

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. GODOFREDO ROMERO, ACCUSED AND APPELLEE.

G. R. Nos. L-4517 to L-4520. July 31, 1951

Ponente: FERIA, J.

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FERIA, J.:

The defendant Godofredo Romero was charged in four separate criminal cases with the crimes of murder (No. 362), frustrated murder (No. 360), attempted murder (No. 359) and illegal possession of firearms (No. 361). He was arraigned on December 2, 1949, and pleaded not guilty.

On May 25, 1950, the parties agreed to try jointly the four cases and the prosecution called its first witness, Dr. Dollar to the stand. During his testimony, the fiscal found out that certain exhibits had been left behind in Manila through an oversight of another prosecution witness essential to the testimony of Dr. Dollar, so the fiscal moved for the postponement and the court postponed the trial of the cases to June 14, 1950, warning the prosecution that it would be the last postponement. In its order the court said the following:

"Juzgado.—A petición del Fiscal provincial Lagrimas, que dirige la acusación, quien manifiesta en corte abierta que no está del todo preparado para seguir con la vista de estas cuatro causas, con objeción del abogado Sr. Fornier, de la defensa, transfírase por última vez la continuación de la vista de estas cuatro causas, para los días 14, 15, y 16 de junio próximo, a las ocho de la mañana; en la inteligencia de que si el Fiscal no estuviere preparado para el 14 de junio próximo, el juzgado sobreseerá estas cuatro causas— El Fiscal Sr. Lagrimas y los abogados Sres. Fornier y Operiano, del acusado, han sido notificados en corte abierta de este señalamiento."

On June 14, 1950, when the cases were called for hearing the Provincial Fiscal informed the court that, although he had four witnesses in the court, Capt. Fernandez who was the expert ballistic witness and Dr. Dollar, another witness for the prosecution, had not yet arrived and their testimony were very essential for the prosecution, and moved the court to order the arrest of said witnesses and to suspend, in the meantime, the trial until said ballistic witness and Dr. Dollar had arrived.

The counsel for the defense objected to the postponement of the trial and invited the attention of the court to its order quoted above, in which it was stated that the cases would be dismissed if the fiscal was not ready to proceed with the trial on June 14, 1950, and in view of the opposition of the defense to a further postponement, the court issued the following order of dismissal dated June 14, 1950:

"Teniendo en cuenta que no es esta la primera vez que el Fiscal Provincial no cuenta con los testigos importantes de la acusación; que de accederse a la petición del Fiscal Provincial, estas causas no podrían ser dispuestas antes del mes de octubre de este año, pues este Juzgado no volverá a celebrar sesiones en esta cabecera hasta el octubre próximo de conformidad con la Ley No. 296 de la República; que es derecho constitucional del acusado el ser juzgado prontamente; que no es culpa del acusado el que los testigos del gobierno no estuvieran ahora a la disposición del Fiscal Provincial; y el Juzgado no puede ir ahora en contra de su orden de fecha 25 de mayo de este año; a petición del abogado Fornier de la defensa, que el Juzgado encuentra bien fundada, sobreseanse estas cuatro causas, con las costas de oficio."

The fiscal filed on the next day or June 15, 1950, a motion for reconsideration of the order of dismissal on the ground that the principal witnesses had arrived a couple of hours after the dismissal of the case, and taking into consideration the seriousness of the offenses charged, the interests of justice require that the order of dismissal be reconsidered and set aside, and the reopening and continuation of the joint trial of the four cases be ordered by the court under Section 5, Rule 124 of the Rules of Court. A copy of the motion for reconsideration was served upon the defense counsel, and the hearing thereof was set on June 24, 1950; and the defense counsel filed on June 23, 1950, a written opposition to said motion which was amended on October 17, 1950. The court denied the fiscal's motion for reconsideration on December 21, 1950, and on January 6, 1951, within a period of 15 days from the notice of the denial of his motion for reconsideration, the fiscal filed with the court a notice of appeal from the order of dismissal of the trial court.

On March 5, 1951, the attorneys for the defendant filed with this Supreme Court a motion to dismiss the fiscal's appeal on the ground that the defendant, having been already in jeopardy, would be placed in double jeopardy by the appeal, notwithstanding the fact that, in the order above-quoted of the court below dismissing the four cases against the defendant, the court states that "A petition del abogado Fornier de la defensa que el juzgado encuentra bien fundada, sobreseanse estas cuatro causas, con las costas de oficio."

The defense counsel, in support of their contention, say the following:

"* * * it is indubitable that your defendant did not himself personally move for the dismissal of the cases against him nor expressly consent to it; and that the dismissal was, in effect, an acquittal on the merits for failure to prosecute, because no reservation was made in favor of the prosecution to renew the charges against your defendant in ulterior proceedings."

Whatever explanation that may be given by the attorneys for the defendant, it is a fact which cannot be controverted that the dismissal of the cases against the defendant was ordered upon the petition of defendant's counsel. In opposing the postponement of the trial of the cases and insisting on the compliance with the order of the court dated May 25, 1950, that the cases be dismissed if the Provincial fiscal was not ready for trial on the continuation of the hearing on June 14, 1950, he obviously insisted that the cases be dismissed. The fact that the counsel for the defendant, and not the defendant himself personally, moved for the dismissal of the cases against him, had the same effect as if the defendant had personally moved for such dismissal, inasmuch as the act of the counsel in the prosecution of the defendant's cases was the act of the defendant himself, for the only case in which the defendant cannot be represented by his counsel is in pleading guilty according to Section 3, Rule 114, of the Rules of Court.

This Court in its resolution in the case of *Gandicela vs. Lutero*, (88 Phil., 299), held the following:

"According to Section 9 of Rule 113, if a criminal case is dismissed otherwise than upon the merits at any stage before judgment, without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information, and after the defendant has pleaded to the charge, the dismissal of the case shall be definite or a bar to another prosecution for the same offense; but if it is dismissed upon the petition or with the express consent of the defendant, the dismissal will be without prejudice or not a bar to another prosecution for the same offense, because, in the last case, the defendant's action in having the case dismissed constitutes a waiver of his constitutional right not to be prosecuted again for the same offense.

"If the defendant wants to exercise his constitutional right to a speedy trial, he should ask, not for the dismissal, but for the trial of the case. If the prosecution asks for the postponement of the hearing and the court believes that the hearing cannot be postponed anymore without violating the right of the accused to a speedy trial, the court shall deny the postponement and proceed with the trial and require the fiscal to present the witnesses for the prosecution; and if the fiscal does not or cannot produce his evidence and consequently fails to prove the

defendant's guilt beyond reasonable doubt, the Court, upon the motion of the defendant, shall dismiss the case. Such dismissal is not in reality a mere dismissal although it is generally so called, but an acquittal of the defendant, because of the prosecution's failure to prove the guilt of the defendant, and it will be a bar to another prosecution for the same offense even though it was ordered by the Court upon motion or with the express consent of the defendant, in exactly the same way as a judgment of acquittal obtained upon the defendant's motion (People vs. Salico, G. R. No. L-1567)."

A motion for reconsideration filed in a criminal case in a Court of First Instance by the Fiscal on the ground of error of law in the judgment or grave abuse of discretion is equivalent to a motion for new trial, Guerrero vs. De la Cuesta, 59 Phil., 464; Blouse vs. Moreno and Garcia, 60 Phil. 741; Levett vs. Sy Quia, 61 Phil., 847; Rodriguez vs. Rovira, 63 Phil., 476. The period of fifteen days for the perfection of an appeal is interrupted from the time a motion for new trial is filed (Sec. 6, Rule 118); and if the government may appeal in the present case, it may file a motion for new trial for the same reason.

In view of the foregoing, the motion to dismiss is hereby denied, because the defendant had not yet been placed in jeopardy in the court below. So ordered.

Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

DISSENTING

PARAS, C. J., and BENGZON, J.,

We cannot give our assent to the proposition that because the defendant moved for dismissal he is precluded from setting up such dismissal as bar to a subsequent prosecution. It would be just like holding that because he moved for acquittal and was acquitted, the defendant may not be protected by such previous acquittal. The Courts are reasonable. They do not expect the accused to oppose or refrain from demanding his acquittal or dismissal whenever the circumstances allow. Therefore they could not have provided that if he asks for either and his request is granted, he may thereafter be again put in jeopardy for the same offense.

We believe that the words "without the express consent of the defendant" in sec. 9 Rule 113 qualify "otherwise terminated"—and not "or the case against him dismissed." If they qualified the latter, there would be no ground to declare that they do not likewise qualify, "convicted or acquitted"; and then the Rules would become absurd. Where is the defendant who will not consent to an acquittal?

We opine that the consent to which the rule applies is approval of a temporary termination of the case, like an order remanding it to a lower court or a provisional dismissal. The case against Gandicela was not provisionally dismissed. Former jeopardy may therefore be validly invoked by him.

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