

**RAMON S. PAULIN, ANGELA F. PAULIN AND JOSE BACHO,
PETITIONERS, VS. HON. CELSO M. GIMENEZ (IN HIS CAPACITY AS
PRESIDING JUDGE OF RTC, CEBU CITY, BRANCH 5), HON. MAMERTO
Y. COLIFL...**

G.R. No. 103323. January 21, 1993

Ponente: MELO, J.

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MELO, J.:

The petition before us arose from a November 10, 1989 incident when the jeep ridden by private respondent and Barangay Captain Castro Belme Mabuyo was overtaken by the Nissan Patrol ridden by herein petitioners, the spouses Dr. Ramon and Angela Paulin, smothering the former with dust.

Irked by this incident, Mabuyo followed the Nissan Patrol until it entered the back gate of Rattan Originals in Tanke, Talisay, Cebu. Inquiring from a nearby security guard as to who owns the Nissan Patrol, he was informed that it belonged to and was driven by petitioner Dr. Ramon Paulin.

Later, while Mabuyo was investigating some problems of his constituents in Kilawan at Tanke, Cebu, Dr. Ramon Paulin and his wife, Angie, allegedly pointed their guns at Mabuyo while Jose Bacho, a companion of the spouses, acted as back-up. Mabuyo instructed one of the barangay tanods to call the police in Talisay and the rest to block the exit of the spouses and their lone companion.

Sensing that they were outnumbered, the spouses put their guns down and upon the arrival of the police officers, they were brought to the police station. On the same date, Station Commander P/Lt. Ariel Palcuto filed a complaint for "grave threats," against the spouses Paulin and Bacho, herein petitioners, which was later docketed as Criminal Case No. 5204. On November 20, 1989, the station commander filed a complaint for, "grave threats and oral defamation," against private respondent Mabuyo, docketed as Criminal Case No. 5213.

The cases were jointly tried and, on June 13, 1990, the Municipal Trial Court of Talisay, Cebu (Branch IX), acting on a motion of the spouses Paulin and Jose Bacho, dismissed Criminal Case No. 5204. On July 2, 1990, Mabuyo filed a, "Motion for Reconsideration," of the said dismissal order which the court granted in a resolution dated July 3, 1990.

At the hearing of Criminal Case No. 5213 on July 5, 1990, petitioners vigorously sought the setting aside of the July 3, 1990 resolution in Criminal Case No. 5204, but the same was denied in another resolution.

Not satisfied with the resolution of respondent Judge Mamerto Y. Coliflores, petitioners filed on July 31, 1990 a petition for "certiorari, prohibition, damages, with relief for preliminary injunction and the issuance of a temporary restraining order" with the Regional Trial Court of the Seventh Judicial Region, which was thereafter docketed as Special Civil Action No. CEB-9207 and later re-raffled to Branch 5 stationed in Cebu City presided over by respondent Judge Celso M. Gimenez, who dismissed the petition in a decision dated December 19, 1991. The decretal portion of the decision states:

"All the foregoing considered, for lack of merit and for being a prohibited pleading under the Rule on Summary Procedure, as revised, the instant petition is hereby dismissed. Public respondent is hereby ordered to proceed with the trial of Crim. Case Nos. 5204 and 5213 and to decide both cases on their merits within the period provided under the Revised Rule on Summary Procedure. The preliminary injunction heretofore issued dated May 9, 1991, is hereby lifted and set aside." (p. 118, Rollo.)

Still not contented, petitioners have now resorted to the instant petition, arguing that (a) the decision of the municipal trial court dated June 13, 1990 dismissing the case against them was a judgment of acquittal, and may no longer be set aside without violating petitioners' right against double jeopardy; and (b) the regional trial court, in dismissing the petition in CEB-9207 abused its discretion as it ignored petitioners' right against double jeopardy.

The main issue to be resolved is whether or not the municipal trial court's dismissal of Criminal Case No. 5204 against petitioners precludes a subsequent reconsideration or reversal of such dismissal as the same would violate petitioners' right against double jeopardy. The secondary issue dwells on the applicability of the Rule on Summary Procedure prohibiting motions to dismiss and petitions for certiorari.

For double jeopardy to be validly invoked by petitioners, the following requisites must have been obtained in the original prosecution:

- a) a valid complaint or information;
- b) a competent court;
- c) the defendant had pleaded to the charge; and
- d) the defendant was acquitted, or convicted, or the case against him was dismissed or otherwise terminated without his express consent (*People v. Obsania*, 23 SCRA 1249 [1968]; *Caes v. IAC*, 179 SCRA 54 [1989]).

Jurisprudence on double jeopardy as well as the exceptions thereto which finds application to the case at bar has been laid down by this Court as follows:

"... However, an appeal by the pro-secution from the order of dismissal (of the criminal case) by the trial court shall not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent of the defendant; (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant." (*People v. Villalon*, 192 SCRA 521 [1990], at p. 529.)

For double jeopardy to attach, the dismissal of the case must be without the express consent of the accused (*People v. Gines*, 197 SCRA 481 [1991]). Where the dismissal was ordered upon motion or with the express assent of the accused, he is deemed to have waived his protection against double jeopardy. In the case at bar, the dismissal was granted upon motion of petitioners. Double jeopardy thus did not attach. This doctrine of waiver of double jeopardy was examined and formally introduced in *People v. Salico* (84 Phil. 722 [1949]), where Justice Felicisimo Feria stated:

"... when the case is dismissed, with the express consent of the defendant, the dismissal will not be a bar to another prosecution for the same offense; because, his action in having the case dismissed constitutes a waiver of his constitutional right or privi-lege, for the reason that he thereby prevents the court from proceeding to the trial on the merits and rendering a judgment of conviction against him." (See also *People v. Marapao* (85 Phil. 832 [1950]); *Gandicela v. Lutero* (88 Phil. 299 [1951]); *People v. Desalisa* (125 Phil. 27 [1966]); and, more recently, *People v. Aquino* (199 SCRA 610 [1991]).

Petitioners insist that the June 13, 1990 decision of the Municipal Trial Court (MTC) is an acquittal since it was

issued after it had allegedly considered the merits of the prosecution's evidence.

In *People v. Salico* (supra), distinctions between acquittal and dismissal were made, to wit:

"... Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that defendant's guilt is beyond reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissals terminate the proceedings, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court or the complaint or information is not valid or sufficient in form and substance, etc. ..." (at pp. 732-733.)

The MTC decision dismissing the case is not an acquittal from the charge considering that no finding was made as to the guilt or innocence of the petitioners.

Under Section 14, Rule 110 of the 1985 Rules on Criminal Procedure, as amended, it is stated:

"Sec. 14. Amendments. - x x x

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Rule 119. Sec. 11..."

In Section 11 of the same Rule, it is provided:

"When it becomes manifest at any time before judgment, that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged, or of any other offense necessarily included therein, the accused shall not be discharged, if there appears to be good cause to detain him. In such case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information." (Id., Sec. 11, Rule 119.)

In the case at bar, the original case was dismissed without the proper information having been filed, it appearing that the proper charge should have been, "disturbance of public performance," punishable under Article 153 of the Revised Penal Code instead of "grave threats," under Article 282 of the same penal code.

Jurisprudence recognizes exceptional instances when the dismissal may be held to be final, disposing of the case once and for all even if the dismissal was made on motion of the accused himself, to wit:

1. Where the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal.
2. Where the dismissal is made, also on motion of the accused, because of the denial of his right to a speedy trial which is in effect a failure to prosecute. (*Caes v. IAC*, 179 SCRA 54 [1989] at pp. 60-61.)

Petitioners' motion to dismiss premised on procedural grounds cannot be considered a demurrer to evidence nor was the dismissal sought by them predicated on the denial of their right to speedy trial. Hence, the exceptions mentioned find no application in the instant case, especially so because when the municipal trial court dismissed the case upon petitioners' motion, the prosecution still had to present several witnesses.

"Where the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated (*People v. Balisacan*, G.R. No. L-26376, Aug. 31, 1966, 17 SCRA 1119; *Uy v. Genato*, G.R. No. L-37399, May 29, 1974, 57 SCRA 123). Where there is a violation of basic constitutional rights, courts are ousted of jurisdiction. Hence, the violation of the State's right to due process raises a serious jurisdictional error (*Gumabon v. Director of the Bureau of Prisons*, G.R. No. L-30026, Jan. 30, 1971, 37 SCRA 420) as the decision rendered in disregard of the right is void for lack of jurisdiction." (*Aducayen v. Flores*, 51

SCRA 78 [1973], at p. 78.)

Where the order of dismissal was issued at a time when the case was not ready for trial and adjudication, the order is null and void (*People v. Pamittan*, 30 SCRA 98 [1969]).

In *People v. Bocar* (138 SCRA 166 [1985]), this Court found that the prosecution was denied due process as it never had the chance to offer its evidence formally in accordance with the Rules of Court in view of the trial court's order of dismissal. The trial court was thereby ousted from its jurisdiction when it violated the right of the prosecution to due process by aborting its right to complete the presentation of its evidence and, therefore, the first jeopardy had not been terminated. Hence, the remand of the case for further hearing or trial is merely a continuation of the first jeopardy and does not expose the accused to a second jeopardy.

In the subsequent case of *People v. Albano* (163 SCRA 511 [1988]), this Court reiterated its previous ruling in the Bocar case, holding that the trial court exceeded its jurisdiction and acted with grave abuse of discretion, tantamount to lack of jurisdiction, when it pre-emptively dismissed the case and as a consequence thereof, deprived the prosecution of its right to prosecute and prove its case, thereby violating its fundamental right to due process. With such violation, its orders are, therefore, null and void and cannot constitute a proper basis for a claim of double jeopardy.

In the more recent case of *Saldana v. Court of Appeals* (190 SCRA 396 [1990]), the issue raised was as follows: "Where the trial court prematurely terminated the presentation of the prosecution's evidence and forthwith dismissed the information for insufficiency of evidence, may the case be remanded for further proceeding?" This Court, applying the Bocar case, ruled that the order of the Court of Appeals reinstating the criminal case for further hearing by the trial court does not violate the rule on double jeopardy inasmuch as the trial court was ousted from its jurisdiction when it violated the right of the prosecution to due process.

The municipal trial court thus did not violate the rule on double jeopardy when it set aside the order of dismissal for the reception of further evidence by the prosecution because it merely corrected its error when it prematurely terminated and dismissed the case without giving the prosecution the right to complete the presentation of its evidence. It follows then that the decision of respondent regional trial court sustaining that of the court of origin cannot be said to be tainted with grave abuse of discretion.

The Rule on Summary Procedure was correctly applied by the public respondents in this case.

Petitioners argue that public respondents gravely abused their discretion in applying the provision prohibiting the filing of motions to dismiss and petitions for certiorari provided under the Rule on Summary Procedure. They claim that the prohibition under Section 15 of the Rule on Summary Procedure refers to motions to dismiss or to quash filed before the accused enters his plea. In any event, petitioners insist that they filed a demurrer to evidence which is not a prohibited pleading under the Rule on Summary Procedure.

Demurrer to evidence due to its insufficiency pre-supposes that the prosecution had already rested its case (Sec. 15, Rule 119, 1985 Rules on Criminal Procedure). Hence, the motion is premature if interposed at a time when the prosecution is still in the process of presenting its evidence (*Aquino v. Sison*, 179 SCRA 648 [1989]), as what happened in this case.

Petitioners, of course, maintain that all the prosecution's evidence was already on record since the affidavits of complainant and his witnesses, in law, constituted their direct testimonies and that, therefore, no other evidence could have been introduced by the prosecution.

Submission of the affidavits to the court does not warrant the inference that the prosecution had already finished presenting its evidence because the affiants are still required to testify and affirm the contents thereof; otherwise,

these affidavits cannot serve as competent evidence for the prosecution. The Rule on Summary Procedure states:

"Sec. 14. Procedure of Trial. Upon a plea of not guilty being entered, the trial shall immediately proceed. The affidavits submitted by the parties shall constitute the direct testimonies of the witnesses who executed the same. Witnesses who testified may be subjected to cross-examination. Should the affiant fail to testify, his affidavit shall not be considered as competent evidence for the party presenting the affidavit, but the adverse party may utilize the same for any admissible purpose.

No witness shall be allowed to testify unless he had previously submitted an affidavit to the court in accordance with Sections 9 and 10 hereof."

WHEREFORE, the petition is DISMISSED and the decision of the Regional Trial Court dated December 19, 1991 AFFIRMED.

SO ORDERED.

Gutierrez Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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