

**CHURCHILLE V. MARI AND THE PEOPLE OF THE PHILIPPINES,
PETITIONERS, VS. HON. ROLANDO L. GONZALES, PRESIDING JUDGE,
REGIONAL TRIAL COURT, BRANCH 39, SOGOD, SOUTHERN LEYTE,
AND PO1...**

G.R. No. 187728. September 12, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This resolves the Petition for Certiorari under Rule 65 of the Rules of Court, praying that the Order[1] of the Regional Trial Court of Sogod, Southern Leyte (RTC), dated January 16, 2009, dismissing the criminal case for rape against PO1 Rudyard Paloma y Torres (private respondent), and the Resolution[2] dated March 16, 2009, denying petitioners' motion for reconsideration, be annulled and set aside.

The records reveal the following antecedent facts.

On October 25, 2004, petitioner AAA, private complainant below, executed a sworn statement before an Investigator of the 8[th] Regional Office, Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG) in Tacloban City, where she stated that she was raped by herein private respondent on October 10, 2004 at her boarding house at Sogod, Southern Leyte. A preliminary investigation of the case was commenced on November 4, 2004 before the Presiding Judge of the Municipal Circuit Trial Court (MCTC) of Sogod. A warrant of arrest was issued against private respondent, so he voluntarily surrendered to the Chief of Police of Sogod on November 18, 2004 and was then incarcerated at the Sogod Municipal Jail.

On November 20, 2004, private respondent filed a Motion for Bail. Hearings on the motion commenced on December 7, 2004, but petitioner failed to appear. Only private respondent presented evidence. Thus, on March 16, 2005, the MCTC of Sogod issued an Order allowing private respondent to post bail set at P200,000.00. After posting a surety bond, private respondent was released from confinement.

Pursuant to the issuance of A.M. No. 05-8-26, divesting first-level courts of authority to conduct preliminary investigation of criminal complaints cognizable by Regional Trial Courts, records of the subject case were transmitted to the Provincial Prosecutor's Office of Southern Leyte.[3] The Prosecutor's Office issued a Resolution dated May 26, 2008, finding probable cause against private respondent and, accordingly, an Information for Rape was filed on June 11, 2008. A warrant of arrest was immediately issued against private respondent.

On June 27, 2008, private respondent was committed to detention[4] and, on June 30, 2008, the RTC issued an Order[5] stating that accused had voluntarily surrendered to the Office of the Clerk of Court and arraignment was set for July 31, 2008. In the meantime, on July 3, 2008, private respondent filed a Motion to Admit Cash Bond in Lieu of Surety Bond; thus, in an Order dated July 10, 2008, the RTC cancelled the July 31, 2008 schedule for arraignment and reset the arraignment and hearing on said motion for August 20, 2008. At said scheduled date for

arraignment and hearing on the motion, nobody appeared for the prosecution. Hence, the RTC issued the Order[6] dated August 20, 2008 resetting the arraignment for October 31, 2008 and stating that:

x x x this Court hereby orders the public prosecutor x x x and/or his assistant prosecutor x x x to appear and prosecute this case on the next scheduled hearing from arraignment up to the termination of the trial of this case otherwise this Court will order the dismissal of this case for failure to prosecute or nolle prosequi.[7]

On October 28, 2008, petitioner AAA, private complainant below, filed through her private counsel, a Motion for Cancellation of Hearing,[8] manifesting that Atty. Pedro Felicen, Jr. had been granted the authority to prosecute by the Provincial Prosecutor and praying that the scheduled arraignment on October 31, 2008 be cancelled due to the pendency of private complainant's petition for transfer of venue before this Court. The authorized private prosecutor did not appear on said hearing date. The hearing on October 31, 2008 proceeded as the RTC ruled, in its Order[9] issued on the same day, that unless restrained by a higher court, the mere pendency of a petition for transfer of venue is not sufficient reason to suspend the proceedings. Moreover, counsel for accused invoked the accused's right to a speedy trial and, thus, private respondent was arraigned in the presence of the Provincial Prosecutor who was designated by the RTC to represent the prosecution for the purpose of arraignment. Pre-trial was set for November 13, 2008. Nevertheless, said schedule for pre-trial was cancelled (per Order[10] dated November 4, 2008) as the Presiding Judge of the RTC had to attend a PHILJA Seminar, and pre-trial was reset to November 24, 2008. On November 24, 2008, the day of the pre-trial itself, the private prosecutor again filed a Motion for Cancellation of Hearing, again using as justification the pendency of the petition for transfer of venue. The RTC issued an Order on even date, reading as follows:

During the scheduled pre-trial conference of this case, the public prosecutors of Leyte, the private prosecutor and the private complainant failed to appear despite proper notices sent [to] them. A motion for cancellation of hearing was filed by the authorized private prosecutor, Pedro Felicen, Jr. for reasons stated therein to which this Court finds to be not meritorious, hence, the same is denied. x x x the public prosecutor as well as the counsel for the accused were directed to make their oral comments on the first endorsement of the Hon. Deputy Court Administrator, regarding the motion to transfer venue of this case to any of the RTC, at Tacloban City, x x x.

x x x Thereafter, the pre trial proceeded by discussing matters concerning the amicable settlement, plea bargaining agreement, stipulation of facts, pre-marking of documentary exhibits, number of witnesses, trial dates and nature of the defense. There being no other matters to discuss on pre-trial in order to expedite the early disposition of this case, the pre-trial proper is now deemed terminated.[11]

The said Order also scheduled the initial hearing for trial on the merits for December 12, 2008. On December 12, 2008, no one appeared for the prosecution, prompting counsel for accused private respondent to move for dismissal of the case on the ground of failure to prosecute. Private respondent's motion to dismiss was denied per Order[12] dated December 12, 2008, and hearing was reset to January 16, 2009.

Again, on the very day of the January 16, 2009 hearing, the private prosecutor filed an Urgent Motion for Cancellation of Hearing, stating that it was only on January 14, 2009 that he was furnished a copy of the notice of the January 16, 2009 hearing and he had to attend a previously scheduled hearing for another case he was handling, set for the very same date. Thus, in the Order dated January 16, 2009, the RTC disposed, thus:

x x x Again notably absent are the private prosecutor, the two public prosecutors designated by the Department of Justice to prosecute this case as well as the private complainant herself.

A last minute urgent motion to reset was filed by the private prosecutor, but the same is denied being in violation of the three (3) day rule in filing written postponements. After hearing the arguments coming from both the public prosecutor assigned to this Court and counsel for the defense, the Court deems it proper to act

on the urgency of the matter prayed for by the said counsel. Considering that the accused has been languishing in jail since June, 2008 up to the present and to allow him to stay in jail for a single minute, it is quite unreasonable and would violate his right to speedy trial.

WHEREFORE, finding the motion of the counsel for the accused to be based on grounds that are meritorious, this Court pursuant to x x x the rule on speedy trial (RA 8433) [should be "8493"] hereby orders this case dismissed for failure of the prosecution to prosecute or nolle prosequi.[13]

Petitioners filed a motion for reconsideration, but the RTC denied the same per Resolution dated March 16, 2009.

Hence, the present petition for certiorari, alleging that public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rashly and precipitately dismissing the rape case against private respondent. Respondents counter that there was no grave abuse committed by the trial court and setting aside the dismissal of the rape case would put private respondent in double jeopardy.

The Court finds the petition bereft of merit.

Firstly, petitioners failed to observe the doctrine on hierarchy of courts. In *Garcia v. Miro*,^[14] the Court, quoting *Vergara, Sr. v. Suelto*,^[15] ruled thus:

The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is, and should continue, to be the policy in this regard, a policy that courts and lawyers must strictly observe.^[16] (Emphasis supplied.)

On this point alone, the petition is already dismissible. However, on several occasions, this Court found compelling reasons to relax the rule on observance on hierarchy of courts. In *Pacoy v. Cajigal*,^[17] the Court opted not to strictly apply said doctrine, since the issue involved is double jeopardy, considered to be one of the most fundamental constitutional rights of an accused. Hence, the Court also finds sufficient reason to relax the rule in this case as it also involves the issue of double jeopardy, necessitating a look into the merits of the petition.

Petitioners insist that the RTC dismissed the criminal case against private respondent too hurriedly, despite the provision in Section 10 of the Speedy Trial Act of 1998 (Republic Act No. 8493), now incorporated in Section 3, Rule 119 of the Rules of Court, to wit:

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:

x x x x

(5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;

x x x x^[18]

A careful reading of the above rule would show that the only delays that may be excluded from the time limit within which trial must commence are those resulting from proceedings concerning the accused. The time involved in the proceedings in a petition for transfer of venue can only be excluded from said time limit if it was the accused who instituted the same. Hence, in this case, the time during which the petition for transfer of venue filed by the private complainant is pending, cannot be excluded from the time limit of thirty (30) days from receipt of the pre-trial order imposed in Section 1, Rule 119 of the Rules of Court.

The records reveal that the 30-day time limit set by Section 1, Rule 119 of the Rules of Court had, in fact, already been breached. The private prosecutor received the Pre-trial Order[19] dated November 24, 2008 on December 3, 2008, while the Provincial Prosecutor received the same on December 2, 2008.[20] This means that at the latest, trial should have commenced by January 2, 2009, or if said date was a Sunday or holiday, then on the very next business day. Yet, because of the prosecution's failure to appear at the December 12, 2008 hearing for the initial presentation of the prosecution's evidence, the RTC was constrained to reset the hearing to January 16, 2009, which is already beyond the 30-day time limit. Nevertheless, the prosecution again failed to appear at the January 16, 2009 hearing. Indeed, as aptly observed by the RTC, petitioners showed recalcitrant behavior by obstinately refusing to comply with the RTC's directives to commence presentation of their evidence. Petitioners did not even show proper courtesy to the court, by filing motions for cancellation of the hearings on the very day of the hearing and not even bothering to appear on the date they set for hearing on their motion. As set forth in the narration of facts above, the prosecution appeared to be intentionally delaying and trifling with court processes.

Petitioners are likewise mistaken in their notion that mere pendency of their petition for transfer of venue should interrupt proceedings before the trial court. Such situation is akin to having a pending petition for certiorari with the higher courts. In *People v. Hernandez*,[21] the Court held that "delay resulting from extraordinary remedies against interlocutory orders" must be read in harmony with Section 7, Rule 65 of the Rules of Court which provides that the "[p]etition [under Rule 65] shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." [22] The trial court was then correct and acting well within its discretion when it refused to grant petitioners' motions for postponement mainly because of the pendency of their petition for transfer of venue.

The trial court cannot be faulted for refusing to countenance delays in the prosecution of the case. The Court's ruling in *Tan v. People*[23] is quite instructive, to wit:

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14 (2) of Article III of the Constitution. This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive delays, its "salutary objective" being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. Intimating historical perspective on the evolution of the right to speedy trial, we reiterate the old legal maxim, "justice delayed is justice denied." This oft-repeated adage requires the expeditious resolution of disputes, much more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy trial.

Following the policies incorporated under the 1987 Constitution, Republic Act No. 8493, otherwise known as "The Speedy Trial Act of 1998," was enacted, with Section 6 of said act limiting the trial period to 180 days from the first day of trial. Aware of problems resulting in the clogging of court dockets, the Court implemented the law by issuing Supreme Court Circular No. 38-98, which has been incorporated in the 2000 Rules of Criminal Procedure, Section 2 of Rule 119.

In *Corpuz v. Sandiganbayan*, the Court had 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. x x x.

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. x x x.

Exhaustively explained in *Corpuz v. Sandiganbayan*, an accused's right to speedy trial is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays. In determining whether petitioner was deprived of this right, the factors to consider and balance are the following: (a) duration of the delay; (b) reason therefor; (c) assertion of the right or failure to assert it; and (d) prejudice caused by such delay.

x x x x

We emphasize that in determining the right of an accused to speedy trial, courts are required to do more than a mathematical computation of the number of postponements of the scheduled hearings of the case. A mere mathematical reckoning of the time involved is clearly insufficient, and particular regard must be given to the facts and circumstances peculiar to each case.[24]

Here, it must be emphasized that private respondent had already been deprived of his liberty on two occasions. First, during the preliminary investigation before the MCTC, when he was incarcerated from November 18, 2004 to March 16, 2005, or a period of almost four months; then again, when an Information had already been issued and since rape is a non-bailable offense, he was imprisoned beginning June 27, 2008 until the case was dismissed on January 16, 2009, or a period of over 6 months. Verily, there can be no cavil that deprivation of liberty for any duration of time is quite oppressive. Because of private respondent's continued incarceration, any delay in trying the case would cause him great prejudice. Thus, it was absolutely vexatious and oppressive to delay the trial in the subject criminal case to await the outcome of petitioners' petition for transfer of venue, especially in this case where there is no temporary restraining order or writ of preliminary injunction issued by a higher court against herein public respondent from further proceeding in the case.

Hence, the Court does not find any grave abuse of discretion committed by the trial court in dismissing the case

against private respondent for violation of his constitutional right to speedy trial.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Sereno,[*] JJ., concur.

[*] Designated additional member per Special Order No. 1028 dated June 21, 2011.

[1] Penned by Rolando L. Gonzales, Presiding Judge, RTC, Br. 39, Sogod, Southern Leyte; rollo, pp. 80-81.

[2] Id. at 88-93

[3] MCTC records, pp. 378-379.

[4] RTC records, p. 25.

[5] Id. at 26.

[6] Id. at 91-92.

[7] Id. at 92.

[8] Id. at 193-195.

[9] Id. at 199-200.

[10] Id. at 206.

[11] Id. at 218.

[12] Id. at 260-261.

[13] Id. at 273-274.

[14] G.R. No. 167409, March 20, 2009, 582 SCRA 127.

[15] G.R. No. L-74766, December 21, 1987, 156 SCRA 753.

[16] Garcia v. Miro, supra note 14, at 131-132.

[17] G.R. No. 157472, September 28, 2007, 534 SCRA 338.

[18] Emphasis and underscoring supplied.

[19] RTC records, pp. 223-225.

[20] See Registry Receipts, RTC records, attached to the dorsal portion of p. 225.

[21] G.R. Nos. 154218 & 154372, August 28, 2006, 499 SCRA 688.

[22] Id. at 713.

[23] G.R. No. 173637, April 21, 2009, 586 SCRA 139.

[24] Id. at 151-155. (Emphasis supplied).

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