

DR. FELIX ABAY, SR. AND FELIX ABAY, VS. THE HON. FELINO A. GARCIA, ACTING CITY JUDGE, CITY OF BACOLOD (NOW MUNICIPAL TRIAL COURT); PEOPLE OF THE PHILIPPINES, REPRESENTED BY THE ...

G.R. No. 66132. June 27, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review under Rule 45 of the Rules of Court of the decision of the Intermediate Appellate Court (now Court of Appeals) dated April 15, 1983, affirming the decision of the Court of First Instance (now Regional Trial Court) at Bacolod City, dismissing the petition for certiorari which sought to annul and set aside the order of the City Court at Bacolod City, dated July 1, 1977, in Criminal Case No. 29688.

The following antecedent facts are undisputed:

On May 21, 1973, Criminal Case No. 29688 for direct assault upon an agent of a person in authority was filed against Felix Abay, Sr., Felix Abay, Jr., and two other accused. Accused Felix Abay, Sr. and Felix Abay, Jr. were duly arraigned on May 27, 1975, and both pleaded not guilty. Trial commenced on July 26, 1976, with Ramiro Garque testifying on direct examination and partly on cross-examination. The trial was transferred to September 14, 1976. But again the cross-examination was not terminated so the case was reset to July 1, 1977.

At the continuation of the trial on July 1, 1977, both accused appeared without their counsel. The trial fiscal, Assistant Fiscal Angel Lobaton, was present, but the complainant, Garque, who was still to be cross-examined, failed to appear despite due notice. The private prosecutor, Atty. Henry Trocino, also failed to appear. Whereupon, City Judge Felino Garcia verbally ordered, *motu proprio*, the dismissal of the case. Fiscal Lobaton did not object to the dismissal. Both accused remained silent and later left the courtroom after the judge dictated the order of dismissal.

At about 10:00 o'clock in the morning of the same day, Atty. Trocino, together with Garque, arrived in court and upon learning that Criminal Case No. 29688 was ordered dismissed, verbally moved to have the order of dismissal set aside.

In the presence of special counsel Navarro, Atty. Trocino was allowed to present evidence in support of the verbal motion for reconsideration and to explain the failure of Garque to appear on time. In his written order of July 1, 1977, Judge Garcia granted the verbal motion for reconsideration and set aside the verbal order of dismissal. He further ordered the resetting of the case for hearing on another date.

Subsequently, the accused, through counsel, filed a motion for reconsideration of the order of July 1, 1977, invoking double jeopardy, claiming that the verbal order of dismissal, even if provisional, was rendered without the express consent of the accused. The motion for reconsideration was denied, after which the accused filed a petition for certiorari, which sought to annul and set aside the order of the City Court dated July 1, 1977, with the

Court of First Instance at Bacolod City, with Judge Jose L. Coscolluela, Jr., presiding.

On October 13, 1981, Judge Coscolluela dismissed the petition. The judge upheld the questioned written order of July 1, 1977 on the ground that the earlier verbal order of dismissal was not final, in fact, was ineffective, because it left something to be done in line with the decision of this Court in *Cabarroguis vs. San Diego*, L-19517, November 30, 1962, 6 SCRA 866. This Court in said case ruled:

"Petitioner's pretense is untenable. The verbal order of dismissal of said case was withdrawn or set aside, as soon as it was dictated by respondent and before it could be reduced to writing and signed by her. As a matter of fact, it was never put in writing. Much less was it ever signed by respondent. For this reason, respondent contended that said order of dismissal was incomplete and did not have the effect of acquitting the accused before it was withdrawn. Indeed, pursuant to Section 2 of Rule 116 of the Rules of Court, 'the judgment' — and the order of dismissal in question had, it completed, such effect — 'must be written x x x personally and directly prepared by the judge, and signed by him x x x.' The cases[*] cited by herein petitioner involved written orders of dismissal, which were signed by the corresponding judges. Hence, said cases are not controlling in the one at bar."

On April 15, 1983, the respondent Court of Appeals, in affirming the decision rendered by Judge Coscolluela, said:

"It is argued by appellants that the verbal order of dismissal, not having been based on the merits of the case, but on the failure of the complainant to appear, the ruling in the *San Diego* case is not applicable, considering that the term 'judgment.' as used in section 1, Rule 120 of the Rules of Court means the adjudication by the court that the defendant is guilty or is not guilty of the offense charged, and the imposition of the penalty provided for by law on the defendant, who pleads or is found guilty thereof. But it must be remembered that in the *San Diego* case, the Supreme Court through the ponente, Justice Roberto Concepcion, did not distinguish as to whether the judgment was based on the merits or not."

We fully agree with the findings of the respondent court. Where there is a valid information and the accused has been arraigned, an order of dismissal issued by the court, *motu proprio*, in the course of a trial of a criminal case, whether based on the merits or for failure of prosecution witnesses to appear, has the effect of a judgment of acquittal and double jeopardy attaches.

The order is also immediately executory. However, this order of dismissal must be written in the official language, personally and directly prepared by the judge and signed by him conformably with the provisions of Rule 120, Section 2 of the Rules of Court (now Rule 120, Section 2 of the 1985 Rules on Criminal Procedure). In the instant case, it is very clear that the order was merely dictated in open court by the trial judge. There is now showing that this verbal order of dismissal was ever reduced to writing and duly signed by him. Thus, it did not yet attain the effect of a judgment of acquittal, so that it was still within the powers of the judge to set it aside and enter another order, now in writing and duly signed by him, reinstating the case.

ACCORDINGLY, the petition is DENIED; the appealed decision of the Court of Appeals is hereby affirmed. Costs against the petitioner.

This decision is immediately executory.

Narvasa (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] *Catilo vs. Abaya*, L-6921, May 14, 1954, 50 O.G. 2477; and *Esguerra vs. De La Costa*, 66 Phil. 134.

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