

MARCELINO G. RIVERA, JR., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND HON. MARCELINO F. BAUTISTA, JR., PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH III, BAGUIO CITY...

G.R. No. 93219. August 30, 1990

Ponente: PARAS, J.

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PARAS, J.:

The instant petition seeks to annul and set aside the Order dated March 28, 1990 issued by respondent Judge in Criminal Case No. 6201-R. The said Order sets aside the verbal order earlier dictated in open court dismissing the case for failure to adduce evidence on the part of the prosecution.

The following pertinent facts are not disputed:

On December 16, 1988, petitioner Marcelino G. Rivera, Jr. was arrested and detained for he allegedly was about to transport marijuana to Manila. Consequently, on December 20, 1988 a case for violation of Section 4, Art. II of RA 6425 was filed against him with the Regional Trial Court of Baguio City, Branch III presided over by respondent Judge Marcelino F. Bautista.

Petitioner was arraigned on February 20, 1989. He pleaded not guilty to the crime charged.

On April 5, 1989, the first witness for the prosecution Cpl. Victorio Afalla partially testified on direct examination and reserved the right to identify the marijuana specimen allegedly confiscated from the petitioner. The hearing was thus re-set to May 3, 1989 and June 6, 1989. But due to the absence of any prosecution witness despite notice and the non-availability of the allegedly confiscated marijuana specimen, the hearings set for May 3, 1989 and June 6, 1989 were postponed to June 8, 1989.

On June 8, 1989, for the same reasons, the hearing was re-set to February 27, 1990.

On February 27, 1990, Capt. Lina Sarmiento, the Forensic Chemist who will present the marijuana specimen, despite notice failed to appear. Petitioner through counsel then moved for the dismissal of the case. This was denied by respondent Judge and the hearing was re-set to March 28, 1990.

On March 28, 1990, when the case was called at about 8:30 a.m. Capt. Lina Sarmiento despite notice, was not around thereby necessitating a second call. When the case was called for the second time at around 9:00 a.m. Capt. Sarmiento was still not around. Hence, Atty. Tomas Gorospe, in behalf of petitioner orally moved for the dismissal of the case invoking the right to speedy trial as the petitioner stands confined and that the Government failed to prosecute or adduce evidence due to the non-appearance of a vital prosecution witness.

The respondent Judge verbally granted the motion and ordered the immediate release of the accused.

While the subsequent calendared cases set for that day was in progress, and in less than an hour after

pronouncement of the verbal order of dismissal, Capt. Lina Sarmiento arrived direct from Quezon City. Upon a satisfactory explanation, the respondent Judge issued his now assailed Order setting aside his previous verbal order of dismissal and re-scheduling Crim. Case No. 6201-R for continuation of trial.

Alleging that the verbal order of dismissal made in open court amounted to the acquittal of petitioner and which order is immediately final and executory, the respondent Judge could no longer set it aside without violating petitioner's constitutional right against double jeopardy.

The petition should be denied. 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, Nov. 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, if 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.”

This doctrine was re-echoed in the case of *Abay Sr. vs. Garcia*, No. 66132, June 27, 1988, 162 SCRA 665 where this Court ruled -

“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. In the instant case, it is very clear that the order was merely dictated in open court by the trial judge. There is no 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.” (162 SCRA, pp. 667-668)

ACCORDINGLY, the petition is DENIED. The case is remanded to the court of origin for further proceedings.

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

Sarmiento, J., on leave.

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