

**GREGOEIO K. KALAW, PETITIONER, VS. SEGUNDO APOSTOL,
PROVINCIAL FISCAL OF SAMAR, AND CELEDONIO ALCAZAE,
JUSTICE OF THE PEACE OF CALBAYOG, SAMAR, RESPONDENTS.**

G. R. No. 45591. October 15, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioner, invoking the doctrine laid down in the case of *Conde vs. Rivera and Unson* (45 Phil., 650), instituted this proceeding to compel the justice of the peace of Calbayog, Samar, to dismiss criminal case No. 10656, and the fiscal of said province and said justice of the peace to abstain permanently from proceeding with the case in question and, lastly, that the fiscal may refrain from further attempts to prosecute him for any crime as a result of the same facts. At the instance of the petitioner a writ of preliminary injunction was issued requiring the respondents, until further orders, to abstain from proceeding with the criminal case in question.

On January 21, 1935, the acting chief of police of Calbayog, Province of Samar, filed a complaint in the justice of the peace court of said municipality against the petitioner, charging him with the crime of frustrated murder, giving rise to criminal case No. 10499. The petitioner's arrest was ordered and he filed a bond of P10,000 and waived the preliminary investigation after having pleaded not guilty. The respondent justice of the peace, on January 22, 1935, entered an order stating the opinion that the petitioner was guilty of the crime imputed to him, and forwarded the record of the case to the Court of First Instance of the province where it was docketed as criminal case No. 9531. On the 28th of said month, the respondent fiscal filed an information in the same case, charging the petitioner, not with the crime of frustrated murder, but with that of frustrated homicide. The trial of the case was set for the first time for August 21, 1935 (for the 20th of said month, according to the fiscal), at Calbayog. Upon petition of the private prosecutor, seconded by the fiscal, but without the knowledge or consent of the petitioner or of his attorney, the court, in an order of August 12th of said year, acceded to the motion for postponement and transferred the trial until further assignment. On April 22, 1936, the private prosecutor asked that the case again be set for trial during the special sessions in May, at Catbalogan. The attorney for the petitioner opposed the motion alleging that it would be impossible for him to appear because in said month he already had other urgent engagements which he could not abandon, and asked that the trial be set for the ordinary court sessions during the month of November, at Catbalogan. The trial was set for June 21, 1936, but the court cancelled the entire calendar for said month and the case was not tried. Once more the trial of the case was set for August 21, 1936. On the 17th of said month, the court denied the private prosecutor's motion for another postponement thereof. When the case was called for trial on August 21, 1936, the respondent fiscal appeared and asked for the postponement of the trial on the ground that it had been so asked by the private prosecutor who, together with the offended party, was absent, stating that he did not have available the evidence for the prosecution. The petitioner and his attorney, who, proceeding from Manila, had appeared, opposed the new motion for postponement and asked for the dismissal of the case. The court, in an order of said date, denied the motion for postponement and, before the petitioner could plead to the information, dismissed the case, with costs

de officio and cancellation of the bond filed by the petitioner. On December 8, 1936, after the lapse of more than three months from the date of the dismissal of the case, and more than one year and ten months from the filing of the first information, the respondent fiscal filed a second information for the same crime of frustrated homicide against the petitioner, in the justice of the peace court of Calbayog, the case so instituted having been docketed as No. 10656. The justice of the peace court again ordered the arrest of the petitioner, fixing the bond that should be filed by him at P2,000. The petitioner filed said bond and the preliminary investigation was set for April 3, 1937. The petitioner asked for the postponement of the hearing on preliminary investigation for the purpose of enabling him to file a pleading questioning the jurisdiction of the justice of the peace court to take cognizance of the second information, and finally filed a pleading alleging that the respondent fiscal could not again prosecute him for the same crime and asking for the dismissal of the second information and the cancellation of his bond. His petition having been denied, the petitioner instituted this present proceeding.

- It is inferred from the foregoing facts that the petitioner was not put in jeopardy of conviction for the crime of frustrated homicide, described in the first information filed by the fiscal, for the reason that criminal case No. 9531 was dismissed by the Court of First Instance of Samar before the petitioner pleaded to said information (sec. 28, General Orders, No. 58). For this same reason, the petitioner does not invoke in his favor the defense of double jeopardy or claim that by virtue of said defense he cannot again be brought to trial for the same offense and upon the second information. The question before this court is whether or not the petitioner can again be prosecuted and tried by virtue of the second information filed by the respondent fiscal, charging him with the same crime and alleging the same facts stated in the first information.

The second paragraph of section 3 of the Jones Law, in force on the date of the filing of the first information, provides as follows:

"That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf."

Section 15, No. 7, of General Orders, No. 58, contains the same provision couched in the following terms:

"Sec. 15. In all criminal prosecutions the defendant shall be entitled:

* * * * *

"7. To have a speedy and public trial."

And Article III, section 1, No. 17, of the Constitution of the Commonwealth of the Philippines, in force on the dates of the dismissal of criminal case No. 9531 of the Court of First Instance of Samar and of the filing of the second information, provides:

"(17) In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf."

It is inferred from the above-quoted legal provisions that every accused in a criminal case is entitled to have a speedy and public trial. Speedy trial means a trial conducted according to the law of criminal procedure and the rules and regulations, free from vexatious, capricious, and oppressive delays (*Burnett vs. State*, 76 Ark., 295; 88 S. W., 956; 113 A. S. R., 94; *Stewart vs. State*, 13 Ark., 720; *People vs. Shufelt*, 61 Mich., 237; 28 N. W., 79; *Nixon vs. State*, 10 Miss., 497; 41 Am. D., 601; *State vs. Cole*, 4 Okl. Cr., 25; 109 P., 736; *State vs. Caruthers*, 1 Okl. Cr., 428; 98 P., 474; *State vs. Keefe*, 17 Wyo., 227; 98 P., 122; 22 L. R. A. [N. S.], 896; 17 Ann. Cas., 161).

According to the admitted facts, it appears that the petitioner was granted a partial trial of the case in the Court of First Instance of Samar, only after more than one and a half years had already elapsed from the date of the filing of the first information and from the receipt of the case in said court, and after the trial of the case had been postponed twice without his consent. To this may be added the fact that the first postponement of the trial was clearly unjustified because the alleged cause thereof consisted merely in the personal convenience of the offended party and his attorney, the former's allegation to the effect that he was then ill not having been sufficiently proved. It is true that the petitioner had asked that the trial of the case be set for November, 1936, instead of May of said year, but, aside from the fact that the reason alleged by him was sufficiently strong, his attorney having been opposed to appearing because of urgent engagements previously contracted by him, under which circumstances he would have been defenseless had he been compelled to go to trial, it appears that the trial was postponed by the court *motu proprio*, having cancelled the entire judicial calendar prepared by the clerk of court for the month of June. In view of these facts, this court holds that the petitioner was deprived of his fundamental right to have a speedy trial.

- This court has held that there is a positive remedy in cases where the constitutional right of the accused to have a speedy trial is violated. The accused, who is deprived of his fundamental right to have a speedy trial, is entitled to ask for his release, if he is restrained of his liberty, or for the final dismissal of the case pending against him (*Conde vs. Rivera and Unson*, *supra*; *In the matter of Ford* [1911], 160 Cal., 334; *U. S. vs. Fox* [1880], 3 Mont., 512).

- The respondent fiscal alleges in his answer, by way of a defense, that he has asked for only one postponement of the trial and that, on the other hand, the petitioner has not urged the trial of the case. This court is of the opinion that the defense is without merit. The right of the accused to have a speedy trial is violated not only when unjustified postponements of the trial are asked for and secured, but also when, without good cause or justifiable motive, a long period of time is allowed to elapse without having his case tried. The promoter fiscal has charge of the prosecution of all public crimes and offenses, and such prosecution is under his control and direction (sees. 1681 and 2465 of the Revised Administrative Code). For this reason, he is in duty bound to see to it that criminal cases are tried without unfounded, capricious, vexatious and oppressive delays, so that the courts may decide them on their merits and determine immediately whether the accused is guilty or not. The postponement of the trial sought and obtained by the private prosecution, with the consent and approval of the fiscal, is equivalent to a postponement asked for and obtained by the fiscal himself. The right to have a speedy trial is not understood to have been waived or abandoned by the accused when he or his attorney fails to urge the trial of the case. Such a waiver or abandonment may be presumed only when the postponement of the trial has been sought and obtained by the accused himself or by his attorney. The suspension of the trial set for June 21, 1936, cannot be attributed to the accused or to his attorney because the same was resolved by the court itself when it cancelled the entire calendar of trials prepared for said month. The practice of permitting the promotor fiscal, after filing informations, to be idle and to allow criminal cases instituted by him to remain inert in the files of the courts for a long or indefinite period of time and even for years, is a pernicious practice unjust to the accused. Such practice violates the fundamental right of the accused to have a speedy trial, is contrary to the public interest, and detrimental to the speedy administration of justice.

- The respondent fiscal also alleges that, pursuant to section 161 of the Revised Administrative Code, as recently amended, the criminal case against the petitioner should have been set for trial during the month of September, 1936, in the municipality of Calbayog, because the sessions of the court in said municipality are held on the second Tuesday of said month every year. This defense is without merit because, according to said section, the Court of First Instance of Samar holds sessions in other months in different municipalities, and in Catbalogan, the capital, on the first Tuesday of the months of June and November of each year. There should not have been any

obstacle to the trial of the case at the capital when in fact the trials set for August 21, 1935, June 21, and August 21, 1936, were to be held at Catbalogan. On the other hand, the fact that there was but one session at Calbayog each year should have influenced the definitive holding of the first trial set. Lastly, there was no reason to insist that the case be tried at Calbayog, because it appears that the accused never invoked such right but, on the contrary, he asked that the same be tried at Catbalogan.

For the foregoing reasons, the remedy applied for is granted, criminal case No. 10656 of the justice of the peace court of Calbayog, Samar, entitled "The People of the Philippine Islands vs. Gregorio K. Kalaw, for the crime of frustrated homicide", is definitively dismissed, and the respondents are ordered henceforth to abstain from prosecuting the petitioner for the same facts constituting the same crime, with the costs of these proceedings to the respondent fiscal. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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