

OSCAR Z. BENARES, PETITIONER VS. JOSEPHINE LIM, RESPONDENT

G.R. NO. 173421. December 14, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review assails the May 25, 2005 Decision[2] of the Court of Appeals setting aside the Resolution[3] dated May 5, 2004 and Order[4] dated July 9, 2004 of the Regional Trial Court (RTC) of Makati City, Branch 132, which set aside the Orders dated June 11, 2002[5] and December 26, 2002[6] of the Metropolitan Trial Court (MeTC) of Makati City granting respondent's motion for reconsideration of the Order dismissing the complaint for estafa for failure to prosecute. Also assailed is the July 7, 2006 Resolution[7] denying petitioner's motion for reconsideration.

The following facts are undisputed:

Petitioner Oscar Beñares was accused of estafa arising from two contracts of sale executed in 1976 where he sold two parcels of land to respondent. Records show that after respondent had fully paid the amortizations and after the deed of absolute sale was issued, petitioner mortgaged the same parcels of land to the Bank of Philippine Islands. Thus, when respondent demanded delivery of the properties, petitioner failed to comply, thus respondent was compelled to file a case for estafa against petitioner.

Trial thereafter ensued. After the prosecution presented its last witness, it was given 15 days to formally offer its evidence.[8] However, the prosecution did not make any formal offer of evidence, hence petitioner filed a motion praying that the prosecution's submission of formal offer of evidence be deemed waived and the case dismissed for lack of evidence.[9] Despite receipt of notice of petitioner's motion, respondent and her counsel failed to attend the hearing on the motion set on December 4, 2001.

On January 28, 2002, the MeTC issued an Order[10] giving the prosecution another 15 days within which to formally offer its evidence which petitioner opposed.[11] On February 27, 2002, the MeTC issued the following Order:

In view of the oral manifestation of counsel for the accused, showing that the private prosecutor received the Order of this Court dated January 28, 2002 on February 7, 2002 giving them an extension of another fifteen days to file their formal offer of evidence, yet failed to do so; the court finds reason to deny the submission of formal offer of evidence.

Acting on the Motion of the accused for the dismissal of this case, for failure of the prosecution to prosecute this case, the motion is granted. This case is hereby ordered DISMISSED.

SO ORDERED.[12]

Respondent moved to reconsider the order of dismissal and prayed for the admission of Formal Offer of Documentary Exhibits,[13] claiming that she had difficulty securing documents from the court which were marked during trial. Petitioner opposed the motion invoking his right against double jeopardy.[14]

On June 11, 2002, the MeTC issued an Order which states in part:

[I]n line with the long standing policy of the Courts to decide issues based on the substantial merits of the case and not simply dismiss cases on technical defects, the Court finds Merit in the Motion for Reconsideration filed by the Prosecution.

Effectively, the Order of the Court dated January 28, 2002[15] is set aside and the case is reinstated in the dockets of the Court. The Prosecution's Formal Offer of Evidence is admitted by the Court and the accused is given 15 days from receipt of this Order to filed (sic) their Comment or Opposition thereto. Thereafter, the incident is deemed submitted for resolution.[16]

Petitioner's Motion for Reconsideration[17] was denied, hence a petition[18] for certiorari was filed with the RTC. In granting the petition, the RTC noted that the MeTC Order dismissing the case for failure to prosecute "had the effect of an acquittal" which is "a bar to another prosecution for the offense charged." [19] The RTC denied respondent's motion for reconsideration.

Alleging grave abuse of discretion, respondent filed a petition[20] for certiorari with the Court of Appeals arguing that there was no failure to prosecute and that double jeopardy did not attach as a result of the dismissal thereof. The Court of Appeals reversed the RTC's Resolution. It held that contrary to the findings of the RTC, there was no double jeopardy because the order dismissing the case for failure to prosecute had not become final and executory due to the timely motion for reconsideration filed by respondent. The appellate court also held that petitioner's right to speedy trial was not violated when respondent failed to formally offer her evidence within the period required by the trial court. The Court of Appeals thus ordered the MeTC to set the case for further trial. Petitioner moved for reconsideration but was denied, hence this petition on the following grounds:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE RIGHT OF THE PETITIONER TO SPEEDY TRIAL WAS NOT VIOLATED.

II.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT THE DISMISSAL OF THE CASE BY MTC-61 WAS A DISMISSAL ON THE MERITS WHICH RESULTED IN THE ACQUITTAL OF THE PETITIONER.

III.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN NOT APPLYING THE RULE ON DOUBLE JEOPARDY.[21]

The issue for resolution is whether the MeTC's Order dismissing the case for failure to prosecute amounted to an acquittal which gave petitioner the right to invoke double jeopardy.

Petitioner argued that the six months' delay by the prosecution to formally offer its evidence is vexatious, capricious and oppressive; that the private prosecutor's claim that the documents could not be found is untrue considering that no manifestation was filed in court stating that fact; that the documents were available as early as January 2002 but the prosecution never asked for extension, nor explained the delay in filing its formal offer despite two orders to do so.

Petitioner further argued that under Section 3, Rule 17 of the Rules of Court, failure to comply with a court order without justifiable reason may cause the dismissal of the case, which shall have the effect of an adjudication on the merits unless otherwise stated by the court.

Respondent, on the other hand, asserted that it was petitioner who delayed the proceedings in the instant case, when he questioned the finding of probable cause against him before the Department of Justice, the Court of Appeals and the Supreme Court, which were all denied; and that the delay in the filing of a formal offer of evidence is justified because as noted by the MeTC, the records were missing.

Respondent likewise insisted that even without documentary evidence, testimonial evidence were presented against petitioner; that petitioner admitted the documentary evidence formally offered. Respondent refuted petitioner's invocation of double jeopardy because the case was dismissed with his express consent.

The petition is without merit.

Section 7, Rule 117 of the Rules of Court states in part:

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

Double jeopardy attaches only (1) upon a valid indictment, (2) before a competent court, (3) after arraignment, (4) when a valid plea has been entered, and (5) when the defendant was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused.[22]

In the instant case, there is no question as to the presence of the first four elements. As to the last element, there was yet no conviction, nor an acquittal on the ground that petitioner's guilt has not been proven beyond reasonable doubt,[23]but the dismissal of the case was based on failure to prosecute.

A dismissal with the express consent or upon motion of the accused does not result in double jeopardy, except in two instances, to wit: (1) the dismissal is based on insufficiency of evidence or (2) the case is dismissed for violation of the accused's right to speedy trial. [24]

Petitioner's claim that the prosecution's delay in filing its formal offer of evidence violated his right to speedy trial is not well taken.

The prosecution's delay in the filing of its formal offer of evidence in this case cannot be considered vexatious, capricious, and oppressive. It appears that there was justifiable reason for the prosecution's failure to formally offer its evidence on time, i.e., the documents which were previously marked in court were misplaced. As correctly ruled by the Court of Appeals:

Truly, the prosecution had failed twice to file the formal offer of evidence within the fifteen (15) day period set by the MeTC. Once was due to the fault of the MeTC judge who expressly admitted in his order that the documentary exhibits necessary for the formal offer of evidence were lost in his office. Thus, the prosecution was unable to submit its formal offer of evidence on time. In short, there was actually only one unjustified delay in the filing of formal offer of evidence in the proceedings below, which cannot be described as vexatious, capricious or oppressive. There is no showing that the criminal case was unreasonably prolonged nor there was deliberate intent on the part of the petitioner to cause delay in the proceedings resulting to serious and great prejudice affecting the substantial rights of the accused.[25]

Indeed, delay is not a mere mathematical computation of the time involved. Each case must be decided upon the facts peculiar to it. The following factors must be considered and balanced: the length of the delay, the reasons for

such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay.[26] In the instant case, the totality of the circumstances excuses the delay occasioned by the late filing of the prosecution's formal offer of evidence. Since the delay was not vexatious or oppressive, it follows that petitioner's right to speedy trial was not violated, consequently he cannot properly invoke his right against double jeopardy.[27]

Petitioner's reliance in *People v. Cloribel*[28] is misplaced because in said case, trial commenced almost four years from the date of filing of the complaint. Such delay, the Court held, can hardly be ignored or disregarded by any fair standard.

Neither can petitioner rely on the doctrine that when a judge dismisses a case for failure to prosecute, the termination amounts to an acquittal as the prosecution will fail to prove the case when the time therefor comes. In the instant case, testimonial evidence were presented against petitioner. Thus, even without documentary evidence, his guilt or innocence may be proven. Second, petitioner appears to have admitted the genuineness and due execution of respondent's documentary evidence, thus the prosecution need not even present such documents in view of his admission. With or without these documents, therefore, the prosecution has enough evidence left for the trial court's determination of his guilt. Thus –

We agree with the OSG's contention that the trial court exceeded its authority when it dismissed the case without giving the prosecution a right to be heard, hence there was a violation of due process. Further, the failure of the prosecution to offer its exhibits is not a ground to dismiss the case. Even without any documentary exhibits, the prosecution could still prove its case through the testimonies of its witnesses. Thus, we find that when the trial court reconsidered its order of dismissal, it merely corrected itself.[29]

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals setting aside the Resolution dated May 5, 2004 and Order dated July 9, 2004 of the Regional Trial Court of Makati City, Branch 132, as well as its July 7, 2006 Resolution denying petitioner's motion for reconsideration, are AFFIRMED.
SO ORDERED.

Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Sometimes referred to as Beñares or Bernares in the records.

* Retired as of December 7, 2006.

** Working Chairman.

[2] Rollo, pp. 9-20. Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Eliezer R. de los Santos and Arturo D. Brion.

[3] Id. at 271-273. Penned by Judge Rommel O. Baybay.

[4] Id. at 274.

[5] Id. at 113-114. Penned by Judge Selma Palacio Alaras.

[6] Id. at 144-145.

[7] Id. at 67-68.

[8] Id. at 69.

[9] Id. at 70-73.

- [10] Id. at 74.
- [11] Id. at 75-82.
- [12] Id. at 83.
- [13] Id. at 84-90.
- [14] Id. at 91-102.
- [15] Should be February 27, 2002.
- [16] Rollo, p. 114.
- [17] Id. at 115-129.
- [18] Id. at 146-169.
- [19] Id. at 272.
- [20] Id. at 260-269.
- [21] Id. at 36.
- [22] Almario v. Court of Appeals, G.R. No. 127772, March 22, 2001, 355 SCRA 1, 7.
- [23] Malanyaon v. Lising, 193 Phil. 425, 428 (1981).
- [24] Philippine Savings Bank v. Bermoy, G.R. No. 151912, September 26, 2005, 471 SCRA 94, 105-106.
- [25] Rollo, p. 14.
- [26] Ty-Dazo v. Sandiganbayan, 424 Phil. 945, 951 (2002).
- [27] Almario v. Court of Appeals, supra note 22 at 10.
- [28] 120 Phil. 775 (1964).
- [29] People v. Alberto, 436 Phil. 434, 443-444 (2002); emphasis added.

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