

FEDERICO MIGUEL OLBES, PETITIONER, VS. HON. DANILO A. BUEMIO, IN HIS CAPACITY AS PAIRING PRESIDING JUDGE OF BRANCH 22 OF THE METROPOLITAN TRIAL COURT OF MANILA, PEOPLE OF THE PH...

G.R. No. 173319. December 04, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On complaint of Samir and Rowena Muhsen, Federico Miguel Olbes (petitioner) was indicted for Grave Coercion before the Metropolitan Trial Court (MeTC) of Manila by Information[1] dated June 28, 2002 which was raffled to Branch 22 thereof. On October 28, 2002, petitioner posted bail and was released.

Denying petitioner's motion to defer or suspend his arraignment in light of his pending petition for review before the Department of Justice from the City Fiscal's Resolution finding probable cause to hale him into court, Judge Hipolito dela Vega proceeded with petitioner's arraignment on February 12, 2003 in which he pleaded not guilty to the charge.[2] Pre-trial was thereupon set to May 28, 2003 which was, however, declared a non-working day due to the occurrence of typhoon "Chedeng." The pre-trial was thus reset to October 23, 2003.[3]

At the scheduled pre-trial on October 23, 2003, petitioner failed to appear, prompting the trial court to issue a warrant for his arrest, which warrant was, however, later recalled on discovery that neither petitioner nor his counsel was notified of said schedule. Pre-trial was again reset to January 21, 2004.[4]

Before the scheduled pre-trial on January 21, 2004 or on November 3, 2003, petitioner filed a Motion to Dismiss[5] the Information on the ground of violation of his right to a speedy trial under Republic Act No. 8493[6] or the Speedy Trial Act of 1998 and Supreme Court Circular (SCC) No. 38-98.[7] He argued that "considering that [he] was not - without any fault on his part - brought to trial within 80 days from the date he was arraigned, this case should be dismissed pursuant to Rule 119, Section 9[8] in relation to Rule 119, Section 6 of the Rules." [9]

The trial court, through pairing Judge Danilo A. Buemio (respondent judge), denied petitioner's Motion to Dismiss by Order[10] of December 5, 2003, holding that petitioner played a big part in the delay of the case, and that technical rules of procedure were meant to secure, not override, substantial justice.

Petitioner's Motion for Reconsideration of the December 5, 2003 Order was denied by Order[11] of March 3, 2004 after respondent judge noted that during petitioner's arraignment on February 12, 2003, he interposed no objection to the setting of the pre-trial to May 28, 2003. Besides, respondent judge held, strict compliance with the Speedy Trial Act was improbable, given the volume of cases being filed with the MeTC. Additionally respondent judge held that the term "speedy trial" as applied in criminal cases is a relative term such that the trial and disposition of cases depended on several factors including the availability of counsel, witnesses and prosecutor, and weather conditions.

Petitioner challenged respondent judge's orders via certiorari and prohibition before the Regional Trial Court (RTC) of Manila, alleging that not only was he (petitioner) not brought to trial within 80 days from the date of his arraignment as required under Section 6, Rule 119, but the prosecution had failed to establish the existence of any of the "time exclusions" provided under Section 3[12] of the same Rule to excuse its failure to bring him to trial within the 80-day period.

By Decision[13] of January 31, 2006, the RTC denied the petition, holding that Section 9 of Rule 119 of the Rules of Court does not call for the automatic dismissal of a case just because trial has not commenced within 80 days from arraignment; that the proceedings before the MeTC were not attended by vexatious, capricious and oppressive delays; and that the concept of a speedy trial is not a mere question of numbers that could be computed in terms of years, months or days but is understood according to the peculiar circumstances of each case, citing *SPO1 Sumbang, Jr. v. Gen. Court Martial PRO-Region 6*. [14]

The RTC further held that in "determining whether petitioner's right to speedy trial was violated,"[15] the circumstances that respondent judge was the pairing judge of Br. 22 of the MeTC who "may be assumed also [to] preside over his own regular court and devotes limited time to his pairing court" and that first level courts in Manila have an excessive load of cases should also be taken into consideration.

His motion for reconsideration having been denied by the RTC,[16] petitioner lodged the present petition for review which, in the main, faults the RTC

I

. . . IN AFFIRMING THE MTC-MANILA JUDGE'S RULING THAT COMPLIANCE WITH RULE 119, SECTION 9 OF THE RULES IS NOT MANDATORY. THE RIGHT OF AN ACCUSED TO A SPEEDY TRIAL IS A SUBSTANTIVE RIGHT THAT CANNOT BE DISREGARDED.

II

. . . IN AFFIRMING THE MTC-MANILA JUDGE'S RULING THAT THE ENUMERATION OF ALLOWABLE TIME EXCLUSIONS UNDER RULE 119, SECTION 3 IS NOT EXCLUSIVE, AND THAT THE FAILURE TO BRING PETITIONER TO TRIAL WITHIN THE PERIOD PROVIDED UNDER RULE 119, SECTION 6 WAS JUSTIFIED.

x x x x,[17]

errors which raise a question of law.

Petitioner argues that his right to speedy trial is a substantive right and that, contrary to the RTC ruling, Section 9 of Rule 119 is mandatory in character, having been taken from SCC No. 38-98, strict compliance with which is urged to remove any attempt on the part of judges to exercise discretion with respect to the time frame for conducting the trial of an accused; that the last paragraph of said Section 9 clearly indicates that it is the right of an accused to move for dismissal of the Information should the prosecution fail to prove the existence of the time exclusions under Section 3 of Rule 119; and that the enumeration of the allowable time exclusions under Section 3 is exclusive, hence, the RTC erred in considering the excessive caseload of respondent judge, as a mere pairing judge, to be an allowable time exclusion under the Rules.

In its Comment,[18] the People, through the Office of the Solicitor General (OSG), counters that "speed alone is not the chief objective of a trial" such that mere assertion of a violation of the right to speedy trial does not necessarily result in the automatic dismissal of an Information; that the time exclusions referred to in paragraphs (a) to (f) of Section 3, Rule 119 are not exclusive and admit of other exceptions; that petitioner himself contributed to the delay in the proceedings when he filed a frivolous motion to suspend proceedings and failed to

appear during the scheduled pre-trial; and that the RTC statement about respondent judge being a mere pairing judge was not an apology for the court's congested dockets but a mere statement of fact as to the impossibility of setting the case for pre-trial at an earlier date.

Furthermore, the OSG asserts that respondent judge's denial of petitioner's motion to dismiss was in order as he correctly applied the principles of relativity and flexibility in determining whether petitioner's right to speedy trial had been violated.[19]

Respondents-private complainants, on the other hand, maintain in their Comment[20] that several Supreme Court decisions[21] dealing with the issue of the constitutional guaranty of a speedy trial, the Speedy Trial Act of 1998, and SCC No. 38-98 have held that the right is deemed violated only when the proceedings are attended by vexatious, capricious and oppressive delays, which did not obtain in the present case, petitioner himself having been instrumental in the delay in the prosecution of the case.

The petition does not impress.

Petitioner draws attention to the time gap of 105 days from his arraignment on February 12, 2003 up to the first pre-trial setting on May 28, 2003, and another gap of 148 days from the latter date up to the second pre-trial setting on October 23, 2003 or for a total of 253 days - a clear contravention, according to petitioner, of the 80-day time limit from arraignment to trial.

It bears noting, however, that on his arraignment on February 12, 2003, petitioner interposed no objection to the setting of the pre-trial to May 28, 2003 which was, as earlier stated, later declared a non-working day. Inarguably, the cancellation of the scheduled pre-trial on that date was beyond the control of the trial court.

Petitioner argues, however, that the lapse of 253 days (from arraignment to October 23, 2003) was not justified by any of the excusable delays as embodied in the time exclusions[22] specified under Section 3 of Rule 119. The argument is unavailing.

In *Solar Team Entertainment, Inc. v. Judge How*,[23] the Court stressed that the exceptions consisting of the time exclusions provided in the Speedy Trial Act of 1998 reflect the fundamentally recognized principle that "speedy trial" is a relative term and necessarily involves a degree of flexibility. This was reiterated in *People v. Hernandez*,[24] viz:

The right of the accused to a speedy trial is guaranteed under Sections 14(2) and 16, Article III of the 1987 Constitution. In 1998, Congress enacted R.A. No. 8493, otherwise known as the "Speedy Trial Act of 1998." The law provided for time limits in order "to ensure a speedy trial of all criminal cases before the Sandiganbayan, [RTC], Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court." On August 11, 1998, the Supreme Court issued Circular No. 38-98, the Rules Implementing R.A. No. 8493. The provisions of said circular were adopted in the 2000 Revised Rules of Criminal Procedure. As to the time limit within which trial must commence after arraignment, the 2000 Revised Rules of Criminal Procedure states:

Sec. 6, Rule 119. Extended time limit.-- Notwithstanding the provisions of section 1(g), Rule 116 and the preceding section 1, for the first twelve-calendar-month period following its effectivity on September 15, 1998, the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period, the time limit shall be eighty (80) days.

R.A. No. 8493 and its implementing rules and the Revised Rules of Criminal Procedure enumerate certain reasonable delays as exclusions in the computation of the prescribed time limits. They also provide that "no provision of law on speedy trial and no rule implementing the same shall be interpreted as a bar to any charge

of denial of speedy trial as provided by Article III, Section 14(2), of the 1987 Constitution." Thus, in spite of the prescribed time limits, jurisprudence continues to adopt the view that the concept of "speedy trial" is a relative term and must necessarily be a flexible concept. In *Corpuz v. Sandiganbayan*, we held:

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. x x x

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.

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.(citations omitted) (underscoring supplied)

The time limits set by the Speedy Trial Act of 1998 do not thus preclude justifiable postponements and delays when so warranted by the situation.[25] To the Court, the reasons for the postponements and delays attendant to the present case reflected above are not unreasonable. While the records indicate that neither petitioner nor his counsel was notified of the resetting of the pre-trial to October 23, 2003, the same appears to have been occasioned by oversight or simple negligence which, standing alone, does not prove fatal to the prosecution's case. The faux pas was acknowledged and corrected when the MeTC recalled the arrest warrant it had issued against petitioner under the mistaken belief that petitioner had been duly notified of the October 23, 2003 pre-trial setting.[26]

Reiterating the Court's pronouncement in *Solar Team Entertainment, Inc.*[27] that "speedy trial" is a relative and flexible term, *Lumanlaw v. Peralta, Jr.*[28] summons the courts to maintain a delicate balance between the demands of due process and the strictures of speedy trial on the one hand, and the right of the State to prosecute crimes and rid society of criminals on the other.

Applying the balancing test for determining whether an accused has been denied his constitutional right to a speedy trial, or a speedy disposition of his case, taking into account several factors such as the length and reason of the delay, the accused's assertion or non-assertion of his right, and the prejudice to the accused resulting from the delay,[29] the Court does not find petitioner to have been unduly and excessively prejudiced by the "delay" in the proceedings, especially given that he had posted bail.

WHEREFORE, the petition is DENIED.

Costs against Petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Rollo, p. 42.

[2] Records, p. 217.

[3] Rollo, p. 43.

[4] Id. at 56.

[5] Id. at 44-46.

[6] AN ACT TO ENSURE A SPEEDY TRIAL OF ALL CRIMINAL CASES BEFORE THE SANDIGANBAYAN, REGIONAL TRIAL COURT, METROPOLITAN TRIAL COURT, MUNICIPAL TRIAL COURT, AND MUNICIPAL CIRCUIT TRIAL COURT, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[7] IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT NO. 8493 (effective September 15, 1998).

[8] Sec. 9. Remedy where accused is not brought to trial within the time limit. - If the accused is not brought to trial within the time limit required by section 1 (g), Rule 116 and section 1, as extended by section 6 of this Rule, the information may be dismissed on motion of the accused on the ground of denial of his right to speedy trial. The accused shall have the burden of proving the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under section 3 of this Rule. The dismissal shall be subject to the rules on double jeopardy.

Failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss under this section. (sec. 14, cir. 38-98).

[9] Vide Motion to Dismiss, rollo, pp. 44-46.

[10] Id. at 55-56.

[11] Id. at 71-73.

[12] SEC. 3. Exclusions. - The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

- (1) Delay resulting from an examination of the physical and mental condition of the accused;
- (2) Delay resulting from proceedings with respect to other criminal charges against the accused;
- (3) Delay resulting from extraordinary remedies against interlocutory orders;
- (4) Delay resulting from pre-trial proceedings; provided, that the delay does not exceed thirty (30) days;
- (5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;
- (6) Delay resulting from a finding of the existence of a prejudicial question; and
- (7) Delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. He shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or, as to whom the time for trial has not run and no motion for separate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court *motu proprio*, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

[13] Rendered by Assisting RTC Judge Manuel M. Barrios; rollo, pp. 34-39.

[14] 391 Phil. 929.

[15] Vide note 13 at 38.

[16] Rollo, pp. 40-41.

[17] *Id.* at 13.

[18] *Id.* at 229-241.

[19] *Id.* at 239-240.

[20] *Id.* at 205- 208.

[21] *People v. Tee*, 443 Phil. 521 (2003); *Gonzales v. Sandiganbayan*, G.R. No. 94750, July 16, 1991, 199 SCRA 298.

[22] Vide at note 12.

[23] 393 Phil. 172, 182 (2000).

[24] G.R. Nos. 154218 & 154372, August 28, 2006, 499 SCRA 688, 708-710; *Caballes v. Court of Appeals*, 492 Phil. 410, 429 (2005).

[25] *Domondon v. Sandiganbayan*, G.R. No. 166606, November 29, 2005, 476 SCRA 496, 504.

[26] Vide *Petition for Certiorari and Prohibition before the RTC Manila*; rollo, p. 79.

[27] *Supra* at note 23.

[28] G.R. No. 164953, February 13, 2006, 482 SCRA 396, 409.

[29] *Domondon v. Sandiganbayan*, *supra* at note 25 citing *Gonzales v. Sandiganbayan*, *supra* note 21 at 307.

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