

**GLENN CABALLES Y CHUA, PETITIONER, VS. COURT OF APPEALS,
HON. EMMANUEL D. LAUREA, HON. BENJAMIN T. ANTONIO, AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

G.R. NO. 163108. February 23, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for certiorari under Rule 65 of the Revised Rules of Court filed by the petitioner for the nullification of the Resolution of the Court of Appeals[1] which dismissed his petition for the issuance of a writ of habeas corpus for his release from detention despite the pendency of *People of the Philippines v. Glenn Caballes*[2] for rape, and its resolution denying his motion for reconsideration thereof.

The antecedents are as follows:

On November 19, 2001, petitioner Glenn Chua Caballes was charged with rape of a minor in the Regional Trial Court (RTC) of Malabon City. The case was docketed as Criminal Case No. 25756-MN and raffled to Branch 169, presided by Judge Emmanuel D. Laurea. Because the petitioner was charged with a non-bailable offense, he was detained.

The petitioner was arraigned on February 7, 2002 and pleaded not guilty to the offense charged. The prosecution presented two (2) witnesses, namely, Venice Vera Pio, the private complainant, and her mother. The petitioner, through counsel, commenced his cross-examination of Pio, but failed to complete the same. In January 2003, the petitioner engaged the services of a new counsel, Atty. Noel S. Sorreda, who entered his appearance as defense counsel.[3]

During the trial of February 26, 2003, the petitioner continued his cross-examination of Pio but still failed to terminate the same. The trial was set on March 6, 2003 for the petitioner to terminate his cross-examination of Pio. However, due to the illness of the private prosecutor, the trial on the said date did not proceed. The trial was further reset to March 17, 2003 during which the petitioner continued with his cross-examination of the private complainant. Thereafter, the continuation of trial was set on April 3, 21, and 30, 2003. On April 3, 2003, the petitioner concluded his cross-examination of Pio. The prosecution declared that its next witness would be Dr. Jose Arnel Marquez, the Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory, who had conducted a medico-legal examination of the private complainant, but stated that he had not been subpoenaed. The prosecution prayed for the cancellation of the trial scheduled on April 21, 2003 to give the prosecution time to secure and cause the service of a subpoena duces tecum on him. The petitioner conformed to the motion of the prosecution.

On April 28, 2003, the petitioner filed a petition for bail.[4]

The trial of April 30, 2003 did not proceed because the petitioner's counsel filed a Manifestation[5] that his presence was required in an execution sale in Cavite. The said counsel manifested that he reserved his right to

cross-examine any witness the prosecution would present in case trial would proceed on that date; on the other hand, in the event that the trial court would cancel the trial, he would be available in May 2003 and during the first half of June 2003.

The trial court reset the hearing of the case to 8:30 a.m. of June 19, 2003 and gave the prosecution ten (10) days to file its opposition[6] to the petitioner's petition for bail. It likewise ordered the issuance of a subpoena to Dr. Jose Arnel Marquez to require him to attend the trial on the said date.

On May 5, 2003, the petitioner filed a motion[7] seeking an earlier trial date, invoking his right to speedy trial under the Speedy Trial Act of 1998. He also filed a motion for the urgent resolution of his petition for bail.[8]

On May 12, 2003, the petitioner filed another motion[9] praying that the hearing scheduled on June 19, 2003 be moved to an earlier date, preferably on May 26, 28 or 29, 2003. In the meantime, the prosecution filed its comment/opposition[10] to the petitioner's petition for bail.

On May 13, 2003, the court issued an Order[11] declaring that the petition for bail was submitted for its resolution and denying the petitioner's motion for an earlier trial date. On June 16, 2003, the trial court issued its Order[12] denying the petition for bail, on its finding that the evidence of guilt against the petitioner was strong.

During the trial of June 19, 2003, Dr. Marquez failed to appear before the court because, in the meantime, he had been assigned to the Eastern Police District and failed to receive the subpoena issued to him by the court. The prosecution prayed for continuance, but the petitioner objected and invoked his right to speedy trial. The court, nevertheless, granted the motion and reset the trial to July 17, 2003.

On June 27, 2003, the court issued a subpoena duces tecum/ad testificandum to Dr. Jose Arnel Marquez requiring him to appear for the trial set on July 17, 2003.[13]

On July 4, 2003, the petitioner filed a Motion for Reconsideration of the court's Order dated June 16, 2003 denying his petition for bail. His motion was set for hearing, also on July 17, 2003. However, the petitioner preempted the resolution of his motion for reconsideration and filed a Motion to Dismiss[14] the case on July 11, 2003 on the ground that his right to speedy trial had been violated. He made the following allegations:

- The hearings in the instant case have more often than not been scheduled more than one month apart;
- In the hearing on April 30, 2003, in particular, the day before undersigned counsel had filed a Manifestation stating inter alia that his available dates for the next hearing may be "any Monday, Wednesday or Thursday for the whole of May 2003 and the first half of June 2003, except on May 14 and 21" – yet Atty. Manalaysay asked for the next hearing on June 19 which is already outside or beyond the dates mentioned in the manifestation, and which was more than 1-1/2 months away, but which the Honorable Court nonetheless granted;
- Atty. Manalaysay has never been able to present any "good cause" as to how come he was not able to present Dr. Marquez on April 30, 2003, and then again on June 19, 2003; and as aforesaid, his absence on March 6, 2003 has not been supported by any medical certificate;
- The first hearing in the instant case was held on June 13, 2002, thus it has now been more than one year, or close to 400 days ago since trial started; neither has there been any authorization from the Supreme Court that the trial period may exceed 180 days;

- There has been no statement by the Honorable Court in any of its orders granting continuance that “the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial;”

- As above stated, it appears that the prosecution made a false statement before the Honorable Court in claiming they had asked Dr. Marquez to testify in the June 19, 2003 hearing, when in fact they had not.[15]

Dr. Jose Arnel Marquez had apparently still not received the subpoena issued by the trial court, because of which the prosecution again failed to present him as a witness during the trial of July 17, 2003. The prosecution prayed for continuance, to which the petitioner vigorously objected. The court, however, granted the motion and reset the trial to August 11, 2003.[16]

On July 24, 2003, Judge Laurea issued an Order[17] inhibiting himself from hearing the case “to avoid being misunderstood, to preserve his reputation for probity and objectivity and to live up to the ideal impartial administration of justice.” The case was re-raffled to Branch 170, presided by Judge Benjamin T. Antonio, who calendared the case for trial on September 8, 2003. Nevertheless, on August 11, 2003, the petitioner filed a Motion for Reconsideration[18] of Judge Laurea’s Order dated July 24, 2003, which the latter denied, on the finding that no cogent reason was presented to reconsider the same.[19]

During the hearing on September 8, 2003, Judge Antonio granted the private prosecutor’s motion to be given five (5) days within which to oppose the petitioner’s motion to dismiss. Judge Antonio also set the trial on September 18, 2003.[20] On the latter date, the trial court issued an Omnibus Order[21] denying the petitioner’s motion to dismiss. The trial court reasoned that there was no violation of the petitioner’s right to speedy trial, considering that the apparent delays could not be attributed to the fault of the prosecution alone. The trial court noted that the petitioner also sought Postponements of the trials.

Anent the motion for reconsideration of the court’s Order dated June 16, 2003 which denied the petition for bail, the trial court considered the same as having been abandoned by the petitioner upon the filing of his motion to dismiss the case without waiting for the resolution of his motion for reconsideration on his petition for bail.

The petitioner then filed with the Court of Appeals (CA) a “Petition for Habeas Corpus and/or Certiorari and Prohibition.”[22] On October 2, 2003, the CA issued a Resolution requiring the petitioner to inform the court of his choice of remedy within five (5) days from notice thereof. In compliance therewith, the petitioner filed a manifestation with the appellate court that he had chosen his petition to be treated as a petition for habeas corpus without prejudice “to the concomitant application of certiorari if the court considered the same necessary or appropriate to give effect to the writ of habeas corpus.”

The petitioner averred that (a) he was deprived of his right to a speedy trial and his constitutional right to a speedy disposition of the case; (b) Judge Laurea erred in inhibiting himself from the case; (c) the trial court committed grave abuse of its discretion in denying his petition for bail; and (d) Judge Antonio had prejudged the case against him.

On December 9, 2003, the CA issued its assailed Resolution dismissing the petition, viz:

WHEREFORE, for being the wrong or improper remedy, the PETITION FOR HABEAS CORPUS is DISMISSED.

SO ORDERED.[23]

According to the appellate court, while the petitioner manifested his preference that his petition be treated as a petition for habeas corpus, the same was not the proper remedy to review and examine the proceedings before the

trial court and as a relief from the petitioner's perceived oppressive situation in the trial court. The CA further emphasized that a writ of habeas corpus is not a writ of error; that it could not exercise its certiorari jurisdiction over the acts or omission of the respondent judge as a concomitant remedy; and that the remedy for habeas corpus and certiorari are different in nature, scope and purpose. The appellate court declared that the petitioner failed to present any evidence to prove that there was any intentional or deliberate delay caused to prejudice him; nor was there any malice in the failure of the prosecution to promptly serve the subpoena duces tecum/ad testificandum its witnesses. The court also noted that the resetting of petitioner's case may also be attributed to the voluminous work of the RTC involved.

The petitioner filed a motion for reconsideration of the said decision contending that (a) the congestion of the trial court's calendar is not a valid ground for continuance of the trial; (b) the trial court failed to secure an extension of time of the trial period from the Supreme Court; (c) the trial court should have given a precedence to the case, the charge therein being a heinous crime; (d) his petition for a writ of habeas corpus was proper because his continued detention had become illegal, following the prosecutor and the trial court's violation of his right to a speedy trial, and the trial court's denial of his motion to dismiss the case and his petition for bail which was tainted with grave abuse of discretion; and (e) a writ of habeas corpus may be issued with the writ of certiorari for the purpose of review. However, the CA denied the petitioner's motion for lack of merit.

The petitioner filed a petition for certiorari in this Court under Rule 65 of the Rules of Court reiterating the grounds contained in his motion for reconsideration of the CA decision. The petitioner averred that the appellate court committed grave abuse of discretion amounting to excess or lack of jurisdiction in rendering its resolution, as well as the resolution denying his motion for reconsideration thereof.

In its comment on the petition, the Office of the Solicitor General submits that a petition for a writ of habeas corpus is not the proper remedy to assail the trial court's order denying his petition for bail, motion to dismiss the case, and Judge Laurea's order of inhibition. The OSG posits that the petitioner was not deprived of his constitutional right to a speedy disposition of his case as well as under the Speedy Trial Act.

The issues for resolution are the following: (a) whether or not the decision of the CA is already final and executory; (b) whether the proper remedy from the appellate court's denial of a petitioner for a writ of habeas corpus is a petition for certiorari under Rule 65 of the Rules of Court; and (c) if in the affirmative, whether or not the petitioner is entitled to the issuance of the writ.

On the first issue, we find and so rule that the petitioner's recourse to this Court via a petition for certiorari from the decision of the CA dismissing his petition for a writ of habeas corpus is inappropriate. Section 39 of Batas Pambansa Blg. 129 provides that the period for appeal from the judgment of any court in habeas corpus cases shall be forty-eight (48) hours from notice of the judgment appealed from. While the said provision was not incorporated in the 1997 Rules of Civil Procedure, this Court approved Administrative Matter No. 01-1-03-SC amending Section 3, Rule 41 of the said Rules, which took effect on July 15, 2001, thus:

SEC. 3. Period of ordinary appeal; appeal in habeas corpus cases.—The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, an appeal in habeas corpus cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

Following the rule, the petitioner should have appealed to this Court from the CA decision denying his petition for

a writ of habeas corpus, as well as the denial of his motion for reconsideration thereof; instead, the petitioner filed a petition for certiorari under Rule 65 of the Rules of Court, as amended. The well-settled rule is that certiorari is not available where the aggrieved party's remedy of appeal is plain, speedy and adequate in the ordinary course, the reason being that certiorari cannot co-exist with an appeal or any other adequate remedy. The existence and availability of the right to appeal are antithetical to the availment of the special civil action for certiorari. These two remedies are mutually exclusive.[24] An appeal in this case would still have been a speedy and adequate remedy. Consequently, when the petitioner filed his petition in this Court, the decision of the CA was already final and executory.

It bears stressing that a decision in a habeas corpus action stands in no different position than with any other proceeding and if the appealed decision is to be reviewed by an appellate court, the remedy is by writ of error because the error committed by the court is an error of judgment and not an error of jurisdiction.[25]

Besides, as correctly held by the CA, a writ of habeas corpus is not the proper remedy to assail the trial court's denial of the petitioner's motion to dismiss the case, the denial of the petition for bail, as well as the voluntary inhibition of Judge Laurea.

A petition for the issuance of a writ of habeas corpus is a special proceeding governed by Rule 102 of the Rules of Court, as amended. In *Ex Parte Billings*,[26] it was held that habeas corpus is that of a civil proceeding in character. It seeks the enforcement of civil rights. Resorting to the writ is not to inquire into the criminal act of which the complaint is made, but into the right of liberty, notwithstanding the act and the immediate purpose to be served is relief from illegal restraint. The rule applies even when instituted to arrest a criminal prosecution and secure freedom. When a prisoner petitions for a writ of habeas corpus, he thereby commences a suit and prosecutes a case in that court.[27]

Habeas corpus is not in the nature of a writ of error; nor intended as substitute for the trial court's function.[28] It cannot take the place of appeal, certiorari or writ of error. The writ cannot be used to investigate and consider questions of error that might be raised relating to procedure or on the merits. The inquiry in a habeas corpus proceeding is addressed to the question of whether the proceedings and the assailed order are, for any reason, null and void.[29] The writ is not ordinarily granted where the law provides for other remedies in the regular course, and in the absence of exceptional circumstances. Moreover, habeas corpus should not be granted in advance of trial.[30] The orderly course of trial must be pursued and the usual remedies exhausted before resorting to the writ where exceptional circumstances are extant. In another case, it was held that habeas corpus cannot be issued as a writ of error or as a means of reviewing errors of law and irregularities not involving the questions of jurisdiction occurring during the course of the trial, subject to the caveat that constitutional safeguards of human life and liberty must be preserved, and not destroyed.[31] It has also been held that where restraint is under legal process, mere errors and irregularities, which do not render the proceedings void, are not grounds for relief by habeas corpus because in such cases, the restraint is not illegal.[32]

Habeas corpus is a summary remedy. It is analogous to a proceeding in rem when instituted for the sole purpose of having the person of restraint presented before the judge in order that the cause of his detention may be inquired into and his statements final.[33] The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be the unlawful authority.[34] Hence, the only parties before the court are the petitioner (prisoner) and the person holding the petitioner in custody, and the only question to be resolved is whether the custodian has authority to deprive the petitioner of his liberty.[35] The writ may be denied if the petitioner fails to show facts that he is entitled thereto *ex merito justicias*. [36]

A writ of habeas corpus, which is regarded as a "palladium of liberty" is a prerogative writ which does not issue

as a matter of right but in the sound discretion of the court or judge. It, is, however, a writ of right on proper formalities being made by proof.[37] Resort to the writ is to inquire into the criminal act of which a complaint is made but unto the right of liberty, notwithstanding the act, and the immediate purpose to be served is relief from illegal restraint.[38] The primary, if not the only object of the writ of habeas corpus ad subjucendum is to determine the legality of the restraint under which a person is held.[39]

Our review of the petitioner's material averments in his petition before the CA reveals that it was a "petition for habeas corpus or, in the alternative, a petition for a writ of certiorari" The petitioner assailed therein the orders of the trial court denying his petition for bail and his motion to dismiss on the ground that he was deprived of his right to a speedy disposition of the case against him, and questioned Judge Laurea's order of inhibition. We agree with the CA that a petition for a writ of habeas corpus cannot be joined with the special civil action for certiorari because the two remedies are governed by a different set of rules. Rule 2, Section 5(b) of the Rules of Court mandates that the joinder of causes of action shall not include special actions or actions governed by special rules, thus proscribing the joinder of a special proceeding with a special civil action.

We also agree with the ruling of the CA that a petition for a writ of habeas corpus is a remedy different from the special civil action of certiorari under Rule 65 of the Rules of Court, as amended. The writ of habeas corpus is a collateral attack on the processes, orders, or judgment of the trial court, while certiorari is a direct attack of said processes, orders, or judgment on the ground of lack of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. A writ of certiorari reaches only jurisdictional errors. It has no other use, except to bring before the court a record material to be considered in exercising jurisdiction. A writ of certiorari reaches the record. On the other hand, a writ of habeas corpus reaches the body but not the record; it also reaches jurisdictional matters but does not reach the record. However, when jurisdiction is obtained by the issuance of a writ of habeas corpus, to bring the body of the person whose liberty is involved into court, and if it is necessary, to provide the record upon which the detention is based, that may be accomplished by using a writ of certiorari as an ancillary proceeding, i.e., it is subordinate to or in aid of the primary action for the purpose of impeaching the record. When a writ of certiorari is issued as the foundation of jurisdiction to bring it and direct upon the validity of a judicial determination by any body or officer, jurisdictional questions only are reached, and such questions pertaining to the detention made by the officer or body particularly complained of.[40]

The petitioner manifested to the appellate court that his petition should be treated as a petition for habeas corpus. Even then, the CA rightly dismissed the petition because the petitioner failed to establish his right to the writ. The records show that the petitioner was charged with rape punishable by reclusion perpetua and was detained based on the said charge; hence, if the evidence of his guilt is strong, he shall not be admitted to bail regardless of the stage of the criminal prosecution.[41] There is no question that the trial court had jurisdiction over the offense charged and over the person of the petitioner. The jail warden has the authority and, in fact, is mandated to detain the petitioner until granted bail by the court, or the case against him dismissed, or until he is acquitted after trial. The petitioner failed to establish that his incarceration pendente lite was illegal, and likewise failed to establish exceptional circumstances warranting the issuance of a writ of habeas corpus by the appellate court.

In *Galvez v. Court of Appeals*,[42] the Court ruled that a petition for habeas corpus is not the proper remedy to assail the denial thereof:

... The original jurisdiction to grant or deny bail rested with said respondent. The correct course was for petitioner to invoke that jurisdiction by filing a petition to be admitted to bail, claiming a right to bail per se by reason of the weakness of the evidence against him. Only after that remedy was denied by the trial court should the review jurisdiction of this Court have been invoked, and even then, not without first applying to the Court of Appeals if appropriate relief was also available there.[43]

The remedy of the petitioner from the Order of the trial court denying his petition for bail was to file a petition for certiorari in the CA if the trial court committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the said order.[44] If the petitioner had done so, his petition would have been granted because as gleaned from the assailed order of the trial court, it failed to summarize the testimonies of the private complainant and that of her mother. Hence, such order is invalid.[45] The trial court would have had to issue another order containing the summary of the testimonies of the private complainant and her mother, including its findings and conclusions. However, the petitioner would still not be entitled to be released from detention in the meantime.

It bears stressing that under the second paragraph of Section 1, Rule 137[46] of the Rules of Court, the voluntary inhibition of a Judge is addressed to his sound discretion for just or valid reasons, the primary consideration being that the people's faith in the courts of justice is not impaired.[47] The petitioner should have thus filed a petition for certiorari and/or prohibition in the CA, instead of a petition for habeas corpus.

In cases where the right of the accused to a speedy trial is violated by the prosecution, the remedy lies in the procedure provided for under Republic Act No. 8493, as implemented by Rule 119 of the 2000 Rules of Criminal Procedure. Section 8 of the said Rule provides:

SEC. 8. Sanctions.— In any case in which private counsel for the accused, the public attorney, or the prosecutor:

- (a) Knowingly allows the case to be set for trial without disclosing that a necessary witness would be unavailable for trial;
- (b) Files a motion solely for delay which he knows is totally frivolous and without merit;
- (c) Makes a statement for the purpose of obtaining continuance which he knows to be false and which is material to the granting of a continuance; or
- (d) Willfully fails to proceed to trial without justification consistent with the provisions hereof, the court may punish such counsel, attorney, or prosecutor, as follows:
 - (1) By imposing on a counsel privately retained in connection with the defense of an accused, a fine not exceeding twenty thousand pesos (P20,000.00);
 - (2) By imposing on any appointed counsel de oficio, public attorney, or prosecutor a fine not exceeding five thousand pesos (P5,000.00); and
 - (3) By denying any defense counsel or prosecutor the right to practice before the court trying the case for a period not exceeding thirty (30) days. The punishment provided for by this section shall be without prejudice to any appropriate criminal action or other sanction authorized under these Rules.

If the trial court acted with grave abuse of its discretion amounting to excess or lack of jurisdiction in granting the prosecution's motion for the resetting of the trial over the petitioner's objections, the more appropriate remedy would have been to file a petition for certiorari and/or a petition for mandamus to compel the trial court to comply with the timeline provided for by the said Rule for trial and termination of the case.

It was inappropriate for the petitioner to file a petition for habeas corpus assailing the trial court's order denying his motion to dismiss the case for failure to comply with the timeline provided for by the said Rules. Reading and evaluating the assailed Order of the trial court dated September 18, 2000, it cannot be gainsaid that the court violated the right of the petitioner to speedy trial. Thus:

The instant motion is anchored on the alleged violation of and/or to enforce the right of the accused to speedy trial. In invoking such right, the accused contends that the failure of the prosecution to present the medico-legal

officer who examined the victim on two (2) occasions, and the non-appearance of the private prosecutor on one occasion caused undue delay in the proceedings of this case.

The prosecution vigorously opposed the Motion to Dismiss and claimed that since the prosecution has not yet rested its case, the Court may not be able to appreciate the merits of the instant motion in the light of the unfinished presentation of evidence for the prosecution and that the grounds relied by the defense do not touch on the sufficiency of the prosecution's evidence to prove the guilt of the accused beyond reasonable doubt, but rather on the alleged delay and failure to present Dr. Jose Arnel Marquez of the PNP Crime Laboratory.

After due consideration, the Court finds the instant motion untenable. The alleged delay and failure to present the medico-legal officer cannot be attributed to the fault of the prosecution and/or the Court. The prosecution and the Court cannot encroach on the right of the medico-legal officer to appear inasmuch as his schedule conflicted with the hearings set for his appearance. Moreover, delays assailed by defense counsel that violated accused' right to speedy trial are not all at the instance of the prosecution. In fact, the defense, contributed to the delay since the former defense counsel and even the present defense counsel sought postponements of the hearings.

Be that as it may, despite the non-presentation of the medico-legal officer, the Court (Branch 169) proceeded in resolving the Petition for Bail of the accused (albeit unfavorable to the cause of the accused) on the basis of the sole testimony of the complainant, which is backed up by several jurisprudence to this effect. The defense, filed a Motion for Reconsideration of said denial after he has filed a Motion to Dismiss. The filing of these pleadings adds to the delay until the Presiding Judge who denied the Petition for Bail voluntarily inhibited himself from this case. Then when the Motion to Dismiss was set for hearing, the Court, in an attempt to expedite the proceedings, suggested for the parties to stipulate on the medical findings of the medico-legal officer so as to dispense with his presentation. Defense counsel, however, would not want to enter into such a stipulation. Hence, another delay.[48]

We agree with the petitioner that a petition for the issuance of a writ of habeas corpus may be filed if one is deprived of his right to a speedy disposition of the case under Article IV, Section 16 of the 1987 Constitution and of his right to due process.[49] However, the petitioner never invoked in the trial court his constitutional right to a speedy disposition of the case against him. What he invoked was his right to a speedy trial under Rule 119 of the 2000 Rules of Criminal Procedure. He invoked his constitutional right to a speedy disposition of the case against him, for the first time, only in the Court of Appeals when he filed his petition for habeas corpus.

Even then, the petitioner failed to establish his claim that he was deprived of his right to a speedy disposition of the case. In *Marilyn Corpuz, et al., v. Sandiganbayan*,[50] the Court had the occasion to state –

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

The Court emphasized in the same case that:

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an ad hoc basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the Possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edged sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State.

In this case, the petitioner was arraigned on February 7, 2002. In the meantime, he was able to present only two witnesses. The petitioner failed to terminate the cross-examination of the private complainant by the year 2002. The Court cannot determine the reason for the delay because the records of the RTC are not before it. Neither of the parties made any explanation for the delay; nor is there any showing that the counsel of the petitioner complained about the delay. Aside from the petitioner's claim that the private prosecutor failed to give good cause for his failure to present Dr. Jose Arnel Marquez during the trial dates April 30, 2003 and June 19, 2003, as well as to substantiate his absence during the trial of March 6, 2003 with a medical certificate, the petitioner failed to support his claim in his pleadings before the CA and in this Court. On the other hand, the counsel of the petitioner was absent during the trial on April 30, 2003 because he had to attend an execution sale in Cavite. The petitioner's counsel gave priority to the execution sale and asked for a resetting despite the fact that his client, the petitioner, was detained for a quasi-heinous crime. While it is true that the trial was reset to June 19, 2003, or more than one month from April 30, 2003, the petitioner's counsel himself manifested that he was available for trial during the first half of June 2003. There was a difference of only four (4) days from the trial date set by the court and the available dates suggested by the petitioner's counsel. It bears stressing that trial dates cannot be set solely at the convenience of the petitioner's counsel. The trial dates available in the calendar of the court and of the prosecutor must also be taken into account.

Hence, it cannot be said that the petitioner was deprived of his right to a speedy disposition of the case simply

because the private prosecutor failed to submit a medical certificate for his absence during the trial of March 6, 2003. The petitioner could have asked the court to cite the private prosecutor in contempt of court for his failure to submit the said certificate; he failed to do so. Moreover, the petitioner failed to establish any serious prejudice by the delay of the trial, and that the State deliberately delayed the trial to prejudice him.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Lucas P. Bersamin, with Associate Justices Renato C. Dacudao and Elvi John S. Asuncion, concurring.

[2] Criminal Case No. 25756-MN.

[3] Rollo, pp. 69-70.

[4] Id. at 18.

[5] Id. at 11.

[6] Id. at 12.

[7] Id. at 13.

[8] Id. at 27.

[9] Id. at 15.

[10] Id. at 17.

[11] Id. at 95.

[12] Id. at 30-31.

[13] Id. at 49.

[14] Id. at 32.

[15] Id. at 33-34.

[16] Id. at 35.

[17] Id. at 36.

[18] Id. at 38.

[19] Id. at 41.

[20] Id. at 42.

[21] Id. at 43.

[22] Id. at 45.

[23] Id. at 76.

- [24] *People of the Philippines v. Court of Appeals*, G.R. No. 144332, June 10, 2004.
- [25] *Gaster v. State ex rel. Whitcher*, 94 N.W. 787 (1903).
- [26] 46 F. Supp. 663 (1942).
- [27] *Click v. Click*, 127 S.E. 194, citing *Ex Parte Tom Tong*, 108 U.S. 556.
- [28] *Burton v. Smithers*, 31 F. 2d 966 (1929).
- [29] *U.S. v. Pridgeon*, 38 L. Ed. 627; *Ex Parte Kearsy* 38 L. Ed. 391.
- [30] *Jones v. Perkins*, 62 L. Ed. 1 (1918).
- [31] *Johnson v. Zerbst*, 82 L. Ed. 1461 (1938).
- [32] 39 CJS, *Habeas Corpus*, §15, p. 448.
- [33] *Sismon v. Georgia Iron and Coal Company*, 43 SE, 78 (1903).
- [34] *Brado v. 30th Judicial Circuit Court of Kentucky*, 35 L. Ed. 443 (1973).
- [35] 39 Am. Jur., *Habeas Corpus*, 86, p. 208.
- [36] *Click v. Click*, *supra*.
- [37] *Bailey*, *Habeas Corpus*, par. 2, p. 6.
- [38] *Ex parte Billings*, *supra*.
- [39] *Caison v. Landon*, 96 L. Ed. 547 (1952).
- [40] *Gaster v. Whitcher*, *supra*.
- [41] Sec. 7, Rule 114 reads: Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.— No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.
- [42] 237 SCRA 685 (1994).**
- [43] *Id.* at 713-714, citing *Enrile v. Salazar, etc., et al.*, 186 SCRA 217 (1990).
- [44] *People v. Gomez*, 325 SCRA 61 (2000).
- [45] See *Goodman v. De la Victoria*, 325 SCRA 658 (2000).
- [46] A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.
- [47] *People v. Kho*, 357 SCRA 290 (2001).
- [48] *Rollo*, pp. 43-44.
- [49] *Bernarte v. Court of Appeals*, 263 SCRA 323 (1996); *Olague v. Military Commission*, 250 SCRA 144 (1987).
- [50] G.R. No. 162214, November 11, 2004.

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