

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE PATERNO V. TAC-AN (IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, FOURTH JUDICIAL REGION, BRANCH 84, BATANGAS CITY) AND...

G.R. No. 148000. February 27, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals in CA-G.R. No. 61535 (SP) dismissing the petition for certiorari filed by petitioner for the nullification of the Order[2] dated August 1, 2002 and the subsequent Order[3] denying the motion for reconsideration issued by the Regional Trial Court, Branch 84 of Batangas City in *People vs. Mario Austria*, docketed as Criminal Case No. 10766.

On February 22, 2000, an Information[4] was filed by the Office of the City Prosecutor of Batangas City against Mario N. Austria for falsification of public official document. The Information reads:

That on or about June 2, 1999 at Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, he being the Officer-in-Charge Provincial Warden of the Batangas Provincial Jail located at Brgy. Cuta Bilibid, Batangas City, and taking advantage of his official position, did then and there wilfully, unlawfully and feloniously falsify a Memorandum Receipt for Equipment Semi-Expendable and Non-Expendable Property, a public/official document of the Office of the Provincial Warden of Batangas, by stating in said memorandum receipt dated June 2, 1999 that Colt MKIV Series '80 Government Model, Pistol Cal. .380 SN-26917 with 40 rounds of ammunitions, is a provincial government property duly registered with the Firearms and Explosives Unit, Batangas PNP Command, Kumintang Ilaya, Batangas City, and issued to Mr. Alberto Tesoro, Civilian Agent, for his own use in connection with the performance of his official duties and functions, when in truth and in fact said statements are absolutely false when he has the legal obligation to disclose the truth, as said firearm is not a property of the Provincial Government of Batangas; that it is not registered with the Firearms and Explosives Units of Batangas PNP Command, Batangas City and Camp Crame, Quezon City; and that Alberto Tesoro is not an employee of the Provincial Government of Batangas, to the damage and prejudice of public interest.

CONTRARY TO LAW.

The following were listed in the Information as witnesses for the People of the Philippines, and their respective addresses/places of station/assignment were also indicated therein:

- SPO3 Gaudencio C. Aguilera, Malvar Police Station, Malvar, Batangas;
- SPO2 Simplicio M. Bejasa, - do -
- PG2 Sofronio Vicencio, c/o Provincial Jail, Brgy. Cuta Bilibid, Batangas City;
- SPO4 Benjamin Geron, Batangas Provincial Police Office, Camp Malvar, Kumintang Ilaya, Batangas City;

- PCI Franklin Moises, Mabanag, -do-
- PCI Jonathan Viernes Ablang, -do-
- PCI Edwin G. Nemenzo, Firearms and Explosives Unit, Camp Crane (sic), Quezon City – RE: Verification dated September 30, 1999.
- P/Inspector Anacleto Cultura, PNP Regional Crime Laboratory Office IV, Camp Vicente Lim, Calamba, Laguna – RE: Document Examination Report No. DE-014-99 dated October 29, 1999;
- Miguel C. Malvar III, General Services Office, Batangas Capitol, Batangas City;
- Augusto M. Claveria, Office of the Provincial Administrator, Batangas Capitol, Batangas City
- Personnel Officer, Office of the Provincial Governor, Batangas Capitol, Batangas City – RE: Appointment of Mario N. Austria as OIC, Provincial Warden from January 1999 to June 2, 1999;

xxx xxx xxx.[5]

The trial court set the arraignment of the accused and the initial pre-trial on August 1, 2000.[6] Apparently, out of the eleven witnesses listed in the Information, only the first three witnesses were notified of said arraignment and pre-trial. When the case was called for pre-trial, the trial court discovered that none of the three witnesses who were allegedly earlier notified by the court was in attendance. On motion of the accused and over the objection of the public prosecutor, the trial court issued an order dismissing the case for failure of said witnesses to appear before it. The bail bond posted by the accused for his provisional liberty was thereby cancelled. The public prosecutor filed a motion for reconsideration of said order, contending that the trial court acted arbitrarily and capriciously when it dismissed the case simply because three of its witnesses who were notified failed to appear at the initial pre-trial. The public prosecutor asserted that it had eleven witnesses but only three were subpoenaed by the trial court. He argued further that the dismissal of the case was not authorized under Republic Act No. 8493.[7] The trial court issued an order denying the motion for reconsideration of the public prosecutor.

The trial court posits that under R.A. No. 8493 pre-trial is mandatory and the presence of the complaining witnesses is likewise required during the trial for the parties to participate in the plea bargaining and stipulation of facts during said proceedings. If the complaining witnesses are absent, the principal purpose of the pre-trial cannot be achieved. It was incumbent on the public prosecutor to procure the attendance of its witnesses for the pre-trial but this, he failed to do. The trial court stated that there were instances in the past when the public prosecutor manifested to the trial court that it had no witness for the pre-trial and moved for the dismissal of criminal cases. The trial court contended that if the dismissal of the case was precipitate, it was the fault of the public prosecutor and not the trial court:

The prosecution filed a Motion for Reconsideration to the Order dated August 1, 2000 which dismissed this case during the arraignment and pre-trial due to the non-appearance of the complaining witnesses, namely SPO3 Gaudencio C. Aguilera and SPO2 Simplicio M. Mejasa as well as Sofronio Vicencio, despite notice. Material witness Sofronio Vicencio who had to identify the alleged falsified document also was not present for the reason that he was already not connected with the Batangas Provincial Jail where he used to be a provincial jailer. He could not be contacted anymore.

Section 2 of Republic Act No. 8493 provides, Mandatory Pre-trial in Criminal Cases. In all criminal cases cognizable by the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Regional Trial Court and the Sandiganbayan, the justice or judge shall, after arraignment, order a pre-trial conference to consider the following:

(a)

Plea bargaining;

(b)

Stipulation of Facts;

(c)

Marking for identification of evidence of parties;

(d)

Waiver of objections to admissibility of evidence; and

(e)

Such other matters as will promote a fair and expeditious (sic) trial.

It is evident that the presence of the complaining witnesses is likewise mandatory because they have to participate in the plea bargaining and the stipulation of facts.

Upon motion of the accused on the ground that the presence of the complaining witnesses is likewise mandatory and that the accused is entitled to speedy trial, the Court was compelled to dismiss the case. Said dismissal is neither capricious and precipitate. The prosecution must likewise endeavor to secure the presence of its complaining witnesses or any witnesses by any form of communication such as telephone, telegram, or letter. That is the essence of vigorous and adequate prosecution. In fact prosecutors must interview their witnesses before the trial or before the hearing in Court. There were instances in the past when the trial prosecutor manifested to the Court that it had no witnesses and moved for the dismissal of the case during arraignment and pre-trial. Experience showed that in such cases, prolonging the case was an exercise in futility. If it was precipitate, then the prosecution had committed it.[8]

The People of the Philippines, through the Office of the Solicitor General, filed a petition for certiorari with the Court of Appeals under Rule 65 of the 1997 Rules of Criminal Procedure, as amended, for the nullification of the orders of the trial court. The People alleged that the trial court acted without jurisdiction or with grave abuse of discretion amounting to excess or lack of jurisdiction in ordering the dismissal of the case and denying its motion for reconsideration.

On April 3, 2001, the Court of Appeals rendered a decision dismissing the petition on the ground that the errors committed by the trial court were mere errors of judgment which are not correctible by a writ of certiorari. The appellate court also stated that a reinstatement of Criminal Case No. 10766 will place the private respondent in double jeopardy.

Aggrieved, petitioner filed the present petition for the reversal of the decision of the Court of Appeals.

Petitioner alleges that the Court of Appeals committed a reversible error in ruling that the trial court did not commit grave abuse of discretion amounting to excess or lack of jurisdiction when it dismissed Criminal Case No. 10766 simply because three witnesses of its eleven witnesses failed to appear at the initial pre-trial of the case. In fact, R.A. 8493 does not contain any provision which mandates a trial court to dismiss a criminal case for failure of the witnesses of the prosecution to appear at the pre-trial.

The petition is impressed with merit.

Under R.A. 8493, the absence during pre-trial of any witness for the prosecution listed in the Information, whether or not said witness is the offended party or the complaining witness, is not a valid ground for the

dismissal of a criminal case. Although under the law, pre-trial is mandatory in criminal cases, the presence of the private complainant or the complaining witness is however not required. Even the presence of the accused is not required unless directed by the trial court.[9] It is enough that the accused is represented by his counsel.

Indeed, even if none of the witnesses listed in the information for the State appeared for the pre-trial, the same can and should proceed. After all, the public prosecutor appeared for the State. The public prosecutor is vested with authority to consider those matters catalogued in Section 2 of R.A. 8493.

The trial court thus acted without jurisdiction when it dismissed the case merely because none of the witnesses notified by the trial court appeared for the pre-trial. The State, like the accused is also entitled to due process in criminal cases.[10] The order of the trial court dismissing the criminal case deprived the State of its right to prosecute and prove its case. Said order is, therefore, void for lack of jurisdiction, and is of no effect.[11] By its ruling, this Court is not abetting or even glossing over the failure of the three witnesses of the prosecution to appear at the initial pre-trial of the case. Said witnesses may be cited by the trial court in contempt of court if their absence was unjustified. Undue delay in the prosecution of the case should not also be condoned. But the right of the State to prosecute the case and prove the criminal liability of the private respondent for the crime charged should not be derailed and stymied by precipitate and capricious dismissal of the case at the initial pre-trial stage. To do justice to private respondent and injustice to the State is no justice at all. Justice must be done to all the parties alike. Not too long ago this Court ruled in *Dimatulac vs. Villon*: [12]

The judge, on the other hand, “should always be imbued with a high sense of duty and responsibility in the discharge of his obligation to promptly and properly administer justice.” He must view himself as a priest, for the administration of justice is akin to a religious crusade. Thus, exerting the same devotion as a priest “in the performance of the most sacred ceremonies of religious liturgy,” the judge must render service with impartiality commensurate with the public trust and confidence reposed in him. Although the determination of a criminal case before a judge lies within his exclusive jurisdiction and competence, his discretion is not unfettered, but rather must be exercised within reasonable confines. The judge's action must not impair the substantial rights of the accused, nor the right of the State and offended party to due process of law.

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice; for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.

The Court of Appeals also erred in ruling that the reinstatement of the case does not place the private respondent in double jeopardy. This Court ruled in *Saldana vs. Court of Appeals, et al.* [13] that:

When the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated (*Uy vs. Genato*, L-37399, 57 SCRA 123 [May 29, 1974]; *Serino vs. Zoa*, L-33116, 40 SCRA 433 [Aug. 31, 1971]; *People vs. Gomez*, L-22345, 20 SCRA 293 [May 29, 1967]; *People vs. Balisacan*, L-26376, 17 SCRA 1119 [Aug. 31, 1966]).

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Thus, the violation of the State's right to due process raises a serious jurisdiction issue (*Gumabon vs. Director of the Bureau of Prisons*, L-300026, 37 SCRA 420 [Jan. 30, 1971]) which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction (*Aducayen vs. Flores*, L-30370, [May 25, 1973] 51 SCRA 78; *Shell Co. vs. Enage*, L-30111-12, 49 SCRA 416 [Feb. 27, 1973]). Any judgment or decision rendered notwithstanding such violation may be regarded as a ‘lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head’ (*Aducayen vs. Flores*, supra).

Respondent Judge's dismissal order dated July 7, 1967 being null and void for lack of jurisdiction, the same does not constitute a proper basis for a claim of double jeopardy (*Serino vs. Zosa*, *supra*).

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Thus, apparently, to raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.

Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused (*People vs. Ylagan*, 58 Phil. 851). The lower court was not competent as it was ousted of its jurisdiction when it violated the right of the prosecution to due process.

In effect, the first jeopardy was never terminated, and the remand of the criminal case for further hearing and/or trial before the lower courts amounts merely to a continuation of the first jeopardy, and does not expose the accused to a second jeopardy.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Decision of the Court of Appeals and the Orders of respondent Regional Trial Court, (Annexes "A," "C," and "E" of the petition,) are SET ASIDE. Respondent Regional Trial Court is ordered to REINSTATE *People vs. Mario Austria*, Criminal Case No. 10766 in the docket of the court.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Austria-Martinez, JJ., concur.

[1] Penned by Associate Justice Eugenio S. Labitoria, ponente, with Associate Justice Eloy R. Bello, Jr., concurring; although Justice Perlita J. Tirona was a member of the Division, she did not affix her signature on the ponencia.

[2] Penned by Presiding Judge Paterno V. Tac-an; Annex "C," Petition; Rollo, p. 44.

[3] Annex "E," Petition; *Id.*, at 48-49.

[4] Annex "B," Petition; *Id.*, at 41-42.

[5] *Id.*, at 42-43.

[6] Petition, p. 5; Rollo, p. 19.

[7] The Speedy Trial Act of 1998.

[8] See note 3, *supra*.

[9] REGALADO, REMEDIAL LAW COMPENDIUM, 9[th] ed., Vol. II, pp. 446-447.

[10] *People vs. Judge Santiago*, 174 SCRA 143 (1989).

[11] See *Marcos vs. Sandiganbayan*, 297 SCRA 95 (1998).

[12] 297 SCRA 713 (1998).

[13] 190 SCRA 396. (1990).

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