

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE
RAFAEL M. DECLARO, REGIONAL TRIAL JUDGE, BRANCH II, REGION
VI, KALIBO, AKLAN, AND EDGAR IBABAO, RESPONDENT.**

G.R. No. 64362. February 09, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Can an order of dismissal of a criminal case upon motion of the accused after arraignment for the failure of the prosecution to appear on the first day of hearing be a bar to another prosecution for the same offense? This is the issue presented in this petition for review on certiorari of the order of dismissal of the Regional Trial Court of Aklan in Criminal Case No. 1421 entitled "People of the Philippines v. Edgar Ibabao."

The antecedents of this case are not in dispute. As result of a traffic accident that occurred at about 9:00 o'clock in the morning of July 7, 1980 at Barangay Laguinbanua West, Numancia, Aklan, Edgar Ibabao was charged for slight physical injuries through reckless imprudence in a complaint that was filed on September 5, 1980 in the Municipal Circuit Court of Malinao, Aklan. The case was docketed as Criminal Case No. 1028-N wherein a certain Crispin Conanan was the offended party. On October 1, 1980, an information for serious physical injuries through reckless imprudence was filed against the same accused in the Regional Trial Court of Aklan. The case was docketed as Criminal Case No. 1421 with one Eduardo Salido as the offended party. This second case arose from the same incident.

Upon the arraignment of the accused in Criminal Case No. 1028-N before the inferior court on October 7, 1981, he entered a plea of not guilty. The case was first set for hearing on January 19, 1983. Both the offended party and the prosecuting fiscal, however, failed to appear at the scheduled hearing despite due notice. Counsel for the accused thus verbally moved for the dismissal of the case for lack of interest on the part of the prosecution. This motion was granted. A motion for reconsideration of the said order was filed by the fiscal on January 27, 1983. The motion for reconsideration was granted in an order dated May 27, 1983. The case was, therefore, set for trial. However, upon a motion for reconsideration filed by the accused, the inferior court issued another order dated August 30, 1983, dismissing the case anew.

In the meanwhile, considering that the said case had been dismissed on January 19, 1983, counsel for the accused filed a motion to dismiss Criminal Case No. 1421 on the ground that the dismissal of the prior case is a bar to the prosecution of the latter. In an order dated March 23, 1983, the trial court dismissed Criminal Case No. 1421 on the ground of double jeopardy. A motion for reconsideration was filed by the prosecution but this was denied on May 11, 1983.

Thus, this petition filed by the private prosecutor with the conformity of the provincial fiscal. The petitioner assails the order of dismissal dated March 23, 1983 in Criminal Case No. 1421. Petitioner argues that double jeopardy has not set-in in this case because:

(1) The dismissal of Criminal Case No. 1028-N was at the instance and with the express consent of accused and

his counsel.

(2) The second offense charged is not the same as the first, nor is it an attempt to commit the same or a frustration thereof, nor does it include or is necessarily included in the first.

(3) Criminal Case No. 1028-N is not yet terminated.

Section 9, Rule 117 of the Rules of Court[1] provides -

"SEC. 9 Former conviction or acquittal or former jeopardy. - When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, 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 defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charge, 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."

To raise the defense of double jeopardy, three requisites must be present; (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.[2]

Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered, and (e) when the defendant was acquitted or convicted, or the case was dismissed or otherwise terminated without the express consent of the accused.[3]

It is the contention of petitioner that the dismissal of the case was at the instance and with the consent of the accused and his counsel which constitutes a waiver of his constitutional right against double jeopardy[4] and, therefore, such dismissal will not bar another prosecution.

On the other hand, private respondent, citing several cases, maintains that although the dismissal was at the instance and with the consent of the accused, it was in reality an acquittal by reason of the prosecution's failure to prove his guilt, thus barring another prosecution for the same offense.

In his comment filed with the Court, respondent Judge of the Regional Trial Court relies on *Lagunillo v. Reyes*[5] which involved a case for slight physical injuries. In said case, after the accused entered a plea of not guilty and the case was called for trial, the prosecuting fiscal moved for postponement on the ground that the complainant and his witnesses were not present. The accused moved for the dismissal of the case. The court, however waited until 10:30 in the morning for the complainant and his witnesses to arrive, it appearing that they had been duly served with subpoenas. When they failed to show up, the court dismissed the case. On motion for reconsideration of the fiscal, the court set aside its order of dismissal and set the case for trial. In the petition for certiorari and prohibition brought before this Court, We held that the dismissal by the lower court of the criminal case because of the apparent lack of interest of the complainant to prosecute the case, predicated on the constitutional right of the accused to a speedy trial, is equivalent to an acquittal. And being an order of acquittal, it became final immediately after promulgation and could no longer be recalled for correction or reconsideration, with or without good reason.

The petition is impressed with merit. Although there are criminal cases which were dismissed upon motion of the accused, because the prosecution was not prepared for trial since the complainant and/or his witnesses did not appear at the trial and where this Court held that the dismissal is equivalent to an acquittal that would bar further prosecution of the defendant for the same offense,[6] the facts and the circumstances of the present case do not warrant a similar ruling.

In the present case, the accused was duly notified that the case was set for hearing on January 19, 1983. On said date of hearing neither the complainant nor the fiscal appeared despite due notice. This was the first date of hearing after arraignment. The court a quo should not have dismissed the case and should have instead reset the case to another date to give the prosecution another day in court.

This Court had occasion to rule in *People v. Pablo*[7] that the court should bear in mind that it is the guardian of the rights of the accused as well as of the people at large, and that it should not unduly force the accused to go to trial, or for light cause jeopardize the rights or interest of the public. The rights of the offended parties, who usually take active part in the trial, are equally entitled to the protection offered by the courts to the public at large in the trial of a criminal case.

Thus, while a violation of the right of the accused to a speedy trial can serve as a basis for the dismissal of a case, this must be balanced with the right of the prosecution to due process.[8]

It is true that in some case where the prosecution was not prepared for trial since the complainant and/or his witnesses did not appear at the trial, this Court held that the dismissal is equivalent to an acquittal that would bar further prosecution of the defendant for the same offense.[9] A review of these cases shows, however, that the prosecution sought postponement the trial on two or more occasions. Thus, this Court considered the dismissal of the criminal cases therein to be equivalent to an acquittal, even if they were made at the instance and with the consent of the accused, since such dismissals were predicated on the right the accused to a speedy trial.

In the instant case, the complaining witness and the prosecutor failed to appear only in the first hearing. Even if the court did not dismiss the case but merely postponed the hearing to another date, there would not have been a denial of the right of the accused to a speedy trial. The right of the accused to have a speedy trial is violated when unjustified postponements of the trial are asked for and secured, or when, without good cause or justifiable motive, a long period of time is allowed to elapse without his case being tried.[10] None of said situations exists in the present case. Surely, it cannot be said that there was a violation of the constitutional right of the accused to a speedy trial. As we observed, the more prudent step that the court a quo should have taken was to postpone the hearing to give the prosecution another opportunity to present its case. The court a quo had in fact reconsidered its order of dismissal of Criminal Case No. 1028-N and reset it for trial. It should have maintained said action instead of granting the motion for reconsideration of the accused. The dismissal of the case by the trial court on the ground that the accused is entitled to a speedy trial is unwarranted under the circumstances obtaining in this case.

Double jeopardy will apply even if the dismissal is made with the express consent of the accused, or upon his own motion, only if it is predicated on either of two grounds, i.e., insufficiency of the evidence or denial of the right to a speedy trial. In both cases, the dismissal will have the effect of an acquittal.

Since the dismissal in this case does not fall under either of these two instances and it was made with the express consent of the accused, it would not thereby be a bar to another prosecution for the same offense.[11]

WHEREFORE, the petition is GRANTED.[12]The order of dismissal issued by the trial court in Criminal Case No. 1421 of March 23, 1983 is hereby reversed and set aside and the records of the case are hereby remanded to the trial court for further proceedings. No costs. This decision is immediately executory.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Substantially reproduced as Section 7, Rule 117 in the 1985 Rules on Criminal Procedure which took effect on

January 1, 1985, and later amended on June 17, 1988 and July 7, 1988.

[2] *People v. Bocar*, 138 SCRA 166 (1985).

[3] *Ibid.* See also *People v. City Court of Silay*, 74 SCRA 247 (1976), *People v. Ledesma*, 73 SCRA 77 (1976) and *People v. Consulta*, 70 SCRA 277 (1976).

[4] Section 22, Article IV, 1973 Constitution (now Section 21, Articles III, 1987 Constitution).

[5] 1 SCRA 1364 (1961).

[6] *Esmeña v. Pogoy* 102 SCRA 861 (1981); *Salcedo v. Mendoza*, 88 SCRA 811 (1979); *People v. Cloribel*, 11 SCRA 805 (1964); *People v. Diaz*, 94 Phil. 714 (1954); *People v. Salico*, 84 Phil. 722 (1949).

[7] 98 SCRA 289 (1980).

[8] *People v. Pablo*, *supra*; *People v. Navarro*, 63 SCRA 264 (1975). See Bernas, *The (Revised) 1973 Philippine Constitution, Notes and Cases*, 1983 ed., page 967.

[9] *Esmaño v. Pogoy*, *supra*, *Salcedo v. Mendoza*, *supra*; *People v. Cloribel* *supra*; *People v. Salico*, *supra*; *People v. Diaz*, *supra*.

[10] *Flores v. People*, 61 SCRA 331 (1974); *Kalaw v. Apostol and Alcozar*, 64 Phil. 852 (1937).

[11] *People v. Obsania*, 23 SCRA 1249 (1968).

[12] *Supra*.

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