution witnesses to appear despite their being notified resulting in the hearings not being held.[7] 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.[8] 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." [9] On February 21, 1974, respondent People of the Philippines filed a motion to revive the case.[10] 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.[11] Then came on May 7, 1974 the challenged order of respondent Judge granting their motion to revive the case.[12] As set forth therein: "The dismissal in the instant case not being predicated on the right of the accused to a speedy trial and the failure of the prosecution to present its evidence but on inducement (sic) of the accused for provisional dismissal, or dismissal

with their express conformity, the motion to revive case herein is granted." [13] There was a motion for reconsideration but it was denied. [14]

Respondents were required to comment and the Solicitor General did so on their behalf. He felt it necessary to submit to the Court what he considered "a more complete narration of the incidents, as per records of the case, arranged in chronological order, . . ." [15] Thus: "1. On April 27, 1971, the victim, Feliciano Tolentino, was stabbed to death; 2. On the same day, the criminal complaint against accused Cenon Solis was filed with the Municipal Court of Lobo, Batangas; 3. On the following day, April 28, 1971, an amended complaint was filed with the Municipal Court of Lobo, Batangas accusing Cenon Solis, as principal, Delfin Solis and Bonifacio Solis, as accomplices, of the crime of Homicide; 4. Warrant of arrest was issued by the Municipal Court on April 29, 1971 and the three (3) accused were arrested. The accused filed their respective bail bond for their provisional liberty. (Order of the Municipal Court of Lobo, Batangas dated May 15, 1971). On May 17, 1971, the accused, through counsel, Atty. Artemio P. Reyes, filed an 'Urgent Motion to Amend the Criminal Complaint and To Exclude Therefrom Delfin Solis' which was opposed by the Chief of Police of Lobo, Batangas. The motion was set for hearing by the Municipal Court of Batangas on July 13, 1971 at 9:00 o'clock in the morning; 5. On August 9, 1971, the accused, through counsel, filed an 'Urgent Motion to Withdraw Accused's Motion to Amend Criminal Complaint and to Exclude Therefrom Delfin Solis;' 6. At their arraignment on August 17, 1971, the accused pleaded not guilty to the offense charged with the statement that 'they reserve the right to ask (for) the second stage of the preliminary investigation in Batangas.' (Order dated August 21, 1971); 7. The accused filed a Petition for Re-Investigation, dated September 3, 1971; 8. On September 8, 1971, the Provincial Fiscal of Batangas, then Fiscal Benedicto M. Sanchez, denied the Petition for Re-Investigation for lack of merit; 9. The Court of First Instance of Batangas then set the case for arraignment on October 18, 1971 whence the accused entered a plea of not guilty; 10. The case was set for initial hearing on December 17, 1971 at 8:00 o'clock in the morning; 11. However, on December 14, 1971, the accused, through counsel, Atty. Artemio P. Reyes, filed an 'Urgent Motion for Postponement' on the ground that the accused, Cenon Solis, is seriously ill with influenza; 12. The Court, presided by Honorable Antonio Q. Malaya, granted the said 'Urgent Motion for Postponement' and re-set the trial of the case to January 18, 1972 at 8:00 o'clock in the morning; 13. On January 18, 1972, the accused, through counsel, Atty. Artemio P. Reyes, filed another 'Urgent Motion for Postponement' based on the same reason that the accused, Cenon Solis, is sick; the Court granted said motion and re-set the initial hearing of the case on February 17, 1972 at 8:00 o'clock in the morning; 14. Before the case could be heard, however, all the accused, through their respective counsel, filed a 'joint Motion for Re-Investigation' dated April 10, 1972, claiming that 'it would be nugatory to go on with the trial of the instant case, as the guilt of the accused could not be proven beyond reasonable doubt by the prosecution, hence, we are constrained to respectfully move to a re-investigation of the case with a view to outright dismissal of the same, and thus, the accused would be secured against hasty, malicious and oppressive prosecutions and would be protected from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial and would also protect the State from useless and expensive trial, . . .'; 15. On April 24, 1972, the Court of First Instance of Batangas denied the joint motion for re-investigation filed by the defense and set the hearing of the case 'for further assignment'. (Order dated April 24, 1972); 16. Judge Malaya was transferred to another court and the case against the accused was then reassigned to the Second Branch of the Court of First Instance of Batangas, the Hon. Jaime R. Agloro, by virtue of the raffle held on July 1, 1972; 17. On July 19, 1972, the Court set the trial of the case against the accused on July 27, 1972 but the said hearing did not push through for failure of the accused to be notified. The hearing of the case was then set to August 21, 1972 on which date, however, the accused Delfin Solis failed to appear purportedly because of an ailment and, consequently, the Court re-set the hearing of the case to September 7, 1972; 18. On September 7, 1972, the parties were not present in court notwithstanding the fact that accused Cenon Solis and Bonifacio Solis were present in court at the last hearing on August 21, 1972. The Court took it that said non--appearance of the

parties was due to the fact that they 'have not been notified due to the lack of stamp. (Order dated September 7, 1972)'; 19. On October 2, 1972, the prosecution witnesses failed to appear; the return of the subpoena for prosecution witnesses Simeon Ada and Sofia Ramos shows that said witnesses are in Mindoro; the subpoena issued to Dr. Jeremias Cordero has not yet been returned. The case was then set for hearing on October 30, 1972, the prosecution presented its first witness, Dr. Jeremias Cordero. After the testimony of said witness, the prosecution asked for continuance on the ground that a prosecution witness is indisposed as evidenced by a medical certificate issued by the Municipal Health Officer of Lobo, Batangas, and that there is no return as yet made by the Chief of Police on the subpoena issued to another witness. The Court reset the hearing of the case to November 24, 1972; 21. On November 24, 1972, the prosecution witnesses failed to appear and the accused asked for the provisional dismissal of the case. Acting on said motion, the lower court dismissed the case provisionally."[16] From the foregoing narration of events, according to the Solicitor General "it cannot be gainsaid that the delay in the termination of the case against the accused was attributable mainly to the accused themselves." [17] The comment was considered as answer and the parties were required to submit memoranda. It is noteworthy that the foregoing detailed narration of what the Solicitor General considered as relevant factual data was not challenged by petitioners as to their accuracy in their memorandum.

In the light of the facts on record, the imputation of grave abuse of discretion hurled against the actuation of respondent Judge cannot be sustained. The petition then, as was noted, cannot prosper.

1. This Court, even prior to the establishment of the Commonwealth, had accorded due recognition to the right to a speedy trial. It was from the pen of Justice Malcolm, in the leading 1924 decision of *Conde vs. Rivera*, [18] that this constitutional guarantee was identified with a trial free from "vexatious, capricious, and oppressive delay." [19] Only last December, such a principle was reiterated in *Flores vs. People*. [20] That is the standard that must be met. Only when there is a failure to abide by it can there be a legitimate cause for complaint. It is essential then that there be a showing that the trial be protracted for such a period as could be justly characterized as causing vexation, manifesting caprice, and resulting in oppression. The circumstances of this case, as rendered clear in the comment of the Solicitor General, not denied by petitioners, are hardly that. It cannot be gainsaid that the delay was attributable not only to the prosecution but to the accused, now petitioners. [21] It would be less than justifiable, therefore, to attribute to respondent Judge conduct amounting to a grave abuse of discretion for reinstating this case that was provisionally dismissed. There was no infringement of the constitutional right to speedy trial. [22]

2. Neither was there a violation of the constitutional right of petitioners against being put in jeopardy of punishment. In the order provisionally dismissing the case, it was explicitly made clear that defense counsel announced "the readiness of the accused to give their express conformity to the provisional dismissal of [their] case." [23] More than that, it was therein stated that respondent Judge "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." [24] Accordingly, it was set forth in the dispositive portion that the case "is hereby ordered dismissed with the express conformity of the accused Cenon C. Solis, Delfin Solis and Bonifacio Solis y Lualhati alias Pacio, with cost de oficio." [25] There being such a provisional dismissal, there is no merit to the contention that a revival of the case would amount to a disregard of the constitutional prohibition against double jeopardy. So it was held in *Jaca vs. Blanco*, [26] where Justice Ozaeta, speaking for this Court, emphasized that it "is a definite or unconditional dismissal which terminates the case, and not a dismissal without prejudice . . . In the absence of any statutory provision to the contrary, [he found] 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. If the accused should deem such

conditional or provisional dismissal to be unjust and prejudicial to him because he has been deprived of his right to a speedy trial, as for instance where the case has dragged on for an unreasonably long time without his fault, he could and should object to such dismissal and insist that the case be heard and decided on the merits." [27] Lately, in *Republic vs. Agoncillo*, [28] there was a reaffirmation of such a doctrine. Thus: "It is true jeopardy had attached with a valid complaint having been filed in a court of competent jurisdiction and defendants having been thereafter arraigned and pleaded. It had not terminated, though. There was neither conviction nor acquittal. There was thereafter a dismissal without prejudice. Defendants knew, or ought to have known, that the complaint could thus be filed again. They could have objected; they did not. Had they stood fast on what they conceived to be their rights as defendants, things might have been different. Matters could have definitely ended then and there. The jeopardy clause could have been thereafter appropriately invoked. The dismissal would have been unconditional in character. That is not, however, how things developed. What transpired instead was a dismissal clearly without prejudice." [29] If, therefore, the plea that petitioners would be placed in double jeopardy cannot be sustained, they have only themselves to blame, agreeing as they did to the provisional dismissal of the case. This is so in this case, although there may be instances where the accused may appropriately invoke the right to speedy trial to bolster the plea of double jeopardy.

WHEREFORE, the petition for certiorari is dismissed for lack of merit. Costs against petitioners.

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

[1] Cenon C. Solis, Delfin Solis and Bonifacio L. Solis.

[2] Criminal Case No. 145, Court of First Instance of Batangas, Eighth Judicial District, Second Branch.

[3] According to Article IV, Section 19 of the Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, and to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence on his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."

[4] According to Article IV, Section 22 of the Constitution: "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."

[5] Petition, par. 2, Annex A.

[6] *Ibid*, par. 3.

[7] *Ibid*, par. 5.

[8] *Ibid*, par. 8.

[9] *Ibid*, par. 9 and Annex F.

[10] *Ibid*, par. 10.

[11] *Ibid*, par. 11.

[12] *Ibid*, par. 14.

[13] *Ibid*, Annex K.

[14] Ibid, pars. 15-18.

[15] Comment, 4.

[16] Ibid, 4-8.

[17] Ibid, 8.

[18] 45 Phil. 650.

[19] Ibid, 651.

[20] L-25769, December 10, 1974, 61 SCRA 331. Also: Acebedo vs. Sarmiento, L-28025, December 16, 1970, 36 SCRA 247.

[21] Cf. People vs. Jabajab, 100 Phil. 307 (1956).

[22] Cf. People vs. Castañeda, 63 Phil. 480 (1936); Esguerra vs. De la Costa, 66 Phil. 134 (1938); Mercado vs. Santos, 66 Phil. 215 (1938).

[23] Annex F.

[24] Ibid.

[25] Ibid.

[26] 86 Phil. 452 (1950).

[27] Ibid, 454-455. Cf. People vs. Romero, 89 Phil. 672 (1951) and Co Te Hue vs. Encarnacion, 94 Phil. 258 (1954).

[28] L-27257, August 31, 1971, 40 SCRA 579.

[29] Ibid, 586-587. Cf. People vs. Surtida, L-24420, January 26, 1972, 43 SCRA 29; Taladua vs. Ochotorena, L-25595, February 15, 1974, 55 SCRA 528.

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