

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. GAUDENCIO CLORIBEL, JUDGE, COURT OF FIRST INSTANCE, MANILA, BLENVENIDO Y. AGUILAR, DIONISIO M. LABAD, SENEN S. BURGOS, ZOSIMO U. ...**

*G.R. No. 20314. August 31, 1964*

Ponente: REGALA, J.

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**REGALA, J.:**

This is a petition for certiorari to review the order of dismissal entered by the respondent Judge in Criminal Case No. 45717 entitled "People of the Philippines vs. Aguilar et al."

On September 27, 1958, a criminal information for falsification of public, official and/or commercial documents was filed against the herein respondents Bienvenido Aguilar, Dionisio M. Labad, Senen S. Burgos, Zosimo U. Angeles and Manuel Akol. It was docketed as Criminal Case No. 45717 of the Court of First Instance of Manila.

The case was set for arraignment on October 17, 1958. In view, however, of a number of preliminary motions filed in the case, the arraignment did not take place as so scheduled but on March 23, 1959.

The case was then set for trial on the merits on May 26 and 27, 1959. Again, however, various incidents prevented the trial from proceeding as originally scheduled and it was eventually transferred to September 16, 1959.

From September 16, 1959 to August 30, 1960, the scheduled hearings were postponed for at least six times. Of these six postponements, four were jointly sought or agreed upon by counsels for both parties herein and one each on their own individual representation. Thus, the hearing for September 16, 1959 was cancelled and postponed to November 23, 25 and 27, 1959 which were in turn transferred to the following dates successively:

- January 25, 26 and 27, 1960
- March 9, 1960
- April 20, 21 and 22, 1960
- June 14, 15 and 16, 1960
- July 11, 13 and 18, 1960
- August 24, 25 and 26, 1960

Of the above six dates, postponements 1, 2, 4 and 5 were jointly asked or agreed upon by the two parties herein. Number 3 was prayed for by the respondent while (Number 6 was represented by the petitioner. Finally, on August 23, 1960, the lower court postponed the hearing of the case set for August 24, 25 and 26 "until further assignment."

On January 23, 1962, Special Prosecutor E. Pañganiban was designated Acting Commissioner of Immigration

while Special Prosecutor Pedro D. Cenzon, some weeks before May 17, 1962, was made to collaborate in the prosecution of the Stonehill cases. In view of their additional assignments, they moved for the cancellation of the trial set for May 17, 1962 which was granted and Criminal Case No. 45717 was again transferred for trial to August 15 and 16, 1962.

Sometime in June, 1962, Special Prosecutor E. Pañganiban returned to the Prosecution Division of the Department of Justice. On July 7, 1962, however, he was assigned to investigate a number of Central Bank cases by reason of which he held office at the Intelligence Division of the Central Bank. During the same period, the other Prosecutor, Pedro D. Cenzon, was extended an ad interim appointment to the Judiciary to the end that by July 3, 1962, he officially withdrew his appearance from the case.

On July 17, 1962, the Records Bureau of the Department of Justice received the Notice of Hearing for the August 15 trial. When, therefore, on the latter date, August 15, 1962, none of the Government prosecutors appeared, the respondent Judge entered the order here asked to be reviewed, to wit:

"When (his case was called for trial at 8:30 the special prosecutor failed to appear despite due notice. The case was called again at 9:35 and still the prosecutor failed to appear.

"WHEREFORE, upon motion of the counsel for the defense this case is hereby provisionally dismissed with costs de oficio and cancellation of bail bonds. So ordered."

As it turned out, there was present in the courtroom a state witness who, on hearing the order of dismissal forthwith notified Prosecutor Pangniban. Immediately, the latter, in the company of Solicitor Emerito M. Salva and Atty. Filoteo Evangelista of the Central Bank, went to see the respondent Judge who had, by the time they arrived, already adjourned the morning's session. Nevertheless, they called on the respondent Judge and explained their failure to appear earlier at the trial. The Judge advised them to file their motion for reconsideration which they did in due time.

In their motion for reconsideration, the Government prosecutors explained their absence at the trial as follows:

"3. That from the records it appears that a Notice of Hearing was issued in the above case, a copy of which was served at the Records Division of the Department of Justice on July 17, 1962. However, this notice of hearing never reached undersigned prosecutor because he has been Associate Commissioner of Immigration and after his recall from said office, he was re-assigned to the Central Bank of the Philippines on July 6, 1962;

"4. While it is true that said notice was also addressed to Fiscal Pedro D. Cenzon, it is very probable that the name did not reach him for the reason that on July 3, 1962, he has already filed a petition to withdraw his appearance in view of his appointment as Judge of the Court of First Instance of Misamis Oriental. Moreover, he was very busy in the numerous Stonehill investigations;

"5. That the undersigned prosecutor was never aware of the hearing of the above case due to the above circumstances. Moreover, the undersigned counsel has always been under the impression that the criminal case is consolidated for trial with the civil case. The records will show that a motion to consolidate Civil Case No. 38824 and Criminal Case No. 45717 was filed by the Solicitor General's office which was granted by this Honorable Court without any objection of the accused or his counsel. Consequently, the above-mentioned cases were set for joint trial by the then Judge Gustavo Victorino and if undersigned recalls correctly, the hearing of the above cases was postponed due to the illness of one of the accused who has the right to be present;

"6. That because of the above facts, undersigned prosecutor has always been under the impression that the joint trial of the criminal and civil case abovementioned is set for September 17, 1962;

After considering the motion for reconsideration, the respondent Judge resolved to deny it. Hence, this petition for

certiorari.

Two issues are raised by this petition, namely: first, did the respondent Judge gravely abuse his discretion in issuing the order of August 15, 1962? And, second, what was the effect of the said order? Did it amount to an acquittal as would bar a reinstatement of Criminal Case No. 45717 by reason of double jeopardy?

The first issue should be resolved in the negative. The second should be answered in the affirmative.

To start with, the authority of the court to dismiss a case for failure of the prosecution to appear cannot be denied. The authority and the extent of the court's power in that regard is clearly recited in Sec. 3, Rule 30 of the former Rules of Court which governs this litigation. (It is now Sec. 3, Rule 17.) The rule reads:

"Sec. 3. Failure to prosecute.—Whim plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court."

It should be observed that under the aforequoted rule, the authority of the court is broad and definite. It grants to the court the power to dismiss even upon its own motion. (*Manila Herald Publishing Co., Inc. vs. Ramos*, 88 Phil. 94) Moreover, it reposes in the trial court the discretion to so dismiss or not. As past cases have held, "the dismissal of an action pursuant to this rule rests upon the sound discretion of the court and will not be reversed on appeal in the absence of abuse. The burden of showing abuse of judicial discretion is upon appellant since every presumption is in favor of the correctness of the court's action." (*Smith Bell & Co., Ltd., et al. vs. American President Lines Ltd., et al.*, 94 Phil., 879; *Venus Sanciango vs. Sanciango, et al.*, L-1G219, April 28, 1962).

It is on record that from the time Criminal Case No. 45717 was filed to the time that it was actually called for trial on the merits, some three years and eleven months had elapsed. The case was filed on September 27, 1958 and it was called for trial on August 15, 1962. The respondent Judge, therefore, may reasonably be assumed to have considered this time element in issuing the order of August 15, 1962. For by any fair standard, three years and eleven months can hardly be ignored or disregarded by a magistrate when he is called upon to rule on a motion to dismiss a criminal prosecution grounded on defendants' constitutional right to speedy trial. Taking into account the protracted delay, as well as the broad concessions extended to a Judge by Rule 30, Sec. 3 as earlier discussed, it would seem that the order here assailed can hardly be labeled "a grave abuse of discretion."

The petitioner contends, however, that the long delay in the prosecution of the case is primarily attributable to the respondents' own "numerous requests for postponement and initiation of incidents and proceedings which were all overruled by the lower court." Consequently, it is urged that the lower court should not have heard, much less acted favorably on, respondents' complaint that their right to speedy trial was being impaired.

While it is true that the herein respondents had, on various occasions, sought the postponement of the scheduled hearings, it is no less true that the petitioner itself had, on as many if not more occasions, effected the deferment of the trial. Thus, and as earlier pointed out, of the six cancellations from September 16, 1959 to August 26, 1960, four were requested jointly by the petitioner and respondents and one each by each of them. Moreover, the transfer of the hearing to March 16, 17 and 20, 1961 resulted from petitioner's own motion for consolidation of the criminal and civil cases. Again, it was on petitioner's motion, concurred in by counsel for respondents, that the trial set for May 17, 1962 was moved to August 15, 1962. Any suggestion, therefore, that the respondents were singularly and primarily to blame for the long drawn litigation would not be quite accurate.

To be sure, We reject the charge of grave abuse of discretion. We have not overlooked that the respondent Judge desisted from dismissing the case outright. When he first called the case for trial and no prosecutor appeared, he

put off the hearing and waited for an hour to give the Government lawyers time to appear. It was only after they failed to appear the second time that he entered the order here complained of. And even then, he did not dismiss the case *motu proprio*, although he was possessed of the prerogative so to do; he decreed the dismissal only in resolution of the defendant's motion to that effect.

We further note that when the prosecutors went to see the respondent Judge to explain their absence at the trial, the latter himself advised the filing of a motion for reconsideration. All these are incompatible with the concept of grave abuse which assumes that the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. (*Tavera-Luna Inc., vs. Nable*, 67 Phil. 340; *Alafriz vs. Nable*, 72 Phil. 278)

In addition, there is yet another reason why the charge of grave abuse of discretion cannot be sustained. The petitioner has not really satisfactorily explained its failure to appear.

Petitioner's main explanation is that the notice of hearing never reached its counsel, Prosecutor Pañganiban, "because he has been Associate Commissioner of Immigration and after his recall from said office, he was reassigned to the Central Bank of the Philippines on July 6, 1962." Furthermore, it is claimed that Prosecutor Pañganiban "has always been of the impression that the joint trial of the criminal and civil cases abovementioned is set for September 17, 1962."

First of all, this Court cannot give serious consideration to the plea that the notice of hearing never reached the petitioner. Petitioner expressly admits that a copy of the said notice was served at and received by the "Records Division of the Department of Justice on July 17, 1962." Consequently, it is of no moment whatsoever that it did not eventually reach its counsels. For service to and receipt by the Records Division, an agent-office of the petitioner, is unquestionably due service to the petitioner. The fact that it was thereafter lost, misplaced or forgotten can only be blamed on the petitioner, and definitely not on the respondent Judge nor on the respondents herein. Especially so when its Records Division had practically a full month to transmit it to its counsels herein.

Secondly, the designation of Prosecutor Pañganiban to the Bureau of Immigration and his subsequent detail to the Central Bank do not seem to have any relevance to his failure to receive the notice of hearing. For while it is really on record that he was so assigned to the Bureau of Immigration on January 23, 1962, it is also recorded that by June, 1962, the assignment had ended and he had returned to the Prosecution Division of the Department of Justice. Undoubtedly, therefore, when the notice of hearing was served on July 17, 1962, Prosecutor Pañganiban was already back in the Department. Too, although during the period between July 7, 1962 and August 15, 1962 then, he still was officially with the Prosecution Division he was handling Central Bank Cases, the fact was, even of the Department of Justice. All these dates and circumstances considered, therefore, there should be no difficulty assessing the correctness of our view that petitioner's failure to appear at the trial has been unsatisfactorily explained.

We fail to see either how Prosecutor Pañganiban could have been of the impression that the trial date was September 17, 1962. It was upon petitioner's own motion of January 23, 1962, on the ground that the prosecutors assigned thereto have been given additional assignments and were therefore very busy, that the trial date was transferred to August 15, 1962. True, Prosecutor Pañganiban was then absent when the motion of January 23, 1962 was made and that it was Prosecutor Cenzon who made the motion, but nevertheless, the petitioner cannot excuse itself from the failure of Fiscal Cenzon to notify Prosecutor Pañganiban of the renewed hearing date. Both Fiscals Cenzon and Pañganiban have been collaborating on the case since its inception. There was no reason why the postponement to August 15 was neither annotated in the expediente of this case for Prosecutor Pañganiban to

see nor made known to him. Besides, there were not just the two of them prosecuting this case. The City Fiscal's Office of Manila and the Central Bank each had their own prosecutor collaborating with the Department of Justice in all the previous antecedents of this case. It certainly could not have been diligence which caused them all to be so uncoordinated even in the matter of the correct trial date. It is significant to note that as against their collective misreading of the true trial schedule, there was a prosecution witness who promptly reported for trial on August 15, 1962.

The second issue is the move fundamental. May the respondents now plead double jeopardy against the reinstatement of Criminal Case No. 45717?

The petitioner denies Hint the respondents can so invoke the protection of the double jeopardy rule because, first it was they themselves who moved for the dismissal, and second, because the dismissal was expressly decreed to be "provisional".

On the other hand, the respondents contend that the dismissal was an acquittal within the meaning of Sec. 9, Rule 113 of the former Rules of Court (now Rule 1171 Sec. 9) because it was ordered subsequent to arraignment by a competent court and upon a valid information. Furthermore, they urge that the qualification of the dismissal into "provisional" is of no legal consequence since it was beyond the respondent Judge's power to do.

As indicated earlier, We find for respondents again.

In asserting that Criminal Case No. 45717 may still be reinstated, the petitioner adopts the ruling once followed by this Court to the effect that a dismissal upon the defendant's own motion is a dismissal consented to by him and, consequently "will not be a bar to another prosecution for the same offense, because, his action having the case dismissed constitutes a waiver of his constitutional right or privilege, for the reason that he thereby prevents the court from proceeding to the trial on the merits and rendering a judgment of conviction against him." (People vs. Salico, 84 Phil. 722.) But, this authority has long been abandoned and the ruling therein expressly repudiated.

Thus, in the case of People vs. Robles, 105 Phil. 1016, citing People vs. Bangalao, 94 Phil., 554; People vs. Diaz, 94 Phil., 714; People vs. Albano, 97 Phil., 28; and People vs. Ferrer, 100 Phil., 124, We said:

"\* \* \* In reaching the above conclusion, this Court has not overlooked the ruling in the case of People vs. Salico, 47 Off. Gaz., 4765, to the effect that a dismissal upon defendant's motion will not be a bar to another prosecution for the same offense unless said dismissal was not without the express consent of the defendant, which ruling the prosecution now invokes in support of its appeal; but said ruling it not vowing contravention, having been modified or abandoned in subsequent cases wherein this Court repudiated the theory of double jeopardy despite the fact that the dismissal was secured upon motion of the accused." (Italics supplied.)

Also, the rule that a dismissal upon defendant's motion will not be a bar to another prosecution for the same offense as said dismissal is not without the express consent of the defendant, has no application to a case where the dismissal, as here, is predicated on the right of a defendant to a speedy trial. (People vs. Tacneng, et al., G. R. No. L-12082, April 30, 1959.)

The petitioner next contends that the qualification of the dismissal into "provisional" removes it from the protective mantle of the double jeopardy rule for the said rule contemplates a definite or unconditional termination of the case.

Petitioner's formulation of the rule is correct but irrelevant. A conditional, provisional, or without-prejudice dismissal admittedly cannot be the legal basis for a claim to the protection of the double jeopardy rule. The issue in this case, however, is not the validity of that proposition. Rather, the issue is whether the qualification notwithstanding, the dismissal entered on August 15, 1962 was definite or without prejudice.

In the case of *People vs. Diaz*, supra, March 10, 1954, this Court ruled that the dismissal of a case upon motion of the defense for failure of the fiscal to be present on the day of trial constitutes a bar to a subsequent prosecution of the accused for the same offense. Again, in the case of *People vs. Labatete*, 107 Phil., 697, We said:

"We again call attention to the fact that judges should be careful in the use of the term 'dismissal' and not use the term in cases where there has been trial on the merits and the court finds that the evidence is insufficient, in which case the judgment that should be entered is one of acquittal, not merely dismissal. Even where the fiscal fails to prosecute and the judge dismisses the case, the termination is not real dismissal but acquittal because the prosecution failed to prove the case when the time therefor came." (Italics supplied.)

Considering the foregoing jurisprudence, therefore, We can only conclude that the dismissal here complained of was not truly a "dismissal" but an acquittal. For it was entered upon the defendants' insistence on their constitutional right to speedy trial and by reason of the prosecution's failure to appear on the date of trial.

If, therefore, the qualification by the respondent Judge of the dismissal into "provisional" has any consequence in law, it is what We expressed in the case of *Gandicela vs. Lutero*, 88 Phil. 299, to wit:

"\* \* \* Courts have no discretion to determine or characterize the legal effects of their orders or decisions, unless expressly authorized to do so as provided for in Rule 30 of the Rules of Court. The addition of such words 'without prejudice', 'provisionally' or 'definitely' to their order or decision would be mere surplusage if the legal effect under the law is otherwise, because courts cannot amend the law. So it is not for the court, to state in the order or decision that the case is dismissed either definitely or without prejudice." (Italics supplied.)

We reiterated in the case of *People vs. Diaz*, supra, March 30, 1954, the above doctrine. Then, We said:

"Here the prosecutor was not even present on the day of the trial so as to be in a position to proceed with the presentation of evidence to prove the guilt of the accused. The case was set for hearing twice and the prosecution without asking for postponement or giving any explanation just failed to appear. So the dismissal of the case, though at the instance of the defendant Diniz, may according to what we said in the *Gandicela* case, be regarded as an acquittal." (Italics supplied.)

In view of all the foregoing, We hold that a reinstatement of this case would operate to violate the respondents-defendants' right against double jeopardy. And having failed to establish grave abuse of discretion against the respondent Judge herein, this petition is dismissed, costs de oficio. So ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., and Paredes, JJ., concur.  
Makalintal, J., votes of dismissal on the first ground.

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