

**HON. ADELINA CALDERON-BARGAS, IN HER CAPACITY AS  
ASSISTANT PROVINCIAL PROSECUTOR OF RIZAL, AND BENNETT LL.  
THELMO, PETITIONERS, VS. THE REGIONAL TRIAL COURT OF  
PASIG, METRO MANI...**

*G.R. Nos. 103259-61. October 01, 1993*

Ponente: PADILLA, J.

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**PADILLA, J.:**

The main issue for resolution in this petition is whether respondent judge committed grave abuse of discretion when he ordered the quashing of three (3) separate informations for libel against private respondents on the grounds of prescription and violation of their right to speedy trial.

Petitioners assail the orders of respondent judge (Regional Trial Court of Pasig, Branch 162), dated 30 August 1991 and 16 December 1991, rendered in Criminal Case Nos. 73490-92 which are criminal complaints for libel against herein three (3) private respondents, namely, Salvador Lacson, Raul Locsin and Leticia Locsin. The orders granted private respondents' motion to quash the informations in said criminal cases.

The records of this case show the following antecedents:

1. Respondent Raul Locsin was the editor and publisher of the newspaper, Business Day. Other respondents, Leticia Locsin and Salvador Lacson, were the managing editor and columnist, respectively, of said newspaper. On 7 April 1987, Salvador Lacson published in Business Day an article entitled "Insurance Monopoly", which allegedly contained defamatory statements against petitioner Bennett LL. Thelmo, and maliciously tried to make it appear that Thelmo was a grafter and bribe-giver.[1]

On 10 April 1987, Thelmo filed an affidavit-complaint with the Office of the Provincial Prosecutor of Rizal, and the case was assigned to Assistant Prosecutor Celestino Simon, Jr. for preliminary investigation.[2]

2. On 8 February 1988, the Prosecutor issued a resolution recommending the filing of three (3) separate criminal cases for libel against the three private respondents. On 23 May 1988, the corresponding informations were filed and assigned to respondent trial court. On 18 October 1988, respondent Salvador Lacson filed a motion to quash on the ground of prescription. Then trial fiscal (Simeon, Jr.) was furnished copy of said motion. On 19 October 1988, the said motion was set for hearing where public prosecutor was given 15 days within which to file an opposition.[3] However, the prosecution after several extensions of time to submit its comment or opposition to the motion, failed to comply therewith.[4]

3. Hence, on 03 January 1991, respondent court issued an order granting the motion to quash the informations, on the ground of prescription. In said order,[5] the court held that considering that libel cases prescribe within one year; that the article "Insurance Monopoly" was published on 7 April 1987; and that the informations were filed only in May 1988 - the case had already prescribed, notwithstanding the fact that the affidavit-complaint for libel was filed with the prosecutor's office on 10 April 1987. The respondent court ruled that the filing of the affidavit-complaint with the office of the prosecutor did not stop the running of the one-year prescriptive

period; that the last day for filing the criminal information was 7 April 1988 or at the latest 10 April 1988 (that is one year from 7 April 1987 when the said article was published.) Petitioner-private complainant filed a motion for reconsideration of the order of 03 January 1991, which motion the private respondents opposed on the ground, among others, that failure of the prosecution to file comment on the motion, despite due notice and order of the respondent court, was tantamount to lack of interest on the part of the fiscal to prosecute the offense charged.[6]

4. Acting on the motion for reconsideration, on 3 May 1991, respondent court rendered an order, granting the motion of petitioner-complainant, for reconsideration of the order dated 03 January 1991, thereby reinstating the three (3) criminal informations.

In the said order of 3 May 1991, respondent court ruled as follows: that in the Olarte case, 19 SCRA 494 (1967), it was held that the filing of complaint in the municipal court, even if it be merely for purposes of preliminary investigation/examination, interrupts the period of prescription, pursuant to Article 91 of the Revised Penal Code; that the case of Francisco v. CA, 122 SCRA 538 (1983) ruled that the filing of complaints for libel with the fiscal's office interrupts the period of prescription.[7]

5. But, respondent court issued another order dated 30 August 1991 (now assailed), granting the motion for reconsideration of the order of 03 May 1991, filed by respondents, thereby dismissing the informations, on the ground of prescription and violation of private respondents' constitutional right to speedy trial. In the order of 30 August 1991, respondent court reiterated its ruling in the order of 03 January 1991.[8]

6. On 16 December 1991, respondent court denied petitioner-complainant's motion for reconsideration of the order dated 30 August 1991.[9]

In the now assailed order of 30 August 1991, respondent court granted private respondents' motion to quash on the principal ground that the prosecution's delay in prosecuting the criminal cases violated the accused's constitutional right to speedy trial. The respondent court said:

"Moreover, even by a stretch of imagination the Court cannot comprehend why these cases have been dragged or pending for four (4) years now since the filing of the informations in 1988. Not only that the preliminary investigation took more than one (1) year to terminate. Such long delay in the preliminary investigation alone is already violative of the accused's constitutional rights to due process and speedy disposition of their cases and even worse, after the informations were filed, the prosecution continued with the delay. This Court waited for two (2) years for the prosecution's comment (on the motion to quash) but to no avail." [10] (Underscoring supplied)

Private prosecutor, for petitioner-complainant, in an effort to explain the failure to file comment on the motion to quash, argues that such failure was due to the fact that no copy of said motion to quash was furnished petitioner-complainant Thelmo; that a copy thereof was given only to the public prosecutor who originally handled the case; and that the respondent court could have resolved the motion even without waiting for the comment of the prosecution and could have declared that the prosecution had waived the right to file comment on the motion to quash.

On the other hand, the respondent court, in rejecting the prosecution's (private prosecutor's) explanation for failure to file comment on the motion to quash, held as follows:

"Further, this Court cannot buy the argument of the private prosecutor that they were not furnished a copy of the Motion to Quash. It is too elementary in our operating table of justice that notice to the fiscal who has the direct control and supervision of the case is also notice to the private prosecutor. Nowhere in our law and jurisprudence (sic) that as a matter of course, counsel for the private complainant is entitled to a copy of the said Motion to Quash. Suffice it to state that a copy to the fiscal is already enough. Furthermore, the record

will bear that the then trial fiscal (Fiscal Simon, Jr.) in charge of this case was furnished a copy of it. Now, the burden lies on the counsel for the private prosecutor to follow-up the status of the case and see to it whether the wheel of justice grinds. xxx "[11]

We rule for the respondents.

Clearly, the prosecution failed to file comment on the accused's motion to quash, despite the admitted service of a copy thereof on the then trial fiscal handling the case (Fiscal Simon, Jr.), and despite order of respondent court directing comment on said motion to quash. Moreover, the prosecution failed to file said comment after asking for several extensions of time to file it. It will be noted that the motion to quash was filed on 18 October 1988, and on 19 October 1988, the public prosecutor was given fifteen (15) days within which to file comment/opposition thereto.

When the respondent court issued the order of 03 January 1991, granting accused's motion to quash, more than two (2) years had lapsed, without public prosecutor having filed any comment despite, we repeat, several extensions of time granted to the prosecution, within which to file comment. This failure of the prosecution to file said comment is a clear defiance of, or at least a non-compliance with the order of 19 October 1988 of the respondent court. And such non-filing of the comment, on the part of the prosecution for more than two (2) years, is undoubtedly an unreasonable failure or delay.

In civil cases, Section 3, Rule 17 of the Rules of Court provides as follows:

"If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court." (Underscoring supplied)

In criminal cases, the rules are quite similar. Under Section 1(h), Rule 115, Revised Rules on Criminal Procedure, one of the rights of the accused is the right "to have a speedy, impartial and public trial." A denial of this right entitles the accused to a dismissal of the case, upon filing the appropriate motion to dismiss; and the dismissal operates as an acquittal.[12]

In the cited Quizada case, the Court held:

"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."

In *Bermisa vs. Court of Appeals*,[13] it was held that the right to a speedy trial is denied the accused "where through the vacillation and procrastination of prosecuting officers, the accused is forced to wait many months or years for trial." And in *Domingo vs. Minister of National Defense*,[14] we said that "there is no disputing the proposition that the non-observance of the constitutional mandate that the accused in all criminal prosecutions shall enjoy the right to have a speedy trial can result in the loss of the right of the government to prosecute him for the crime of which he is charged, and the accused is entitled to be released on habeas corpus; and that the dismissal of the case based on that ground would amount to an acquittal."

In the criminal cases at bench, it is clear that the prosecution failed to prosecute them for an unreasonable length of time. The fiscal (assistant provincial prosecutor) who was handling the subject cases and who under Section 5, Rule 110 of the Revised Rules on Criminal Procedure is responsible for their direction and control, failed in this task.

As correctly pointed out by respondent court, it is not a sufficient excuse to say that the delay in the prosecution of

the cases at bench was due to the fact that private prosecutor was not furnished a copy of the motion to quash, upon which motion respondent court ordered the prosecution to comment. We agree with the respondent court that it is enough that the trial court was furnished a copy of the motion to quash and the prosecution ordered to comment thereon.

Moreover, since there was non-compliance for an unreasonable length of time with the order of the respondent court to file comment on the aforesaid motion to quash - which constituted a failure to prosecute the cases - they were properly dismissible. However, the motion to quash the informations was not strictly the proper remedy, because a denial of the right to speedy trial is not one of the grounds (Sec. 3, Rule 117 of the Revised Rules on Criminal Procedure) upon which a motion to quash a complaint or information may be grounded. The denial of the accused's right to speedy trial as a consequence of the prosecution's failure to prosecute for over two (2) years gave rise to a motion to dismiss. The cases were properly dismissible on this score.

It will also be noted that the respondent court in its order of 30 August 1991 granted the motion to quash on the additional ground of prescription. It ruled that since the offense of libel prescribes within one (1) year (in accordance with Article 90 of the Revised Penal Code), and further considering that the informations at bench were filed only in May 1988, or more than one (1) year after the alleged libelous article was published, the crimes charged had already prescribed when the informations were filed.

While it may be true that prescription of offenses is a ground upon which a motion to quash may be anchored - on the theory that criminal liability has, in effect, been extinguished - we do not again agree with the respondent court that the libel, if any, had prescribed when the informations were filed.

Article 91 of the Revised Penal Code provides as follows:

"ART. 91. Computation of prescription of offenses. - The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, x x x and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him." (underscoring supplied)

In the present case, the criminal complaint was filed with the office of the prosecutor on 10 April 1987. The alleged libelous article was published on 07 April 1987. Hence, the complaint was filed with the prosecutor's office three (3) days after the publication of the alleged libelous article. Thus, the running of the prescriptive period was interrupted on 10 April 1987.

In *Francisco v. Court of Appeals*, this Court held that the filing of a complaint in the fiscal's office interrupts the period of prescription.[15]

All told, we hold that the dismissal of the criminal cases at bench is proper on the ground of the prosecution's failure to prosecute the cases which, as a consequence, denied the private respondents their right to a speedy trial.

ACCORDINGLY, the assailed orders of respondent court, dated 30 August 1991 and 16 December 1991, rendered in Criminal Case Nos. 73490-92 are SET ASIDE. But the respondent court is ordered to DISMISS said criminal cases against private respondents, with prejudice.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Regalado, Nocon, and Puno, JJ., concur.

[1] Rollo, pp. 4-5

[2] Ibid, p. 5

[3] Ibid, pp. 5 and 31

[4] Ibid, p. 20

[5] Ibid, pp. 20-22

[6] Rollo, p.23

[7] Ibid, pp. 23-26

[8] Ibid, p. 27-32

[9] Ibid, p. 3

[10] Rollo, p. 31

[11] Rollo, p. 31

[12] People vs. Baladjay, G.R. Nos. L-26915-18, 30 March 1982, 113 SCRA 284; Esmena vs. Pogoy, G.R. No. 54110, 20 February 1981, 102 SCRA 861; and People vs. Quizada, G.R. Nos. 61079-81, 15 April 1988, 160 SCRA 516.

[13] G.R. No. L-32506, 30 July 1979, 92 SCRA 136

[14] G.R. No. 55212, 02 September 1983, En Banc 124 SCRA 529

[15] G.R. No. L-45674, May 30, 1983, 122 SCRA 538

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