

ROBERTO P. ALMARIO, PETITIONER, VS. COURT OF APPEALS, HON. FLORENTINO A. TUASON, JR., PEOPLE OF THE PHILIPPINES AND RIZAL COMMERCIAL BANKING CORP., RESPONDENTS.

G.R. No. 127772. March 22, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This appeal by certiorari seeks to set aside the resolutions of the Court of Appeals dated November 21, 1996[1] and of January 7, 1997,[2] in CA-G.R. No. SP-42312, which denied the petition for certiorari, prohibition and mandamus with preliminary injunction instituted by petitioner against the Hon. Florentino A. Tuason, Jr., in his capacity as Presiding Judge of Branch 139, Regional Trial Court of Makati City, the Rizal Commercial Banking Corporation (RCBC), and the People of the Philippines.[3] Involved in said petition were the orders of Judge Jaime D. Discaya and Judge Tuason dated October 25, 1995[4] and April 11, 1996,[5] respectively, issued in Criminal Cases Nos. 91-6761-62 which petitioner claimed were violative of his constitutional right against double jeopardy but which respondent appellate court upheld.

The factual antecedents in these cases, as culled by the Court of Appeals, are as follows:

Petitioner is one of the accused in Criminal Case No. 91-6761, for estafa thru falsification of public document, and Criminal Case No. 91-6762, for estafa, with respondent RCBC as the offended party in both cases.

The informations were filed on October 22, 1992. After petitioner's arraignment on March 18, 1992, pre-trial was held, which was terminated on October 21, 1994. Thereafter, the cases were scheduled for continuous trial in December 1994, and in January and February 1995, but the hearings were cancelled because the Presiding Judge of the court was elevated to this Court and no trial judge was immediately appointed/detailed thereto.

The hearing set for June 21, 1995, was postponed for lack of proof of notice to all the accused and their counsel. The hearing on July 17, 1995, upon request of private prosecutor, and without objection on the part of petitioner's counsel, postponed to July 24, 1995. However, for lack of proof of service of notice upon petitioner's three co-accused, the hearing set for July 24, 1995, was likewise cancelled and the cases were reset for trial on September 8 and 25, 1995.

On September 8, 1995, private complainant failed to appear despite due notice. Hence, upon motion of petitioner's counsel, respondent court issued the following order:

When this case was called for hearing, private complainant is not in Court despite notice. Atty. Alabastro, counsel for accused Roberto Almario, moved that the case against the latter be dismissed for failure to prosecute and considering that accused is entitled to a speedy trial.

WHEREFORE, the case against accused Roberto Almario is hereby dismissed. With respect to accused Spouses Susencio and Guillerma Cruz and Dante Duldulao, 1st warrant be issued for their arrest.

SO ORDERED.

Upon motion of the private prosecutor and despite the opposition of petitioner, respondent court in its Order dated October 25, 1995, reconsidered the Order of September 8, 1995. The pertinent portion of said order reads as follows:

In *Hipolito vs. Court of Appeals* (G.R. No. 108478-79, Feb. 21, 1993) the Supreme Court held that the right of the accused to a speedy trial is deemed violated only when the proceedings is attended by vexations, capricious and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or unjustifiable motive, a long period of time is allowed to (e) lapse without the party having his case tried. At least this right is relative, taking into (the) account the circumstances of each case.

There has been no vexations, capricious and oppressive delays, or unjustified postponements of the trial, or a long time is allowed to (e) lapse without the party having his case tried which would constitute, according to the above case, violation of the right of the accused to speedy trial. After arraignment of the accused, the pre-trial was set and the same was ordered terminated on October 25, 1994. On June 21, 1995, the case was set for initial presentation of evidence of the proof of service of the notices to the accused and their respective counsels. On July 17, 1995, counsel for the accused did not interpose objection to private prosecutor's motion to postpone due to absence of witnesses. On July 24, 1995, the trial could not proceed as, being a joint trial of three criminal cases, the three other accused were not present. There were only three settings from the date of termination of the pre-trial for the prosecution to present evidence and the same were postponed with valid reasons.

The dismissal in the Order dated September 8, 1995, did not result in the acquittal of the accused since the right of the accused to speedy trial has not been violated, and its dismissal having been made upon the motion of the accused there is no double jeopardy.

WHEREFORE, premises considered, the Order dated September 8, 1995 dismissing the charge/case against the accused Roberto Almario is reconsidered and set aside.

SO ORDERED.

Petitioner sought a reconsideration of the above order. Acting on the Motion for Reconsideration dated November 9, 1995, respondent Judge issued his assailed Order of April 11, 1996, the dispositive portion of which reads as follows:

IN VIEW OF THE FOREGOING, the Motion for Reconsideration dated 9 November 1995 is hereby denied for lack of merit considering that, based on the foregoing facts, the proceedings in this case have not been prolonged unreasonably nor were there oppressive delays and unjustified postponements in violation of the Accused's constitutional right to speedy trial.

SO ORDERED.[6]

Aggrieved by the foregoing order, petitioner filed before the Court of Appeals a petition for certiorari, prohibition and mandamus with preliminary injunction against the presiding judge of Branch 139 of the Regional Trial Court of Makati City, RCBC and the People of the Philippines. In a resolution dated November 21, 1996, respondent appellate court denied the petition due course and dismissed it for lack of merit. Petitioner's motion to reconsider it was likewise denied for lack of merit in a resolution dated January 7, 1997.

Before us, petitioner maintains that the appellate court erred in sustaining the trial court which, in turn, had gravely abused its discretion, amounting to lack of jurisdiction, when it reconsidered the order which dismissed the criminal cases against him. Petitioner asserts that this reversal was a violation of the doctrine of double jeopardy, as the criminal cases were initially dismissed for an alleged violation of petitioner's constitutional right to a speedy trial.[7]

The issue for resolution is whether, in petitioner's cases, double jeopardy had set in so that petitioner's constitutional right against such jeopardy had been violated.

Article III, Section 21 of the 1987 Constitution provides:

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.

Section 7, Rule 117 of the Revised Rules of Court provides:

SEC. 7. Former conviction or acquittal; double jeopardy. - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

x x x

Clearly, jeopardy attaches only (1) 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 convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused.[8]

In the cases at bar, the order of dismissal based on a violation of the right to speedy trial was made upon motion by counsel for petitioner before the trial court. It was made at the instance of the accused before the trial court, and with his express consent. Generally, the dismissal of a criminal case resulting in acquittal made with the express consent of the accused or upon his own motion will not place the accused in double jeopardy. However, this rule admits of two exceptions, namely: insufficiency of evidence and denial of the right to speedy trial.[9] Double jeopardy may attach when the proceedings have been prolonged unreasonably, in violation of the accused's right to speedy trial.[10]

Here we must inquire whether there was unreasonable delay in the conduct of the trial so that violation of the right to speedy trial of the accused, herein petitioner, resulted. For it must be recalled that in the application of the constitutional guaranty of the right to speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case.[11] Both the trial court and the appellate court noted that after pre-trial of petitioner's case was terminated on October 21, 1994, continuous trial was set in the months of December 1994, and January and February of 1995. The scheduled hearings, however, were cancelled when the presiding judge was promoted to the Court of Appeals, and his successor as trial judge was not immediately appointed, nor another judge detailed to his sala.

Records show that on June 21, 1995, hearing was postponed for lack of proof of notice to the accused and their counsel. The hearing on July 17, 1995, was postponed upon motion of the private prosecutor without objection from petitioner's counsel. The hearing set on July 24, 1995 was reset, despite the presence of petitioner and his counsel, because of lack of proof of service of notice to co-accused Dante Duldulao and the spouses Susencio and Guillerma Cruz.[12]

As observed by respondent appellate court, delay in the trial was due to circumstances beyond the control of the parties and of the trial court. The first and third postponements were clearly justified on the ground of lack of notice to accused, co-accused, and/or counsel. Another was made without objection from petitioner's counsel. However, on September 8, 1995, counsel for petitioner moved for dismissal of this case, because of the absence of

the private prosecutor due to a severe attack of gout and arthritis, although he had sent his associate lawyer acceptable to the court.[13] All in all, there were only three re-setting of hearing dates. Thus, after a closer analysis of these successive events, the trial court realized that the dates of the hearings were transferred for valid grounds. Hence, the trial court set aside its initial order and reinstated the cases against petitioner,[14] which order the appellate court later sustained.

That there was no unreasonable delay of the proceedings is apparent from the chronology of the hearings with the reasons for their postponements or transfers. Petitioner could not refute the appellate court's findings that petitioner's right to speedy trial had not been violated. As both the trial and appellate courts have taken pains to demonstrate, there was no unreasonable, vexatious and oppressive delay in the trial. Hence, there was no violation of petitioner's right to speedy trial as there were no unjustified postponements which had prolonged the trial for unreasonable lengths of time.[15]

There being no oppressive delay in the proceedings, and no postponements unjustifiably sought, we concur with the conclusion reached by the Court of Appeals that petitioner's right to speedy trial had not been infringed. Where the right of the accused to speedy trial had not been violated, there was no reason to support the initial order of dismissal.

It follows that petitioner cannot invoke the constitutional right against double jeopardy when that order was reconsidered seasonably.[16] For as petitioner's right to speedy trial was not transgressed, this exception to the fifth element of double jeopardy - that the defendant was acquitted or convicted, or the case was dismissed or otherwise terminated without the express consent of the accused - was not met. The trial court's initial order of dismissal was upon motion of petitioner's counsel, hence made with the express consent of petitioner. That being the case, despite the reconsideration of said order, double jeopardy did not attach. As this Court had occasion to rule in *People vs. Tampal*, (244 SCRA 202) reiterated in *People vs. Leviste*,[17] where we overturned an order of dismissal by the trial court predicated on the right to speedy trial -

It is true that in an unbroken line of cases, we have held that the 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.

Both the trial court and the Court of Appeals were thus not in error when they allowed reinstatement of the cases against petitioner.

WHEREFORE, the resolutions of the Court of Appeals in CA-G.R. No. SP-42312, dated November 21, 1996 and January 7, 1997, which upheld the orders of the Regional Trial Court of Makati, Branch 139, in Criminal Cases Nos. 91-6761-62, are hereby **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 84-90.

[2] *Id.* at 98.

[3] *Id.* at 67-81.

- [4] Id. at 49-50.
- [5] Id. at 62-66.
- [6] Id. at 84-86.
- [7] Id. at 5.
- [8] People vs. Nitafan, 302 SCRA 424, 440 (1999).
- [9] People vs. Bans, 239 SCRA 48, 55 (1994).
- [10] Commission on Elections vs. Court of Appeals, 229 SCRA 501, 507 (1994).
- [11] Socrates vs. Sandiganbayan, 253 SCRA 773, 788 (1996).
- [12] Rollo, pp. 88-89.
- [13] Id. at 49.
- [14] Id. at 62-66.
- [15] See Guerrero vs. Court of Appeals, 257 SCRA 703, 713 (1996).
- [16] People vs. Leviste, 255 SCRA 238, 249 (1996).
- [17] Ibid.

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