

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. GENARO GINES, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH XXVI, SAN FERNANDO, LA UNION, RAMON LABO, JR., AND FRANCIS FLORESCA, ...**

*G.R. No. 83463. May 27, 1991*

Ponente: PARAS, J.

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**PARAS, J.:**

In this special civil action of certiorari, petitioner assails the Order of Judge Genaro Gines of the Regional Trial Court, Branch 26, San Fernando, La Union dated October 15, 1987, which dismissed Criminal Case No. 1829 entitled "People vs. Ramon Labo, Jr. and Francis Floresca" and the Order dated February 8, 1988 denying the motion for reconsideration.

On complaint of herein private complainant retired Supreme Court Justice Juvenal K. Guerrero in the Municipal Trial Court of San Fernando, La Union, an information for libel was filed on January 27, 1987 before the Regional Trial Court (Branch 26) of San Fernando, La Union against Ramon Labo, Jr., Francis Floresca and Perfecto Manaois as editor/publisher of the "People's Bagong Taliba" in connection with the publication of the article captioned "Inihablang Ex-Justice" in its August 3, 1986 issue.

The case was docketed as Criminal Case No. 1829 of the San Fernando, La Union Court. On March 23, 1987, accused Labo and Floresca were arraigned, and with the assistance of counsel, both entered "not guilty" pleas. The other accused, Perfecto Manaois, was then at large. After the pre-trial conference was conducted and thereafter terminated, public respondent set the case for hearing on April 20 and 21, 1987. Accused Labo and Floresca waived their right to appear at the hearing of the case.

On April 13, 1987, private complainant filed a motion for joint hearing and at the same time asked the court to defer the hearing already scheduled for April 20 and 21, 1987, on the ground that the other accused, Manaois, had lately been arrested and filed bond for his provisional liberty. The motion was granted and the court reset the case for the arraignment and pre-trial of the case with respect to the accused Manaois for May 18, 1987.

Upon arraignment on May 18, 1987, Perfecto Manaois pleaded "not guilty" to the crime charged. Trial was set for June 22, 1987.

On June 11, 1987, private complainant filed a motion for postponement on the ground that he has a serious eye ailment (cataract in both eyes) that needs immediate medical attention. In an order dated June 16, 1987, the Court granted the said motion and reset the hearing of the case to July 30, 1987.

On July 30, 1987, when the case was called for initial reception of evidence for the prosecution, the trial fiscal appeared together with private complainant. However, since counsel for Labo and Floresca failed to appear despite due notice to him, the court again reset the hearing of the case to August 17 and 18, 1987.

On September 16, 1987, with the conformity of private complainant the court issued an order for the exclusion of accused Perfecto Manaois because it was found out that he was neither the publisher nor the editor of the August 3, 1986 issue of the People's Bagong Taliba where the alleged libelous article appeared. Since private complainant was not present, hearing of the case was once more reset to October 15, 1987. The court gave warning that should private complainant fail to present any evidence on the said scheduled hearing, the case will be dismissed for lack of interest.

According to the prosecution, when the Regional Trial Court on September 16, 1987 reset the hearing to October 15, 1987, private complainant was in Manila recuperating from a second eye operation, that is, "removal of cataract of his left eye and implantation of intracellular lens therein," done at the Manila Medical Center September 14, 1987". To support this allegation, the prosecution attached with its petition a copy of the receipt issued by the Manila Medical Center showing payment of his hospital deposit dated September 13, 1987, marked therein as Annex "K". (Petition, p. 7; Rollo, p. 7)

On September 25, 1987, private complainant filed with the Fiscal's Office a complaint for libel against private complainant Esquivel, the person identified by Manaois as the editor of the August 3, 1986 issue of the People's Bagong Taliba, for his possible inclusion as one of the accused in Criminal Case No. 1829 in lieu of Manaois who had been discharged earlier.

On September 29, 1987, Benefredo Esquivel was required to submit his counter-affidavit and other controverting evidence. The letter was however "returned to sender" (Fiscal's office) on November 18, 1987.

On October 15, 1987, the respondent court issued the now assailed Order dismissing the case as against respondents Labo and Floresca for failure of private complainant Justice Guerrero to appear despite the vigorous objection of the fiscal who requested that the hearing of the case be deferred as the Fiscal's Office was then conducting a preliminary investigation with respect to Benefredo Esquivel.

The prosecution avers that when the respondent court ordered the dismissal of the case due to the absence of private complainant, the latter was scheduled to depart for abroad for a medical check up. Thus, a motion for reconsideration dated October 19, 1987 asking for a reinstatement of the case was filed by the prosecution, to which private respondents filed their opposition. The motion was denied on February 8, 1988 hence the instant petition.

Two issues have been raised, namely:

1)

whether or not the public respondent "acted with grave abuse of discretion tantamount to lack of or in excess of jurisdiction in dismissing Criminal Case No. 1829 against the two accused despite the pendency of the preliminary investigation against a third respondent for his possible inclusion as one of the accused in the same criminal case pending before the court;"

2)

whether the right of the accused to speedy trial had been violated to entitle them to the dismissal of the case.

Private complainant asseverates that since Esquivel had admitted responsibility for the publication of the libelous article in question and no preliminary investigation had as yet been conducted on the criminal complaint against said accused when respondent judge dismissed the subject criminal case on October 15, 1987, it follows that the case was not ready for trial on that day as Esquivel had not yet been included in the criminal case through an

amended information. Considering further that the respondent judge had earlier granted petitioner's motion for a joint hearing of all the accused in the interest of the speedy administration of justice, the respondent court should have directed the Fiscal to complete the preliminary investigation within a reasonable period of time, deferred the hearing of the case until Esquivel is arraigned, and finally set the joint hearing of the case on a definite date. Having failed to do so, the respondent judge gravely abused his discretion when it dismissed the case on the ground of private complainant's absence (Petition, pp. 10-11).

On the other hand, private respondents maintain that the act of initiating a suit against Benefredo Esquivel could no longer prosper as such indictment has prescribed one year from August 3, 1986; that to allow the prosecution to first terminate its investigation on the complaint against Esquivel after the lapse of more than one year would unduly delay the termination of the case against private respondents despite an appeal for speedy trial; and that if the Court grants the petition the case would in effect be re-opened thereby placing the private respondents in double jeopardy.

Article 360 of the Revised Penal Code provides that the persons liable for the crime of libel include "any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, . . . ."

In like manner, Section 1 of Rule 110 of the Rules of Court provides that "all criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefor."

Benefredo Esquivel apparently admitted through an affidavit that he was the real editor of "People's Bagong Taliba" and assumed full responsibility for the publication of the subject libelous article. The prosecution should have included Esquivel as co-accused in the information against the other respondents or through an amended information, both within the period of prescription. At the very least, the prosecution could have filed their complaint (against Esquivel) with the fiscal's office for the purpose of a preliminary investigation within the one-year period. It is important to note that the said complaint was lodged in the fiscal's office only on September 25, 1987, which is already more than one year from August 3, 1986, the date the alleged libelous article was published. Based on Article 91 of the Revised Penal Code, the prescriptive period commences to run from the day following the commission of the offense or discovery by the offended party, the authorities or their agents, and is interrupted by the filing of the complaint or information. The period starts to run again when the proceeding is terminated: (a) without the accused being convicted or acquitted; or (b) the proceeding is unjustifiably stopped for a reason not imputable to the offender. (Art. 91, Revised Penal Code). Certainly, the crime of libel has already prescribed in so far as private respondent Benefredo Esquivel is concerned, as the complaint against him was filed beyond the one-year period of prescription. Since Esquivel was not included in the information filed against the other respondents, any amendment thereto would not be a mere correction but a substantial alteration. Such being the case, for purposes of computing the prescriptive period, the date of the amendment, if any, is to be considered and not the date the original information was filed. (LTB vs. Ramos, G.R. No. 41399, August 9, 1934). The information against the first three respondents, having been filed within the one-year period, did interrupt the period of prescription, but only against those three and not against Esquivel. The alleged offense was committed on August 3, 1986; if the said offense is to be prosecuted, any information that would be filed against Esquivel charging him with libel would have long prescribed. Consequently, We sustain the dismissal of the case in so far as private respondent Benefredo Esquivel is concerned.

On the issue of the right of the accused to a speedy trial, the Court finds that said right has not been violated in the case at bar and thus holds that the dismissal of the case as regards private respondents Labo and Floresca is premature and erroneous. "The right of an accused to a speedy trial is guaranteed to him by the Constitution but

the same shall not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals. It secures rights to a defendant but it does not preclude the rights of public justice." (Mercado vs. CFI, et al., 66 Phil. 215; Gunabe, et al. vs. Director of Prisons, 77 Phil. 993; Bermisa vs. Court of Appeals, 92 SCRA 136) The Court is convinced that private complainant's absences at the hearings of the case were in good faith and that he had justifiable and meritorious reasons therefor. Said absences are evidently not capricious, oppressive, nor vexatious to the two accused who had waived their appearance at the trial of the case. It should be remembered that the right to a speedy trial is relative, subject to reasonable delays and postponements arising from illness, medical attention, body operations, as in the instant case where it was satisfactorily proven that private complainant had to undergo eye operations, hospitalization and a medical check-up abroad. The subject case for libel was dismissed on October 15, 1987, some eight and a half months after the information was filed. This period is not such an extended, prolonged or lengthy duration as to cause capricious and vexatious delay. For, speedy trial means one that can be had as soon after indictment is filed as the prosecution can with reasonable diligence prepare for trial (Mercado v. CFI, supra). While accused persons do have rights, many of them choose to forget that the aggrieved also have the same rights.

The allegation of double jeopardy is plainly unmeritorious. Private respondents contend that to grant the petition would be tantamount to reviving and re-opening the case, thus placing them in double jeopardy. In support thereof, they cite several cases which reiterate the doctrine that "a case which was dismissed after the accused had invoked their rights to speedy trial for failure of the prosecution to present evidence, amounts to an acquittal which would bar the subsequent prosecution of the accused for the same offense." (Comment of private respondents, p. 8, citing in particular the case of Salcedo vs. Mendoza, 88 SCRA).

The requisites that must concur for legal jeopardy to attach are: a) a valid complaint or information; b) a court of competent jurisdiction; C) the accused has pleaded to the charge; and d) the accused has been convicted or acquitted or the case dismissed or terminated without the express consent of the accused. The fourth requisite is lacking in the instant case. The case was obviously dismissed upon motion and with the express consent of the accused. Private respondents invoked their constitutional right to a speedy trial when the prosecution failed to present evidence due to the absence of private complainant at the hearing. It was on their motion that the lower court ordered the case to be dismissed. "For double jeopardy to attach, the general rule is that the dismissal of the case must be without the express consent of the accused. (Que v. Cosico, 177 SCRA 410, citing People v. Jardin, 124 SCRA 167, People vs. Pilpa, 79 SCRA 81, and People vs. Cuevo, 104 SCRA 312). This is the general rule.

As exceptions, the case of People vs. Quizada, 160 SCRA 516, states that: "There are only two occasions when double jeopardy will attach even if the motion to dismiss the case is made by the accused himself. The first is when the ground is insufficiency of the evidence of the prosecution, and the second is when the proceedings have been unreasonably prolonged in violation of the right to a speedy trial." None of these exceptions is present in the case at bar.

We hold in sum that the criminal information for libel against private respondents Ramon Labo, Jr. and Francis Floresca was validly filed, that the dismissal as to these two respondents was erroneous, and that its reinstatement will not violate the prohibition against double jeopardy.

ACCORDINGLY, the petition is GRANTED in part. The Orders of public respondent judge dated October 15, 1987 and February 8, 1988 are SET ASIDE. Criminal Case No. 1829, with the exclusion of Benefredo Esquivel, is REINSTATED and REMANDED to the trial court for further proceedings.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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