

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. LUIS TAMPAL, DOMINGO PADUMON, ARSENIO PADUMON, SAMUEL PADUMON, AND HON. WILFREDO C. OCHOTORENA IN HIS CAPACITY AS PRESIDING JUDGE OF B...

G.R. No. 102485. May 22, 1995

Ponente: PUNO, J.

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PUNO, J.:

As significant as the right of an accused to speedy trial is the right of the State to prosecute people who violate its penal laws and who constitute a threat to the tranquility of the community. We hold that when the postponements of the trial of an accused have not reached the point of oppression, the State's right to prosecute should not be curtailed.

In an Information,[1] dated August 17, 1990, LUIS TAMPAL, DOMINGO PADUMON, ARSENIO PADUMON, SAMUEL PADUMON, PABLITO SUCO, DARIO SUCO and GAVINO CADLING were charged before the Regional Trial Court of Zamboanga del Norte (Branch XI) with the crime of "Robbery with Homicide and Multiple Physical Serious Injuries." The case was docketed as Criminal Case No. S-1902 and raffled to respondent Wilfredo Ochotorena as presiding judge.

Only private respondents Luis Tampal, Samuel Padumon, Arsenio Padumon and Domingo Padumon, were arrested.[2] The others remained at large.

Upon arraignment on May 17, 1991, the private respondents pleaded not guilty to the offense charged.[3] The case was set for hearing on July 26, 1991. On said date, however, Assistant Provincial Prosecutor Wilfredo Guantero moved for postponement on the ground that he failed to contact his material witnesses. The case was reset to September 20, 1991 without any objection from the defense counsel.[4]

The case was called on September 20, 1991 but the prosecutor was not present. The respondent judge considered the absence of the prosecutor as unjustified, and dismissed the criminal case for failure to prosecute.[5]

The prosecution moved for a reconsideration of the order of dismissal claiming, inter alia, that the Provincial Prosecutor's Office was closed on said date. It was alleged that September 20 is a legal holiday for Muslims, the same being the birthday of Prophet Mohammad SAW. Despite the explanation, the motion for reconsideration was denied by the respondent judge in an Order dated October 4, 1991.[6] The Order reads:

"On September 20, 1991, (this) Court issued an order of (sic) the following tenor:

'IT appears on the record that this case has been filed on August 24, 1990; the arraignment was done on May 17, 1991; trial was held on July 26, 1991.

'WHEN this case was called for today's trial, prosecuting (sic) prosecutor failed to appear despite of (sic) due notice. As such, for its failure to prosecute, this case is hereby DISMISSED.

'LET them be released immediately from custody unless held on other legal cause.

`COSTS de oficio.'

'SO ORDERED.'

"WHAT was the effect of the said order? Did it amount to an acquittal as would bar a reinstatement of the instant case by reason of double jeopardy? The answer would be in the AFFIRMATIVE.

"To start with, the authority of the Court to dismiss a case for failure of prosecution to appear cannot be denied. The authority and extent of the Court's power in that regard is clearly recited in Section 3, Rule 17 of the New Rules of Court. The rule reads:

`Sec. 3. Failure to prosecute. - When plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the Court, the action may be dismissed upon motion of the defendant or upon the Court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the Court.'

"IT should be observed that under the aforequoted rule, the authority of the court is broad and definite. It grants to the Court the power to dismiss even upon its own motion. (Manila Herald Publishing Co., Inc., vs. Ramos, 88 Phil 94). Moreover, it reposes in the trial Court the discretion to so dismiss or not. (People vs. Cloribel, 11 SCRA 809).

"WHEREFORE, premises considered, (the) motion (for reconsideration) at bar is hereby DENIED for lack of merit.

"SO ORDERED."

In the present petition for certiorari, the Solicitor General contends that respondent judge acted without or in excess of his jurisdiction or with grave abuse of discretion when he dismissed the criminal case for failure to prosecute despite the fact that the public prosecutor's absence was for a valid cause. He also claims that since the dismissal of the case is void, the case may be reinstated without placing the private respondents in double jeopardy.

In his Comment, respondent judge justifies the dismissal of Criminal Case No. S-1902 on the rights of the accused to speedy trial[7] and against double jeopardy.[8]

The petition is impressed with merit.

In dismissing criminal cases based on the right of the accused to speedy trial, courts should carefully weigh the circumstances attending each case. They should balance the right of the accused and the right of the State to punish people who violate its penal laws. Both the State and the accused are entitled to due process.[9]

In the petition at bench, the records show that on March 11, 1991, the Office on Muslim Affairs, Region IX, Zamboanga City, thru Regional Director Hadji Salih I. Hayre, issued a Memorandum Circular in connection with CSC Resolution No. 81-1277, dated November 18, 1981, (re: Request for Recognition of Muslim Holidays in areas outside the Autonomous Regions),[10] thus:

"Pursuant to Sections 2 and 5 of Presidential Decree No. 291 dated September 12, 1973, as amended by Presidential Decree No. 322 dated October 26, 1973, the request for authority to excuse from office Muslim-Filipinos who are working with the local or the national government in areas throughout the Philippines outside of the autonomous regions, is hereby approved in the manner herein provided:

- During the: For CY 1991

x x x

3) Mauluddin Nabi (Birthday of Prophet Mohammad SAW) Sept. 20

Muslims are free from office work the whole day of these holidays without being marked absent.

x x x x x x x x

- In Regions 9 and 12, as authorized by the President, offices and/or agencies of the National and Local governments are closed during the above-mentioned Muslim Legal, Holidays, therefore, Muslims and non-Muslims are all excused from work."

It is apparent that the public prosecutor's failure to attend the September 20, 1991 hearing was due to his good faith and belief that said date was a Muslim Legal Holiday. To be sure, the prosecutor could not be faulted for not working on that day since the Provincial Prosecutor's Office was closed pursuant to the aforequoted memorandum circular.

In determining the right of an accused to speedy trial, courts should do more than a mathematical computation of the number of postponements of the scheduled hearings of the case. What offends the right of the accused to speedy trial are unjustified postponements which prolong trial for an unreasonable length of time. We reiterate our ruling in *Gonzales vs. Sandiganbayan*:^[11]

"... the right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious or oppressive delays; or when unjustified postponements of trial are asked for and secured; or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter in which the conduct of both the prosecution and the defense are weighed, and such factors as length of delay, the defendant's assertion or non-assertion of his right and prejudice to the defendant resulting from the delay, are considered."

Criminal Case No. S-1902 was only postponed twice and for a period of less than two months. The first postponement was without any objection from the private respondents. The second postponement was due to a valid cause.

The facts in field in no way indicate that the prosecution of private respondents in Criminal Case No. S-1902 had been unjustly delayed by the prosecution, hence, the respondent judge should have given the prosecution a fair opportunity to prosecute its case. The settled rule is that the right to speedy trial allows reasonable continuance so as not to deprive the prosecution of its day in court.^[12] Thus, we held in *People vs. Navarro*,^[13]:

"A trial court may not arbitrarily deny a timely and well-founded motion of the prosecution for reconsideration of an order of dismissal or acquittal and that such arbitrary refusal to reopen the case will be set aside to give the State its day in court and an opportunity to prove the offense charged against the accused and to prevent miscarriage of justice, especially when no substantial right of the accused would be prejudiced thereby." (emphasis supplied)

Private respondents cannot also invoke their right against double jeopardy. The three (3) requisites of double jeopardy are: (1) a first jeopardy must have attached prior to the second, (2) the first jeopardy must have been validly terminated, and (3) a second jeopardy must be for the same offense as that in the first.^[14] Legal jeopardy attaches only: (a) upon a valid indictment, (2) before a competent court, (3) after arraignment (4) when a valid plea has been entered, and (5) when the defendant was acquitted or convicted, or the case was dismissed or otherwise terminated without the express consent of the accused.^[15]

It is true that in an unbroken line of cases,[16] we have held that dismissal of cases on the ground of failure to prosecute is equivalent to an acquittal that would bar further prosecution of the accused for the same offense. It must be stressed, however, that these dismissals were predicated on the clear right of the accused to speedy trial. These cases are not applicable to the petition at bench considering that the right of the private respondents to speedy trial has not been violated by the State. For this reason, private respondents cannot invoke their right against double jeopardy.[17]

IN VIEW WHEREOF, the instant petition for certiorari is GRANTED. The respondent judge's September 20, 1901 Order of dismissal and the October 4, 1991 Order denying the motion for reconsideration of the prosecution, are ANNULLED AND SET ASIDE. The case is remanded to the court of origin for further proceedings. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] Original Records, p. 49.

[2] Order of Arrest, dated August 24, 1990, Original Records, p. 52.

[3] Ibid, p. 54.

[4] Order, dated July 26, 1991, Original Records, p. 57.

[5] See Order, dated September 20, 1991, Rollo, p. 35.

[6] Original Records, p. 63.

[7] See Section 1 (h) Rule 115 of the Revised Rules on Criminal Procedure. In relation thereto, Section 16, Article III of the 1987 Constitution reads:

All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

[8] Section 21, Article III of the 1987 Constitution reads:

"Sec. 21. 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."

[9] People vs. Declaro, G.R. No. 64362, February 9, 1989, 170 SCRA 142.

[10] The constituent units which approved the Organic Act for the Autonomous Region in Muslim Mindanao are as follows: Lanao Del Sur, Maguindanao, Sulu and Tawi-Tawi (Abbas vs. Comelec, G.R. No. 89651, November 10, 1989, 179 SCRA 287)).

[11] G.R. No. 94750, July 16, 1991, 199 SCRA 298.

[12] See People vs. Pablo, No. L-37271, June 25, 1980, 98 SCRA 289.

[13] Nos. L-38453-54, March 25, 1975, 63 SCRA 264.

[14] Gorion vs. Regional Trial Court of Cebu City, Br. 17, G.R. No. 102131, August 31, 1992, 213 SCRA 138.

[15] *People vs. Vergara*, G.R. Nos. 101557-58, April 28, 1993, 221 SCRA 560.

[16] *Salcedo vs. Mendoza*, No. L-49375, February 28, 1979, 88 SCRA 811; *Esmeña vs. Pogoy*, No. L-54110, February 20, 1981, 102 SCRA 861; *People vs. Robles*, No. L--12761, June 29, 1959, 105 Phil. 1016.

[17] *People vs. Pablo*, *supra*.

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