

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. DR. CLARO ROBLES, DEFENDANT AND APPELLEE.*G.R. No. 12761. June 29, 1959*

Ponente: BAUTISTA ANGELO, J.

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On March 2, 1960, Claro Robles with others were charged before the Justice of the Peace Court of Tiaong, Quezon, with a violation of Article 199, paragraphs (b) and (c), of the Revised Penal Code, as amended by Commonwealth Act 235, which charge was amended on March 8, 1950. After the corresponding preliminary investigation, the case was forwarded to the Court of First Instance of Quezon, where a formal investigation was filed by the Fiscal against them involving the same charge. Robles with some of his co-accused pleaded not guilty (Case No. 10711).

The case was set for hearing on July 26, 1950. The hearing was not held on said date but was transferred to other dates either at the instance of appellee on the ground of illness, or upon motion of the Fiscal because of the absence of his important witnesses who were mostly members of the Philippine Constabulary, until it was finally set on November 15, 1950. On this later date, the Fiscal moved for provisional dismissal on the ground that in spite of his efforts his witnesses could not appear to prove the allegations of the information, and as the accused gave their conformity to it, the case was provisionally dismissed.

On January 10, 1952, the Provincial Fiscal filed a new information against the same accused which is practically a reproduction of the original charge (Case No. 11065). After the corresponding preliminary investigation, which was conducted only after suffering several postponements, the arrest of Robles and his co-accused was ordered, who in due time put up a bail bond for their temporary release. They were arraigned on June 16, 1952, and pleaded not guilty, the court setting the hearing for July 28 and 29, 1952. As some of the accused have not been apprehended, the Court, upon motion of the defense, ordered the postponement of the trial until such time as all the other accused shall have been apprehended. The case was again set for hearing on February 4, 1953, and was reset for February 9 and 10, 1953, but when February 9 came, the Fiscal could not go to the trial because of the absence of some of his witnesses, and so he informed the Court that he has no alternative than to ask for postponement. Because of the alleged reason, the Court again postponed the trial "for the last time, with the warning that when this case is set anew for trial, it will not entertain any petition for further postponement of the trial".

When the case was called for hearing on March 19, 1953, the Fiscal again moved for postponement because of the absence of his witnesses. The motion was vigorously opposed by counsel for appellee, adverting to the fact that this case has been postponed many times for the reason that the prosecution could not go to trial because of the absence of its witnesses with the result that the case had been pending for more than three (3) years since it was originally instituted, and considering that the accused have already suffered long enough "from mental anguish, wounded feelings, social shock and besmirched reputation" and are entitled under the Constitution to a speedy trial, counsel moved that the case be definitely dismissed, with costs de oficio. The Court denied the motion for

postponement, but on March 28, 1953, dismissed the case on the ground "that the prosecution has had ample time and opportunity to prepare for trial and to prosecute this case, and that it would be unfair and unjust to hold indefinitely the defendants to the offense charged herein until the prosecution is in a position to enter trial."

Three years after the dismissal of the second charge, or on February 21, 1956, the Provincial Fiscal filed another information for the same offense only' against Claro Robles, his other co-accused in the previous cases not having been included in this third charge. The third information was referred to the Justice of the Peace Court of Lucena for preliminary investigation. On June 5, 1956, Robles, through counsel, filed a motion to quash on the ground that he had already been placed in jeopardy. The Provincial Fiscal filed his reply contending that there was no double jeopardy because the dismissal of the first charge was provisional in character and that of the second charge was granted on motion of the accused himself. The Justice of the Peace Court denied the motion to quash and set the case for preliminary investigation on July 28, 1956. Then the accused filed a supplementary motion to quash, to which the Fiscal filed a reply. To this reply the defendants put up an answer. After a series of replies and rejoinders to the pleadings of both parties, the Justice of the Peace Court denied the supplementary motion to quash for lack of merit, and thereupon conducted the required preliminary investigation. But on August 22, 1956, the Justice of the Peace Court issued an order declaring without effect the preliminary investigation conducted by it in view of a writ of injunction issued by the Court of First Instance disputing its jurisdiction to act thereon. And on August 23, 1956, the Court of First Instance issued an order dismissing the case alleging as ground that the accused can no longer be prosecuted for the reason that he has already been placed twice in jeopardy. It is against this order that the Provincial Fiscal interposed the present appeal.

While the order of the trial court subject of the present appeal does not clearly indicate the reason why appellee would be placed twice in jeopardy if the present charge be prosecuted to its termination, it may be gathered from the record that the basis of the finding of double jeopardy is the dismissal of the second charge which was granted upon motion of appellee invoking his right to a speedy trial under the Constitution. The Court considered such order of dismissal as an acquittal on the merits that would bar the filing of another information for the same offense.

Because of its importance in the determination of the merits of this case, we will quote hereunder the order of dismissal issued in Criminal Case No. 11065:

"When this case was called for trial on March 19, 1953 at 9:30 a.m. none of the witnesses for the prosecution, who are all members of the A.F.P. or P.C, appeared despite due notice upon them through the Office of the Provincial Commander, P.C, at Camp Wilhelm, Lucena, Quezon, and for which reason, Assistant Provincial Fiscal Santiago O. Tañada, who appeared for the prosecution, moved for postponement of trial. Counsel for the defense vigorously opposed further postponement of trial on the ground that this case has been pending trial for three years, and that in the meantime the defendants have undergone mental suffering on account of this criminal action against them, that the trial of this case has been postponed time and again, on petition of the prosecution; and that this case had already been once provisionally dismissed for failure of the prosecution to be ready for trial, and for which reason the defense moved for the dismissal of the case.

In open court, the motion for postponement of hearing was denied, but the Court reserved its resolution on the motion of the defense to dismiss the case.

A perusal of the record of this case, discloses that this case was instituted and originally docketed as Criminal Case No. 10711 of this Court on May 12, 1950, at the instance of the P.C. at Lucena, Quezon, but it was ordered provisionally dismissed on November 16, 1950, on motion of the prosecution; that it was revived only on January 10, 1952, upon the filing directly with this Court of the present criminal action after the lapse of more than one year since its provisional dismissal; that when this case was set and called for trial on February 5, 1953, its trial was again postponed on petition of the prosecution on the ground that the prosecution was not

fully prepared for trial, and for the further reason that the remaining thirty-four defendants were still at large, which postponement of trial was granted by the Court in its order of February 9, 1953, in order to afford the prosecution another opportunity to be fully prepared for trial, with a warning, however, that the Court will not entertain any petition for further postponement of trial.

Counsel for the defense vigorously opposed further postponement of trial on the ground that this case has been pending for three years, and that in the meantime the defendants have undergone mental suffering on account of this criminal action against them; that the trial of this case has been postponed time and again on petition of the prosecution; and that this case had already been once provisionally dismissed for failure of the prosecution to be ready for trial.

Wherefore, the Court, finding that the prosecution has had ample time and opportunity to prepare for trial and to prosecute this case, and that it would be unfair and unjust to hold indefinitely the defendants to the offense charged herein until the prosecution is in a position to enter trial, hereby orders the dismissal of the case with respect to the defendants Claro Robles, Eduardo Ambat, Eladio Vinal, Fortunate Alcairo, Pedro Umali, Filomeno Jaurigue, Santiago Paras, Maria Quiano, and Anselmo Somajestad, and the cancellation of the bail filed for their provisional liberty, with proportional costs de oficio"

It would appear, as the trial court has said, that this case was instituted originally on May 12, 1950, but was provisionally dismissed on November 10, 1950, on motion of the prosecution; that it was revived on January 10, 1952, upon filing of another information for the same offense after a lapse of more than 1 year since its provisional dismissal; that when this case was set and called for trial on February 9, 1953, the trial was again postponed on petition of the prosecution on the ground that it was not prepared for trial and because some of the co-accused of appellee were still at large, which postponement was granted in order to afford the prosecution another opportunity to prepare for trial with the warning that the court will not entertain any other petition for postponement.

It would likewise appear that the defense vigorously objected to further postponement on the ground that this case has been pending for three years and that in the meantime the defendants, including appellee, have undergone mental anguish because of the pendency of this case, and that the trial had been postponed time and again on petition of the prosecution, the opposition of counsel being predicated on the right of the defendant to a speedy trial guaranteed by the Constitution. And on the basis of these facts and the reasons advanced by the defendant, the Court dismissed the case with costs de oficio.

In the circumstances, we find no alternative than to hold that the dismissal of Criminal Case No. 11065 is not provisional in character but one which is tantamount to acquittal that would bar further prosecution of the accused for the same offense.

There is a close parallelism between the instant case and that of *People vs. Tacneng, et al.*, G. R. No. L-12082, which was decided by this Court only on April 30, 1959. In that case, the accused was charged with homicide before the Court of First Instance of Ilocos Sur. They pleaded not guilty, and the case was set for hearing.

When the hearing came, the Fiscal asked for postponement alleging that he was not able to contact his witnesses, which was granted. When the case was again called for hearing, the Fiscal "moved for another postponement alleging that his witnesses could not be found, and the hearing was again postponed. But when the third hearing came and the Fiscal asked for another postponement, the accused vigorously objected to the postponement invoking his Constitutional right to a speedy trial. Considering that the case had been postponed twice and the whereabouts of the witnesses for the prosecution could not be ascertained, while on the other hand the accused were entitled to a speedy trial, the Court dismissed the case. However, one year and three months thereafter, the Provincial Fiscal filed another information for murder against the same defendants, with the only difference that

the mayor of the place was included as co-accused. When the case came up for hearing, the defendants moved to quash the information on the ground of double jeopardy. The Court entertained the motion and on appeal this Court rendered a confirmatory decision.

In holding that the dismissal of the previous case under the circumstances then prevailing was tantamount to an acquittal of the defendants, this Court said: "Evidently,, the order of dismissal in Criminal Case No. 1793 was based on the right of the appellees to a speedy trial, and the same was only issued because the records shows that at the time said case was called for hearing for the third time on April 21, 1954, the Fiscal wanted to secure an other postponement, and for that reason he manifested that he was not ready to go into trial on account of the absence of his witnesses, specially that of his principal witness Mauro Hernaez whose appearance was uncertain as his whereabouts were then unknown. But since the absence of witnesses was the very same reason why the two postponements had been granted, the herein appellees protested and objected to a third postponement and moved for the dismissal of the case, and the Court, believing that further postponement would be unreasonable and unfair to herein appellees who had the right to be tried promptly, dismissed the case in order to maintain inviolate their constitutional right to a speedy trial."

And making a resume of the case, this Court concluded: * * * when criminal case No. 1793 was called for hearing for the third time and the fiscal was not ready to enter into trial due to the absence of his witnesses, the herein appellee had the right to object to any further postponement and to ask for the dismissal of the case by reason for their constitutional right to a speedy trial; and if pursuant to that objection and petition for dismissal the case was dismissed, such dismissal amounted to an acquittal of the herein appellees which can be invoked, as they did, in a second prosecution for the same offenses.'" In reaching the above conclusion, we have not overlooked our ruling in the case of *People vs. Salico*, 44 Off. Gaz., No. 4, 1765-1776, reiterated in *People vs. Romero*, 89 Phil., 672; 49 Off. Gaz., (11) 4851, to the effect that dismissal upon defendant's motion will not be a bar to another prosecution for the same offense as said dismissal was not without the express consent of the defendant, which ruling the prosecution now invokes in support of its appeal; but said ruling is not now controlling, having been modified or abandoned in subsequent cases wherein we sustained the theory of double jeopardy despite the fact that the dismissal was secured upon motion of the accused.[1] Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Bengzon, Padilla, Montemayor, Concepcion, and Barrera, JJ., concur.

[1] *People vs. Bangalao*, 94 PM1., 354; 50 Off. Gaz., (11) 4860; *People vs. Diaz*, 94 Phil., 714; *People vs. Abano*, 97 Phil., 28; and *People vs. Ferrer*, 100 Phil., 124; 55 Off. Gaz., (4) 620).

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