

**ANTONIO DE ZUZUARREGUI, JR., COMPLAINANT, VS. JUDGE
MAXWEL R. ROSETE, METROPOLITAN TRIAL COURT, BRANCH 58,
SAN JUAN, METRO MANILA, RESPONDENT.**

A.M. No. MTJ-02-1426. May 09, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint against Judge Maxwell R. Rosete of the Metropolitan Trial Court, Branch 58, San Juan, Metro Manila, for gross ignorance of the law, grave abuse of authority, incompetence, and impropriety, for dismissing with prejudice a criminal case for falsification of a private document filed by complainant.

The information in Criminal Case No. 52786, entitled *People of the Philippines v. Eduardo I. Lim and Paolo Z. Barrameda*, alleged that on July 2, 1997, the accused conspired in preparing and executing an authorization letter bearing the forged signature of complainant Antonio de Zuzuarregui, Jr. and thereafter in presenting said falsified authorization letter and a fictitious driver's license to the Bureau of Customs to secure the release of a 1997 Ford Expedition - Eddie Bauer (4x4), to the damage and prejudice of complainant.[1] It appears that, after the two accused entered a plea of not guilty during their arraignment on January 19, 1998 in the said criminal case, Judge Guillermo G. Purganan, of the MeTC, Branch 58, set the case for pre-trial and trial on February 17, 1998.[2] The scheduled hearings of the case were subsequently postponed for various reasons, to wit:

- a) From February 17, 1998 to March 31, 1998 – The trial court required the prosecution to submit its opposition to the motion to quash filed by the accused. Thereafter, the defense was required to file its reply and, consequently, the prosecution, its rejoinder;[3]
- b) From March 31, 1998 to May 21, 1998 – The accused Eduardo Lim failed to appear despite due notice. Consequently, the prosecution moved for the issuance of a warrant for the arrest of Lim and, accordingly, his cash bond was confiscated in favor of the government. The motion to quash was then declared submitted for resolution;[4]
- c) From May 21, 1998 to July 14, 1998;[5] July 14, 1998 to September 23, 1998;[6] September 23, 1998 to October 26, 1998[7] – By agreement of the parties, the hearings on these dates were postponed;
- d) From October 26, 1998 to December 9, 1998 – The accused Lim was indisposed and the hearing was cancelled without any objection from the prosecution;[8]
- e) From December 9, 1998 to February 3, 1999 – The accused were given the opportunity to settle the civil aspect of the case. The trial court granted the prosecution's request for the issuance of a subpoena duces tecum and subpoena ad testificandum to the Bureau of Customs, through its authorized representative, to testify and to bring to the court the complete records of the importation made by Toys for the Big Boys, involving a 1997 Ford Expedition vehicle (#1043), black color, VIN # 1FMFL 186 VLB 73056, which was covered by a bill of lading issued by Nippon Yusen Kaisha Line (NYK) under Doc. No. BOI N-2966 TWRA 107.[9]
- f) From February 3, 1999 to May 4, 1999 – There was no proof that the representative of the Bureau of

Customs received a copy of the notice of trial;[10]

g) From May 4, 1999 to June 8, 1999 – The hearing was cancelled due to the absence of both accused Lim (who was sick) and Barrameda (who was out of town) without any objection from the prosecution;[11]

h) From June 8, 1999 to July 19, 1999 – Another postponement was made by agreement of the parties and their counsels and because Pairing Judge Leodegario C. Quilatan had to attend to an official business;[12]

i) From July 19, 1999 to September 13, 1999 – The hearing was cancelled at the instance of the defense because of the possibility that the accused would settle the civil aspect of the case, without any objection from the prosecution;[13]

j) From September 13, 1999 to October 18, 1999 – Both the prosecution and the defense jointly moved for the postponement of the trial ;[14]

k) From October 18, 1999 to December 8, 1999 – The hearing was again postponed upon motion of the defense without any objection from the prosecution. Moreover, upon motion by the defense, the District Collector of the Bureau of Customs, MICP, North Harbor, Manila, was directed to show cause why he should not be cited in contempt of court for his non-appearance during the hearing;[15]

l) From December 8, 1999 to February 9, 2000 – The District Collector of the Formal Entry Division of the Manila International Container Port in Manila failed to appear despite notice. As a consequence, the subpoena duces tecum and subpoena ad testificandum were served anew.[16]

On February 9, 2000, the private prosecutor, with the approval of the public prosecutor and without any objection from the defense, moved for the postponement of the trial to April 12, 2000. In granting the same, respondent said:

On motion of Atty. Ricardo Molina, with the prior approval of the government prosecutor, and there being no objection on the part of Atty. Peter Tabang, reset this case to April 12, 2000 at 8:30 o' clock in the morning.

In the event the prosecution fails to present evidence on the next scheduled hearing, the Court on its own motion shall consider the prosecution as having waived its right to present additional evidence.

Atty. Molina is held responsible for the attendance of the witnesses he intends to present.

Counsels, as well as both accused, are notified in open court of this assignment.

SO ORDERED.[17]

On April 12, 2000, the prosecution requested another postponement because complainant had earlier left for the United States to undergo a carotid operation. Instead of acting upon said motion, respondent issued an order, dated April 12, 2000, dismissing the criminal case with prejudice because of the prosecution's failure to present evidence. Respondent stated in his order:

For the continued failure of the prosecution to adduce evidence despite opportunities given, and conformably to the right of the accused to a speedy and expeditious trial, this case is hereby ordered DISMISSED with prejudice.

SO ORDERED.[18]

Complainant filed a motion for reconsideration, submitting a letter, dated April 13, 2000, of Dr. Gregory C. Robertson, complainant's doctor in the United States, which stated that complainant recently had a carotid angiogram at the Stanford Hospital and had to undergo a carotid intervention a week later; and, because of this, complainant was not allowed to travel.[19] Complainant also submitted two pictures which showed him

undergoing carotid operation.[20]

In his order, dated May 24, 2000, respondent said:

The dismissal must be sustained.

True, there may have been occasions that resettings have been made at the initiative of the defense but that alone is not sufficient to override the primordial right of the accused to a speedy and expeditious trial especially so when the prosecution never interposed its objection to such resettings as in this case obtaining.

Not only the defense counsel or the government prosecutor should be vigilant in safeguarding the constitutional right to speedy and expeditious trial, but it is the primary duty of the court to see to it that such right is not merely a paper mandate but a real constitutional one.

Rightly so, the continued failure of the prosecution to adduce evidence despite the lapse of a long period of time is a flagrant violation of the right of the accused to a speedy trial. To reinstate this case will only result to a further violation of such right and no other justification can be made to arrest further violation except to sustain the dismissal of this case. . . . [21]

Hence, complainant filed the present complaint against respondent, alleging gross ignorance of the law, grave abuse of discretion, grave abuse of authority, incompetence, and impropriety in dismissing with prejudice Criminal Case No. 52786 despite the absence of any compelling reason. Complainant averred that the order of respondent had no basis as the accused themselves had not at any time invoked their right to a speedy trial on or before the scheduled hearing of April 12, 2000. On the other hand, complainant claims that the prosecution's motion for postponement of the April 12, 2000 hearing was justified as he was then in the United States awaiting his carotid operation. He cites the voluminous records of the case in the custody of the Bureau of Customs.

Complainant explains that since he had yet to testify, there was no basis for respondent to rule upon the issue of ownership over the 1997 Ford Expedition vehicle. The pertinent portion of respondent's order, dated May 24, 2000, reads:

Anent the motion for issuance of an order allowing the registration with the Land Transportation Office (LTO) of the vehicle adverted to in the information, the court may only state in obiter that it is the LTO in coordination with the Bureau of Customs (BOC) that determines the registrability of said vehicle but for as long as there is compliance of the rules and regulations pertaining to the registration of the vehicles and custom laws as well, the court sees no obstacle for the registration of said vehicle in the name of the shipper, as appearing in the bill of lading covering said vehicle, considering that the transaction between the shipper and the consignee did not materialize so that, utilizing said bill of lading alone, the former remains as the legal owner thereof.

WHEREFORE, premises considered, the Motion for Reconsideration seeking to set aside the Order of April 12, 2000 should be as it is hereby DENIED and the Urgent Motion of April 24, 2000 is merely NOTED, the LTO being the proper agency tasked, in coordination with the BOC, to determine registrability of imported vehicles.

SO ORDERED.[22]

In his comment, dated January 31, 2001, respondent insists that the questioned orders, dated April 12, 2000 and May 24, 2000, were issued judiciously and with utmost impartiality. Respondent contends that it should be the complainant, not him, who should be blamed for the dismissal of the criminal case as he had earlier issued an order, dated February 9, 2000, resetting the hearing on April 12, 2000, with the warning that, in the event that the prosecution failed to present evidence, the trial court would deem the prosecution to have waived the presentation of its evidence. Respondent points out that, from the time therein accused were arraigned on January 19, 1998 up

to the time the case was dismissed on April 12, 2000, complainant failed to present evidence before the trial court. As regards the order, dated May 24, 2000, respondent explains that he did not categorically rule on the urgent motion, dated April 24, 2000, of the accused Eduardo Lim, but merely noted the same.

In its report, dated January 7, 2002, the Office of the Court Administrator recommends that the case be re-docketed as a regular administrative matter and that the respondent be fined in the amount of two thousand (P2,000.00) pesos for grave abuse of discretion. It expresses the view that while the hearings of the case had been rescheduled many times at the instance of the defense, the trial court and the prosecution never interposed any objection thereto. Since the accused themselves sought for the postponements of the trial, there was deemed a waiver or abandonment of their right to invoke the right to speedy trial. More importantly, the dismissal of the case was not even at the instance of the accused, but by the trial court. On the other hand, it observed that the two postponements sought by the prosecution were for valid and meritorious reasons. Hence, it found respondent's dismissal of the criminal case an abuse of judicial discretion.

We find the recommendation well taken.

Respondent wants to impress upon this Court that his *motu proprio* dismissal of the case was justified as it has been more than two years since the case was set for hearing to allow the prosecution to present its evidence and that any further delay would violate the right of the accused in that case to speedy trial.

To the contrary, the records show that of the 15 postponements, five were by agreement of both the prosecution and the defense. Likewise, the hearing was postponed six times at the instance of the defense either because of the non-appearance of the accused despite notice or because of its manifestation that it be given an opportunity to settle the civil aspect of the case. On the other hand, the resetting of the case by the private prosecutor from February 9, 2000 to April 12, 2000 was with the prior approval of the public prosecutor and without any objection from the defense. On the scheduled hearing of April 12, 2000, the prosecution requested a resetting of the case, but respondent dismissed the case with prejudice. We find this an abuse of discretion on the part of respondent. Needless to state, the request was not for any flimsy or trivial excuse, but precisely because complainant was in the United States to undergo a carotid operation, a fact duly proven.

The right to speedy trial is a relative one, subject to reasonable delays and postponements arising from illness, medical attention, and body operations, as in the present case where it was duly proven that complainant had to undergo a carotid operation. Speedy trial means one that can be had soon after indictment is filed as the prosecution can, with reasonable diligence, prepare for trial. As has been stated, accused persons sometimes forget that those who are aggrieved also have rights.[23] For this reason, in determining the right of the accused to speedy trial, courts should do more than a mathematical computation of the number of postponements of scheduled hearings of the case. What offends the right to speedy trial are unjustified postponements which prolong trial for an unreasonable length of time.[24] This is not the case here.

Neither can respondent excuse himself in dismissing the case on the ground that he did so in the exercise of his judicial discretion: In *Basco v. Rapatalo*,[25] we ruled that:

To be sure, the discretion of the trial court "is not absolute nor beyond control." It must be sound and exercised within reasonable bounds. Judicial discretion, by its very nature, involves the exercise of the judge's individual opinion and the law has wisely provided that its exercise be guided by well-known rules which, while allowing the judge rational latitude for the operation of his own individual views, prevent them from getting out of control. An uncontrolled or uncontrollable discretion on the part of a judge is a misnomer. It is a fallacy.

While respondent may have a laudable purpose in ensuring the prompt disposition of cases, i.e., one that is free from vexatious, capricious, and oppressive delays, he must not lose sight of the fact that his primordial concern

must be justice and fairness.[26] Since no right of the accused in the criminal case had been violated, the order of respondent motu proprio dismissing with prejudice Criminal Case No. 52786 constituted a grave abuse of his discretion. It was, moreover, premature for respondent to act on the motion for issuance of an order allowing the registration of the subject vehicle in the criminal case.

WHEREFORE, as recommended by the Office of the Court Administrator, a FINE of two thousand (P2,000.00) pesos is hereby imposed upon respondent Judge Maxwell R. Rosete of the Metropolitan Trial Court, Branch 58, San Juan, Metro Manila for grave abuse of discretion in dismissing with prejudice Criminal Case No. 52786. He is WARNED that commission of the same or similar acts will be dealt with more severely.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Corona, JJ., concur.

De Leon, Jr., J., abroad on official business.

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- [1] Information dated November 17, 1997; Annex A of Complaint.
- [2] Order dated January 19, 1998 of Judge Guillermo G. Purganan; Annex B of Complaint.
- [3] Order dated February 17, 1998 of Judge Guillermo G. Purganan; Annex C of Complaint.
- [4] Order dated March 31, 1998 of Judge Guillermo G. Purganan; Annex D of Complaint.
- [5] Order dated May 21, 1998 of Judge Guillermo G. Purganan; Annex E of Complaint.
- [6] Order dated July 14, 1998 of Judge Guillermo G. Purganan; Annex F of Complaint.
- [7] Order dated September 23, 1998 of Judge Guillermo G. Purganan; Annex G of Complaint.
- [8] Order dated October 26, 1998 of Judge Guillermo G. Purganan; Annex H of Complaint.
- [9] Order dated December 9, 1998 of Judge Guillermo G. Purganan; Annex I of Complaint.
- [10] Order dated February 3, 1999 of Judge Guillermo G. Purganan; Annex J of Complaint.
- [11] Order dated May 4, 1999 of Pairing Judge Leodegario C. Quilatan; Annex K of Complaint.
- [12] Order dated June 8, 1999 of Pairing Judge Leodegario C. Quilatan; Annex L of Complaint.
- [13] Order dated July 19, 1999 of Pairing Judge and Executive Judge Leodegario C. Quilatan; Annex M of Complaint.
- [14] Order dated September 13, 1999 of Acting Judge Maxwell S. Rosete; Annex N of Complaint.
- [15] Order dated October 18, 1999 of Acting Judge Maxwell S. Rosete; Annex O of Complaint.
- [16] Order dated December 8, 1999 of Acting Judge Maxwell S. Rosete; Annex P of Complaint.
- [17] Order dated February 9, 2000 of Acting Judge Maxwell S. Rosete; Annex Q of Complaint.
- [18] Order dated April 12, 2000 of Acting Judge Maxwell S. Rosete; Annex R of Complaint.
- [19] Annex T of Complaint.
- [20] Annex U of Complaint.

[21] Order dated May 24, 2000 of Acting Judge Maxwell S. Rosete; Annex S of Complaint.

[22] Id.

[23] People v. Gines, 197 SCRA 481 (1991).

[24] People v. Tampal, 244 SCRA 202 (1995).

[25] 269 SCRA 220, 226 (1997).

[26] Martin v. Ver, 123 SCRA 745 (1983).

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