

PEOPLE OF THE PHILIPPINES. LORETO M. DURANO, MANUEL R. POTOT, ANDRES D. AMIL, IN THEIR CAPACITIES AS PROVINCIAL FISCAL, 3RD ASSISTANT PROVINCIAL FISCAL, ACTING 5TH ASSISTANT PRO...

G.R. No. 53873. May 13, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners seek the review and setting aside of the order of the then Court of First Instance of Cebu, Branch 15 which dismissed the criminal case against accused Soledad Castro and Crisologo Abines on the ground that their constitutional right to speedy trial was violated.

The private respondents were charged with the crime of grave coercion in an information filed by the petitioners, Third Assistant Provincial Fiscal Manuel R. Potot on January 15, 1980 with the Court of First Instance of Cebu, Branch 15 and docketed as Criminal Case No. AR-645. The crime was allegedly committed as follows:

xxx xxx xxx

"That on the 29th day of December, 1978, at 9:00 o'clock in the morning, more or less, in the Barangay of Looc, Municipality of Santandcr, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and helping one another, without authority of law and by means of violence, did then and there wilfully, unlawfully and feloniously prevent the spouses Leoncio Wenceslao and Valena B. Wenceslao and their laborers from fencing a piece of land owned by the Wenceslaos, the fencing not being prohibited by law.

"In violation of Article 286 of the Revised Penal Code." (p. 3. Rollo)

Upon arraignment on February 13, 1980, the accused pleaded "NOT GUILTY." In an order dated the same day, the trial of the case was set on March 14 and 25, 1980 both at 8:30 in the morning "as requested by the prosecution and defense." Representing the prosecution during the arraignment was Assistant Provincial Fiscal Sotero R. Camello, the prosecutor assigned to the sala of the respondent judge.

Fiscal Camello inhibited himself from prosecuting the case because when he originally investigated the case, he recommended its dismissal. However, he was reversed by the Provincial Fiscal. The case was, therefore, assigned to Assistant Provincial Fiscal Potot.

On March 12, 1980, Fiscal Potot received notice of the hearing scheduled for March 14, 1980. On this same day, Fiscal Potot filed an urgent ex-parte motion for postponement stating among others that before learning of the scheduled March 14, 1980 hearing, he was already committed to appear in Branch 3 and Branch 12 of the Court of First Instance of Cebu and that on March 14, 25, and 26, 1980, all in the afternoon, he, as special prosecutor of the Tanodbayan, had already set for clarificatory examination the Toledo City Highways Engineering District cases for estafa and violation of Republic Act 3019.

On the scheduled March 14, 1980 hearing, the defense counsel objected to the postponement on the ground that the prosecution represented by Fiscal Camello had agreed to the scheduled hearings of March 14 and 25, 1980 and manifested that on said dates Fiscal Potot will be available.

The Court granted the motion for postponement of the scheduled March 14, 1980 hearing but ordered the hearing on March 25, 1980 at 8:30 in the morning to be held as scheduled "on the ground that if other lawyers from Cebu City taking the ordinary means of transportation can appear in this Court during its morning session and still have sufficient time to return to Cebu City for their afternoon court engagements, then there is no reason why Fiscal Potot cannot return on time for his afternoon hearing in the City." The Court also stated in its order granting the postponement. "However, if Fiscal Potot cannot really make it and considering that there are many assistants in the Provincial Fiscal's Office, then, any of the Assistant Provincial Fiscals must appear on said date and hour."

On March 18, 1980, Fiscal Potot requested the Provincial Fiscal that the case be assigned to Assistant Provincial Fiscal Andres Amil. The case was transferred to Fiscal Amil on March 21, 1980.

Fiscal Amil then filed a motion to postpone the scheduled March 25, 1980 hearing on the following grounds:

xxx xxx xxx

"3. That the undersigned has long been committed to appear before the Municipal Circuit Court of Barili, Cebu which date was personally chosen by the undersigned and besides the undersigned is not prepared to enter a trial of the above-entitled case considering that he is not familiar with the facts of the case since the records of this case is with Assistant Provincial Fiscal Sotero R. Camello;

"4. That it is physically impossible for the undersigned to be appearing on two courts in a distance about fifty kilometers apart." (p. 22. Rollo)

Fiscal Amil prayed that the hearing of the case be transferred to another date in the month of May, 1980.

During the scheduled hearing of March 25, 1980, the accused objected to the motion for postponement on the following grounds:

xxx xxx xxx

"xxx (1) that the motion was presented not in accordance with the Rules of Court and the three-day period as provided by the rules was not observed: (2) that one of the accused being an incumbent Municipal Mayor of Santander, Cebu, has to attend to man}' official duties within this jurisdiction: (3) that the grounds alleged in the motion for postponement are flimsy: and (4) that the accused are entitled to a speedy public trial." (p. 24. Rollo)

The accused also manifested their readiness for trial. They insisted on proceeding with the hearing.

In an order dated March 25, 1980, the court, finding the grounds advanced by the accused meritorious, denied the motion for postponement and sustained the objections of the accused. The case was ordered dismissed for failure to prosecute.

A motion for reconsideration filed by the People of the Philippines was denied.

Hence, this petition.

The petitioners contend that the respondent court acted with grave abuse of discretion in the exercise of its judicial functions—

"a)

in dismissing the information for Grave Coercion:

"b)

in refusing arbitrarily and capriciously to reconsider his order of dismissal;

"c)

by reason of which, the prosecution without due process of law was deprived of its day in court — which would be a stall (sic) in the machinery of justice." (p. 8. Rollo)

We have defined the right to a speedy trial in the following manner:

xxx xxx xxx

"xxx [T]hat the accused is free from vexatious, capricious, and oppressive delays, its salutary objective being to assure that an innocent person may be free from 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 whatever legitimate defense he may interpose." (People v. Jardin, 124 SCRA 167, 173; See Andres v. Cacadac, 113 SCRA 216).

xxx xxx xxx

"xxx [W]hether or not one has been denied speedy trial is not susceptible to precise quantification. At best, the constitutional right of speedy trial is relative, consistent with reasonable delays, taking into account the circumstances of each case. As expressed in *Barket v. Wingo*, 33 L.. Ed 2d 101:

" ' . . [T]he right to a speedy trial is a more vague and generically different concept than other constitutional rights guaranteed to accused persons and cannot be quantified into a specified number of days or months, and it is impossible to pinpoint a precise time in the judicial process when the right must be asserted or considered waived . . .

" ' [A] claim that a defendant has been denied his right to a speedy trial is subject to a balancing test, in which the conduct of both the prosecution and the defendant are weighed, and courts should consider such factors as length of the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, in determining whether defendant's right to a speedy trial has been denied . . . ' " (Martin v. Ver, 123 SCRA 746. 751)" (Italics supplied)

Applying the foregoing principles, we sustain the dismissal order of the court below. The manner the prosecution handled a simple case of coercion is deplorable. It must be noted that after Fiscal Camello inhibited himself from the case because he could not in conscience prosecute the case considering that he had recommended its dismissal as its initial investigator and after prosecuting Fiscal Potot asked that he be relieved from the case because of his tight schedule, the court below specifically ordered that the case be assigned to another fiscal furnishing a copy of said order to the Provincial Fiscal himself.

The Provincial Fiscal assigned another Fiscal, Fiscal Amil, but it turned out that the latter like Fiscal Potot was not also available during the scheduled March 25, 1980 hearing because of previous commitments on the very same day.

It must be stressed that in the March 14, 1980 order, after the motion for postponement of the scheduled hearing was approved, the court below categorically stated that the March 25, 1980 schedule must be maintained. And yet, the provincial fiscal's office despite notice of such order kept on changing the fiscals and assigned the case to

prosecutors who at the time of their assignment to the case already had previous commitments.

The cavalier attitude of the Provincial Fiscal's Office not only towards a more efficient management of its work but, more important, a greater respect for the rights of the accused greatly prejudiced the constitutional right to speedy trial of the private respondents.

The case was a simple one. It did not need length and tedious preparation for trial. This familiar ground for postponement — previous and tight schedules of the prosecuting fiscal -- is so hackneyed and overused that it is time the Prosecution Service takes remedial measures. The excuse should be used sparingly and proof must be adduced that every honest effort to avoid botching the court's schedule has been taken. The provincial fiscal was aware of the court's order denying the motion to postpone the March 25, 1980 hearing. The trial court stated in its March 14, 1980 order — "xxx if Fiscal Potot cannot really make it and considering that there are many assistants in the provincial fiscal's office, then any of the assistant provincial fiscals must appear on the said date and hour."

The two-months' delay of the trial from March 25, 1980 to May 1980, if requested for sound reasons may not be unreasonable. However, owing to the nature of the case, the reasons for the postponements, and the fact that one of the accused is a municipal mayor, who had to leave his work everytime he was haled to court only to be told to return another day, the delay became vexatious because the lower court stated — "the delay is not only prejudicial to him but also to the people of Santander, Cebu."

WHEREFORE, the instant petition is DISMISSED for lack of merit. The order of the then Court of First Instance of Cebu, Branch 15 dismissing Criminal Case No. AR-645 is AFFIRMED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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