NICOLAS PADILLO, PETITIONER, VS. MR. BADERE APAS AND KASUAGI LADJARANI, ACCUSED; AND HON. HAKIM S. ABDULWAHID AND HON. ABDULMAID KIRAM MUIN, PRESIDING JUDGES, REGIONAL TRIAL COU...

G.R. NO. 156615. April 10, 2006

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-156615/

CARPIO MORALES, J.:

On complaint of herein petitioner Nicolas Padillo, Badere Apas and Kasuagi Ladjarani were charged before Branch 5 of the Regional Trial Court at Bongao, Tawi-Tawi (the court) for Estafa in an Information filed on February 28, 1996, the accusatory portion of which reads:

> That on or about the first week of July, 1994 and subsequent thereto, in the Municipality of Sapa-Sapa, Province of Tawi-Tawi, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously defraud one Nicolas Padillo, a businessman doing business in Bongao, Tawi-Tawi, in the amount of P168,000.00, Philippine Currency, in the following manner, to wit: the accused, having obtained permission from the latter to load his lumber for sale at Labuan, Sabah, Malaysia, under the express obligation on the part of said accused to immediately account for and deliver the proceeds so made by them to said Nicolas Padillo, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert said sum of P168,000.00 to their own use and benefit, to the damage and prejudice of said Nicolas Padillo in the aforementioned amount of P168,000.00.[1]

More than four years after the filing of the Information or on March 22, 2000, the accused moved to dismiss the case on the ground of failure of the prosecution to prosecute the case. By Order of even date, the court granted the motion, declaring that "the continued pendency of the case, and repeated postponement of the hearing at the instance of the prosecution is not only violative of the constitutional right of the accused to speedy trial of the case against them, but has deprived them, as government employees, of the opportunity for promotion."[2] (Underscoring supplied)

While early on this Court declares that petitioner does not have, under the circumstances attendant to the case, the personality to assail its dismissal, a statement of the case is in order to reflect the lack of merit, at all events, of the petition.

After the accused were arraigned on July 17, 1996[3] and waived their right to pre-trial, the case was set for hearing on September 17 & 18, 1996.[4] The private prosecutor, however, filed on July 25, 1996 a motion for postponement, and another such motion on September 11, 1996, of these scheduled hearings due to, inter alia, the unresolved petition for inhibition of the prosecutor pending before the Prosecutor's Office. These motions were granted and the hearing was reset to November 21, 1996.

On November 12, 1996, however, again the private prosecutor filed a motion for postponement[5] of the

November 21, 1996 setting on the ground that there was a pending request addressed to the Regional State Prosecutor for the assignment of a prosecuting fiscal, no reply to which had yet been received. The motion was, by Order of November 21, 1996,[6] granted.

On February 3, 1997, Prosecutor Peter L. Medalle, who had in the meantime been designated as Acting Provincial Prosecutor in the case, filed a motion to set the case for hearing "in the February 1997 calendar" of the court.[7] It appears that the motion was granted. The hearing was reset to March 19, 1997.[8]

The scheduled hearing of March 19, 1997 was cancelled, however, as the separate motions of the public prosecutor and the defense to reset it were granted.[9]

In the meantime, the private prosecutor withdrew in April 1997 his appearance.[10]

The hearing of the case was set on June 16, 1997.[11] This scheduled hearing was also cancelled after the public prosecutor's motion to postpone on the ground of conflict of schedule was granted.[12] The hearing was thus reset to August 18, 1997.

On the rescheduled hearing of the case on August 18, 1997, the public prosecutor, who was allegedly in Manila and was scheduled to proceed to Cebu to attend a meeting of the Amnesty Commission, failed to appear despite receipt on August 11, 1997 of the Notice of Hearing and without him having priorly filed a motion for postponement.

By Order of August 19, 1997,[13] the trial court noted that the case had been set for hearing for seven times[14] all of which were postponed "at the instance of the prosecution" except once at the instance of both the prosecution and the defense. The court also noted that "the accused have been opposing the postponement and invok[ing] their constitutional right to speedy trial." The court nonetheless postponed the hearing "provided that the postponement shall be for the last time at the instance of the prosecution." In the same Order of August 19, 1997, the court reset the hearing to September 22 & 23, 1997, with warning that should the prosecution fail again to present evidence, it would be constrained to dismiss the case.[15]

On the scheduled hearing of the case on September 22, 1997, however, the public prosecutor filed a Motion for Leave of Court to Amend Information.[16] The hearing of the case was in the meantime reset to November 17 & 18, 1997.[17]

On November 11, 1997, the court issued a Constancia[18] resetting the hearing due to the non-availability on November 17 and 18, 1997 of the Acting Presiding Judge. The hearing was reset to December 9 & 10, 1997.[19]

On December 5, 1997, the counsel for the accused filed a Motion to Reset the Hearings[20] scheduled on December 9 & 10, 1997 on the ground that he had previously committed himself to appear before several branches of the Regional Trial Court (RTC) of Zamboanga City on December 9 & 10, 1997.

In the meantime, the court, by Order of January 5, 1998,[21] granted the Motion to Amend Information. An Amended Information dated January 15, 1998[22] was subsequently filed raising from P168,000 to P456,762 the amount subject of the Estafa case.

On February 26, 1998,[23] the court issued a Notice of Hearing under the amended information on March 25, 1998.

The records do not show what transpired on March 25, 1998, but a Notice of Hearing was issued on April 19, 1999 setting the case for hearing on May 18, 1999.[24] On May 3, 1999, however, the court issued a Constancia[25] cancelling the May 18, 1999 hearing due to the non-availability of the Acting Presiding Judge and also on motion of both parties.[26]

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The hearing was thereafter set on July 27, 1999.[27]

On July 22, 1999, however, the parties filed a Joint Motion to Postpone Hearing[28] on the ground that their respective counsels were to appear in a pre-trial scheduled on July 29, 1999 before Branch 12 of the RTC of Cebu City in a case which also involved the same parties. The motion was granted by Order of July 27, 1999.[29]

The hearing was then reset to November 17, 1999.

On November 17, 1999, however, private complainant-herein petitioner filed an urgent Motion for Postponement[30] of the hearing scheduled on November 17, 1999 as he was scheduled to testify in a case filed against him in Cebu. The Public Prosecutor similarly filed a Motion to Postpone[31] with prayer that the case be reset to January 2000. The motion to postpone appears to have been granted.

The court thereafter set the case for hearing on March 22, 2000 but on said date, the public prosecutor and the private complainant failed to appear[32] albeit the court noted "the last minute" filing of a "photocopy-message" by the prosecutor of a request for postponement which was "unsupported by convincing proof or compelling reason." The defense counsel was thus prompted "to move for the dismissal of the case on the ground of failure of the prosecution to prosecute the case." By Order[33] issued on even date, the court granted the motion to dismiss in this wise:

> The records show this case was filed with this Court way back on February 28, 1996. Before the accused were arraigned on July 18, 1996, the proceedings in this case were postponed thrice at the instance of the private complainant Nicolas Padillo through the private prosecutor, Atty. Victor Alfredo O. Queniahan who later withdrew his appearance. After the arraignment, and before today's scheduled trial, the scheduled hearing of this case have been postponed several times " four times at the instance of the prosecution, four times at the instance of both the prosecution and the defense who filed either joint or separate motions for postponement, and one time at the instance of the defense. The prosecution has listed five witnesses including private complainant Padillo, but as of this date, not one of them has been presented as witness.
>
> For today's scheduled hearing, private complainant Padillo was served with the subpoena through registered mail, while other prosecution witnesses by personal service. The trial prosecutor and the defense counsel, both received copies of the notice of hearing, on March 1, 2000 as evidenced by the return cards attached to the record of the case. Despite this, when the case was called for hearing today, the trial prosecutor and the private complainant and other prosecution witness failed to appear, x x x
>
> x x x x
>
> [T]he last minute filing of the request for postponement by the prosecution which is unsupported by convincing proof or compelling reason, is violative of the basic rule of procedure that motion for postponement [of hearing] shall be filed at least three days before the scheduled hearing, and the opposing party would be informed or furnished with copy of such motion. It is also in contravention of the Order of this Court dated August 19, 1997 that the resetting of the hearing will be for the last time at the instance of the prosecution. Moreover, the continued pendency of the case, and repeated postponement of the hearing at the instance of the prosecution is not only violative of the constitutional right of the accused to speedy trial of the case against them, but has deprived them, as government employees, of the opportunity for promotion.[34] (Emphasis and underscoring supplied)

To the dismissal order, the public prosecutor filed a Motion for Reconsideration[35] on April 26, 2000, which motion was scheduled for hearing on June 20, 2000,[36]but on June 19, 2000, the public prosecutor filed an Urgent Ex-Parte Motion to Postpone Hearing,[37] alleging conflict of schedule.

The hearing on the Motion for Reconsideration was reset to July 19, 2000 at 8:30 A.M.,[38] and subsequently to

December 10, 2001.[39] However, on December 10, 2001,[40] neither the public prosecutor nor the counsel for the accused appeared; hence, the hearing was reset to January 17, 2002.[41]

On January 13, 2002, the public prosecutor filed an Urgent Ex-Parte Motion to Postpone Hearing[42] on the ground that he had also been scheduled to appear before the RTC, National Capital Judicial Region, Branch 163, Pasig City in People of the Philippines v. Kadaffy Janjalani on January 17, 2002. The hearing on the motion for reconsideration was again reset to March 19, 2002 but on said date, the public prosecutor again failed to appear,[43] prompting the trial court to reset for the last time the hearing on the motion for reconsideration to May 3, 2002[44] and direct the public prosecutor to explain within 15 days his failure to appear at the March 19, 2002 hearing.[45]

In a Manifestation[46] filed on May 2, 2002, however, the private complainant stated that he could not make it to the scheduled hearing on May 3, 2002 and that considering that the public prosecutor had not yet explained why he failed to attend the March 19, 2002 hearing, the scheduled hearing on May 3, 2002 was "still premature." The hearing on the motion for reconsideration was reset to May 15, 2002.

On May 15, 2002, the public prosecutor failed to attend the hearing but he advised via cellular phone that he could not attend it as he was assigned to prosecute cases in Manila.[47]

The trial court thereupon issued an Order[48] of May 15, 2002 denying the motion for reconsideration for lack of merit. The public prosecutor's Urgent Second Motion for Reconsideration[49] was denied in an order dated October 18, 2002.[50]

A third Motion for Reconsideration[51] dated November 18, 2002 was filed by Regional State Prosecutor Abubakar C. Barambangan, alleging that he had been ordered by the Provincial Prosecutor to take over the prosecution of the case until the appointment of an Assistant Prosecutor in the regional office.[52] The trial court denied this third Motion for Reconsideration by Order of December 16, 2002.[53]

Hence, the private complainant, through his new counsel, filed the present Petition for Certiorari[54] assailing the orders of the trial court dismissing the case against the accused and denying the motions for reconsideration. He argues that the dismissal of the case violates his right to due process of law and that the accused cannot invoke double jeopardy as the dismissal was with his consent.[55]

In their Comment on the Petition,[56] the accused question the personality of private complainant-herein petitioner to file and prosecute the instant petition, they contending that:

> Criminal Case No. 511-5 is a criminal prosecution for violation of a specific provision of the Revised Penal Code. x x x [T]he prosecution of the offense was handled by the government prosecutors. The participation of a private prosecutor was given up when the alleged private offended party chose to file a separate civil case. In effect, the private offended party, petitioner herein, became a mere witness for the prosecution in the criminal case.[57] (Underscoring supplied)

As reflected early on, the petition fails.

While it is settled that a private complainant, in his or her own name, has the right or personality to file through a private prosecutor a petition for certiorari questioning the dismissal of a criminal case,[58] such right or personality is premised on his or her interest in the civil aspect of the case.[59]

In the case at bar, the private prosecutor filed a Motion to Withdraw as Private Prosecutor[60] on April 16, 1997 on the ground that "private complainant is desirous to file an independent civil action, and consequently has no need of the services of a private prosecutor."[61] The motion was, by Order[62] of June 16, 1997, granted by the

court.

The Motion to Withdraw as Private Prosecutor having been granted on the ground therein given, there is no doubt that the private complainant-herein petitioner reserved his right to litigate the civil aspect of the case in a separate case.[63] As such, he was not a party aggrieved by the court's dismissal of the criminal case[64] and has no standing to file the petition at bar.[65]

At all events, from the above-detailed statement of the case which reflects the failure of the prosecution to present any evidence within years and the attention the court drew to the fact that "the accused have been opposing the postponement and invok[ing] their constitutional right to speedy trial,"[66] the dismissal of the case on motion of the accused was in order.

This brings the Court to petitioner's argument that the accused cannot invoke double jeopardy as the dismissal of the case was with his consent.

Petitioner's argument is patently bereft of merit. Since the prosecution, by repeated motions for postponement, caused the delay of the proceedings from the time the information was filed on February 28, 1996 from which time the test of the violation of the right to speedy trial is to be counted,[67] the dismissal of the case, on motion of the accused, amounts to acquittal.[68]

En passant, Section 5 of Rule 37[69] proscribes the entertainment of a second motion for reconsideration of a judgment or final resolution by the same party. The trial court should not have thus considered at all the second and third motions for reconsideration.

WHEREFORE, the petition is DISMISSED. The questioned orders of Branch 5 of the Regional Trial Court of Tawi-Tawi dated March 22, 2000 and May 15, 2002 are AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, and Tinga, JJ., concur.

---

[1] RTC records, p. 1.

[2] Id. at 238.

[3] Id. at 89.

[4] Id. at 88.

[5] Id. at 136-137.

[6] Id. at 143.

[7] Id. at 146-147.

[8] Id. at 148.

[9] Id. at 154.

[10] Id. at 155.

[11] Id. at 156.

[12] Id. at 160.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[13] Id. at 164.

[14] Actually six, the date of arraignment/pre-trial being excluded.

[15] Supra note 13.

[16] Id. at 168-169.

[17] Id. at 170.

[18] Id. at 184.

[19] Ibid.

[20] Id. at 190.

[21] Id. at 192-194.

[22] Id. at 195-196.

[23] Id. at 206.

[24] Id. at 210.

[25] Id. at 213.

[26] Id. at 214-216, 219.

[27] Id. at 220.

[28] Id. at 222-223.

[29] Id. at 224.

[30] Id. at 228-229.

[31] Id. at 233.

[32] Id. at 236.

[33] Id. at 237-239.

[34] Id. at 237-238.

[35] Id. at 242-244.

[36] Id. at 245.

[37] Id. at 246.

[38] Id. at 255.

[39] Id. at 256.

[40] Id. at 258.

[41] Id. at 260.

[42] Id. at 265.

[43] Id. at 272.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

[44] Id. at 290.

[45] Id. at 271.

[46] Id. at 292-293.

[47] Id. at 297.

[48] Id. at 297-298.

[49] Id. at 299-303.

[50] Id. at 304-305.

[51] Id. at 306-308.

[52] Id. at 307, 309-310.

[53] Id. at 311.

[54] Rollo, pp. 4-21.

[55] Id. at 13-17.

[56] Id. at 184-187.

[57] Id. at 185-186.

[58] Flores v. Joven, G.R. No. 129874, December 27, 2002, 394 SCRA 339, 344.

[59] Id. at 345; vide Dela Rosa v. Court of Appeals, G.R. No. 116945, February 9, 1996, 253 SCRA 499, 507-508.

[60] Supra note 10.

[61] Ibid.

[62] Supra note 1 at 160.

[63] Vide Sarmiento, Jr. v. Court of Appeals, G.R. No. 122502, December 27, 2002, 394 SCRA 315, 324: "In the present case, it can be said with reasonable certainty that by withdrawal of appearance of its counsel in the early stage of the criminal proceedings, the private respondent, indeed, had no intention of submitting its claim for civil liability against petitioners in the criminal action filed against the latter."

[64] Vide Cabral v. Hon. Puno, etc., et al., 162 Phil. 814, 823 (1976): "It appearing, therefore, from the record that at the time the order of dismissal was issued there was a pending civil action arising out of the same alleged forged document filed by the offended party against the same defendant, the offended party has no right to intervene in the prosecution of the criminal case, and consequently cannot ask for reconsideration of the order of dismissal, or appeal from said order."

[65] Vide Rules of Court, Rule 65, Sec. 1: "Petition for certiorari " When any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court xxx" (Emphasis added.). Also vide Macias v. Lim, G.R. No. 139284, June 4, 2004, 431 SCRA 20, 36, and Tang v. Court of Appeals, G.R. No. 117204, February 11, 2000, 325 SCRA 394, 402-403. (The phrase "person aggrieved

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

thereby" in Rule 65, Sec. 1 of the Rules of Court refers only to parties to the case before the lower court.)

[66] Art. III, Bill of Rights of the Constitution provides:

SEC. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Sec. 1(h) of Rule 115 also provides:

SEC. 1. Rights of accused at the trial. -

x x x x
(h) To have speedy, impartial and public trial.

[67] People v. Orsal, et al., 198 Phil. 610 (1982).

[68] People v. Tacneng, et al., 105 Phil. 1298 (1959).

[69] Sec. 5, Rule 37 of the Rules of Court provides:

> SEC. 5. Second motion for new trial. - A motion for new trial shall include all grounds then available and those not so included shall be deemed waived. A second motion for new trial, based on a ground not existing nor available when the first motion was made, may be filed within the time herein provided excluding the time during which the first motion had been pending.
>
> No party shall be allowed a second motion for reconsideration of a judgment or final order.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.