

**ESTELITA HIPOLITO AND ALFREDO BOLSICO, PETITIONERS, VS.
THE HONORABLE COURT OF APPEALS (SPECIAL SECOND DIVISION),
THE HONORABLE PRESIDING JUDGE, REGIONAL TRIAL COURT,
BRANCH 18,...**

G.R. Nos. 108478-79. February 21, 1994

Ponente: NOCON, J.

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NOCON, J.:

Our organic[1] and procedural laws[2] expressly guarantee that in all criminal prosecutions, the accused shall enjoy the right to have a speedy trial. The salutary objective of this right is to assure that an innocent person may be freed from anxiety and expense of a court litigation or, if otherwise, to have his guilt determined within the shortest possible time compatible with the presentation and consideration of whatever legitimate defenses he may interpose.[3] So esteemed is this right that a violation thereof can serve as a basis for the dismissal of the case against the accused.[4] However, it should not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals. The State secures rights to an accused but it does not preclude the rights of public justice.[5]

The antecedent facts of this case, insofar as relevant are, as follows:

On November 4, 1990, Patrolman Celso Reyes, Bgy. Captain Pedro Panganiban and Armando Vitug were ambushed along Ipo-road, Kay-pian, San Juan del Monte, Bulacan, resulting in the untimely death of Reyes and Panganiban. The National Bureau of Investigation conducted an inquisition of the incident and after which charged petitioners Estelita Hipolito and Alfredo Bolsico, together with Romeo Adviento, Romeo Permejo, Rolando Gozum and four (4) John Does with the crimes of murder and frustrated murder before the Municipal Trial Court of San Jose del Monte, then presided over by Judge Virginia Pagarogon.

Judge Pagarogon conducted a preliminary examination of the witnesses and on November 14, 1990 issued an order admitting the complaint and ordering the detention of all the accused after finding that the crimes charged have been committed and there is reasonable ground to believe that the accused are probably guilty thereof. No bail was recommended.

Judge Pagarogon then forwarded the records of the cases to the Provincial Prosecutor's Office of Bulacan for appropriate action. The Investigating Prosecutor, without conducting a thorough investigation of the cases, concluded that there was no probable cause and ordered *motu proprio* the release of the accused from custody. So, the widow of Patrolman Reyes petitioned the Department of Justice to disqualify the Provincial Prosecutor's Office from conducting the preliminary investigation and prosecution of the cases.

In due course, the DOJ acted favorably on the petition and designated State Prosecutor Santiago Turingan to take over and handle the cases. The State Prosecutor found probable cause for murder and frustrated murder against all the accused and consequently, they were formally charged with said crimes on March 13, 1991, before the Regional Trial Court of Malolos, Bulacan, docketed as Criminal Cases No. 487-M-91, 488-M-91 and 489-M-91.

No bail was recommended and the corresponding warrants of arrest were issued.

The accused were quick to learn of the filing of the informations: On the same day (March 13, 1991), they filed a "Manifestation and Motion to Defer the Issuance of Warrant of Arrest," praying for the suspension of court proceedings on the ground that they are filing a petition for review of the resolution of the State Prosecutor.

On March 21, 1991, the accused, who were not yet arrested or placed under the jurisdiction of the trial court (after their precipitate release earlier), filed a "Petition to Grant Bail" in C.C. Nos. 487-M-91 and 488-M-91 and a "Petition to Reduce Bail" in C.C. No. 489-M-91.

On March 25, 1991, the trial court issued an order denying the petitions since the accused had not yet surrendered and/or apprehended and, therefore, the court has not acquired jurisdiction over their persons.

On the same day (March 25, 1991), the accused filed another petition entitled "Reinstatement of the Petition to Grant Bail in the above entitled cases and Motion to Reduce Bail Bond and Motion to Set Petition for Hearing with Manifestation to Surrender the Accused on the Hearing of this Petition."

On April 4, 1991, the trial court, apparently with a change of heart, issued an order consolidating the petitions for bail, set them for hearing on April 6, 1991, and directed the DOJ and/or the Office of the Provincial Prosecutor to forward to it the records of the preliminary investigation of the cases within ten (10) days from notice.

On April 15, 1991, petitioners filed an urgent motion to quash the warrants of arrest alleging want of probable cause.

On April 22, 1991, the accused withdrew their motion for reinstatement of their petition for bail and opted to pursue their motion to quash the warrants of arrest.

On May 2, 1991, the trial court quashed the warrants of arrest and set the hearing on May 15, 1991 for the purpose of determining the existence of probable cause.

On May 17, 1991, after examining the records of the cases as forwarded to him by the prosecution, the trial court found the existence of probable cause but instead of issuing the corresponding warrants of arrest, for the purpose of acquiring jurisdiction over the persons of the accused upon their apprehension or voluntary surrender, it ex mero motu granted bail to them despite the absence of (because it was previously withdrawn) a petition for bail and, worse, the lack of a hearing wherein the prosecution could have been accorded the right to present evidence showing that the evidence of guilt is strong.

On August 23, 1991, the prosecution filed an omnibus motion praying for the cancellation of the bail bonds as well as the issuance of warrants of arrest on the fundamental ground that the trial court could not legally grant bail in a capital offense without the prosecution being accorded the right to show that the evidence of guilt is strong.

On October 28, 1991, the trial court denied the prosecution's motion on the principal ground that its questioned orders had become final and executory. On December 2, 1991, the motion for reconsideration was likewise denied.

On March 3, 1992, the prosecution filed a petition for certiorari, prohibition and preliminary injunction with prayer for a temporary restraining order before respondent Court of Appeals, CA-G.R. S.P. No. 27430, assailing the following orders of the trial court: the May 17, 1991 order which granted bail to the accused; the October 28, 1991 order which denied the prosecution's omnibus motion praying for the issuance of warrants of arrest as well as the cancellation of what it perceived to be irregularly posted bail bonds; and the December 2, 1991 order which denied the prosecution's motion for reconsideration. Upon the filing of said petition, respondent court issued the temporary restraining order.

On the other hand, petitioners filed a petition for certiorari, mandamus and prohibition before the same court, CA-G.R. S.P. No. 27472, seeking: (a) to annul the orders of the trial court resetting the hearings on different dates for being dilatory and violative of their constitutional right to a speedy trial; (b) to command the trial court to dismiss with prejudice all the criminal cases; and (c) to perpetually prohibit the prosecution of the criminal cases.

On July 31, 1992, respondent court ruled in favor of the prosecution. The dispositive portion of its consolidated decision reads:

"WHEREFORE, the instant petition (SP No. 27430) is hereby granted and the questioned orders of respondent Court dated May 17, 1991, October 28, 1991, and December 2, 1991 are annulled and set aside. Accordingly, the accused herein (private respondents) are ordered arrested/committed pending the trial of their cases, without prejudice on their part to file in the proper court a petition for bail after their arrest, detention or deprivation of their liberty, wherein the prosecution is accorded the right to present evidence to prove that evidence of guilt is strong. SP No. 27472, on the other hand, is hereby DISMISSED for lack of merit, considering that the delays incurred herein were due to unavoidable circumstances and were therefore reasonable in nature.

No costs in both instances.

SO ORDERED."[6]

Petitioners filed a motion for reconsideration wherein they stressed in oral arguments that the cases filed against them should be dismissed on the ground that the trial of said cases having been postponed numerous times at the instance of the prosecution, despite a warning from the trial court, they were denied their constitutional right to a speedy trial.

On November 25, 1992, respondent court resolved to deny the motion for reconsideration, rationalizing thus:

"On this particular point, the prosecution argued through private prosecutor former Justice Alfredo Lazaro with proper authorization from Solicitor Florencio Barron, that the prosecution was always ready to present evidence at the hearing called on various occasions, and in fact counsel for the defense, former Justice Serafin Cuevas, on certain occasions, would request the court to have the names of prosecution witnesses called to find out if they were present, and they were always present. But the trial could not proceed because the state prosecutor assigned to the case was sick. Private prosecutor asserted that he was ready to go to trial but the law, in the absence of the private (sic) prosecutor, denied him the privilege.

The prosecution further argued that it was being led or snared by the defense into a situation from which it would find itself in trouble later, i.e., that if the prosecution went into trial it would later be nailed down as in estoppel to question the fundamental issue involved, which is the grant of bail to movants without hearing, or whether they are entitled to bail before they are placed in custody of the law.

We find the prosecution's contentions well taken and so We stand pat on Our original position that the alleged delays in the trial of the criminal cases were unavoidable, thus reasonable, and did not warrant dismissal of said cases upon the invocation of the right to speedy trial."[7]

Hence, the present petition for certiorari, prohibition and mandamus with prayer for preliminary injunction and/or temporary restraining order which seeks to annul the July 31, 1992 decision and November 25, 1992 resolution of respondent court.

Petitioners impute grave abuse of discretion on the part of respondent court:

- 1) in ruling that there was no violation of petitioners' right to speedy trial; and
- 2) in the manner by which it dismissed petitioners' petition.

Additionally, petitioners raise the issue as to whether or not respondent court's decision dated July 31, 1992 is a proper subject of petition for certiorari under Rule 65 of the Rules of Court.

Petitioners allege that since the filing of the cases on March 13, 1991 up to the last order of the trial court dated February 26, 1992, the hearings thereof had been interrupted by the following postponements:

- postponements of October 9, 10, 16 and 17, 1991 hearings - at the instance of the prosecution allegedly due to the pendency of its omnibus motion dated August 15, 1991 which constitutes a pre judicial question; the trial court reset the hearings to November 15, 10 and 21, 1991;
- postponement of November 15, 20 and 21 hearings - at the instance of the private prosecutor allegedly because State Prosecutor Turingan was sick or "might still be sick;" in the order dated November 20, 1991, the trial court reset the hearing of the cases to January 8, 15 and 22, 1992;
- postponement of January 8, 15 and 22, 1992 hearings - at the instance of the private prosecutor supposedly because the prosecution is in the process of finalizing a petition for review on certiorari before this Court; the trial court reset the hearings to February 26, March 8 and 12, 1992 with a warning that should prosecution fail to present any evidence on February 26, 1992, it will be constrained to dismiss the cases on the grounds invoked by the defense.
- postponement of February 26, 1992 hearing - at the instance of the prosecution allegedly due to the fact that they are still in the process of filing a petition for certiorari."^[8]

The prosecution had not alleged any good cause for the numerous postponements. It may not rely on the public prosecutor's several absences because such fact does not serve as an excuse but rather, a cogent proof of failure to prosecute. The discretion of the courts as to postponements is not absolute. It must not be exercised in disregard of the fundamental rights of the accused. Therefore, when the trial court allowed the postponement of the trials on the basis of flimsy excuses to the prejudice of the accused, it did so in grave abuse of discretion. The respondent court dismissed outright the petition of petitioners without even stating a single law or fact on which the dismissal was based, thereby violating their right to procedural due process, which is tantamount to a grave abuse of discretion. The special civil action of certiorari under Rule 65 of the Rules of Court is available to petitioners on the allegation that respondent court committed grave abuse of discretion and acted beyond its jurisdiction and that appeal is inadequate.

On the part of the Office of the Solicitor General, it contends that whatever error might have been committed by respondent court in its questioned decision and resolution could only amount to an error of judgment and not grave abuse of discretion. Furthermore, it is not disputed that petitioners received a copy of the resolution of respondent court which denied their motion for reconsideration on December 7, 1992. Accordingly, they had only until December 22, 1992 within which to file a petition for review on certiorari under Rule 45 of the Rules of Court before this Court; when the present petition was filed on January 27, 1993, the decision and resolution of respondent court had already lapsed into finality. As a matter of fact, entry of judgment was made by respondent court on February 2, 1993. A petition for certiorari under Rule 65 of the Rules of Court cannot be a substitute for lost appeal. Assuming arguendo that the questioned decision and resolution of respondent court may still be the subject of a petition for certiorari under Rule 65, it did not act with grave abuse of discretion in dismissing petitioners' petition. The postponements in the trial of the cases were brought about by petitioners' application for bail (which were later withdrawn) and which application was granted by the trial court, without giving the prosecution the opportunity to be heard. Naturally, the prosecution sought to annul the order of the trial court by way of an omnibus motion. When this motion was denied, the prosecution was constrained to file a petition for certiorari before respondent court. These circumstances necessitated hard efforts on the part of the prosecution, requiring postponements in the trial court.

We do not find any grave abuse of discretion committed by respondent court.

The following are the questioned orders of the trial court which, in pertinent portions, read:

1) The October 9, 1991 order

"Furthermore, upon verbal motion of the same counsel (private prosecutor) and in view of the pendency of the Omnibus Motion which on the basis of the reliefs therein prayed for may be considered a prejudicial question which should be first resolved before delving into the merits of the case such that over the objections of counsel for the defense, the hearings of the instant cases set for tomorrow, October 16, and 17, 1991 are hereby all cancelled, and the same reset to November 15, 20 and 21, 1991 all starting at 9:00 o'clock in the morning."[9]

2) The November 20, 1991 order

"When this case was called for hearing this morning, the private complainant, the prosecution witness, the Private Prosecutor and the counsel for the accused are present. However, State Prosecutor Turingan who is appearing for the government failed to appear. Whereupon Atty. Alfredo Lazaro, the private prosecutor, orally moved for the cancellation of today's hearing as well as for tomorrow, in view of the absence of the State Prosecutor. Counsel for the accused vigorously interposed an objection invoking the right of the accused to speedy trial. Considering that the said State Prosecutor might still be sick and considering further that the accused are not in jail, and in the interest of justice, the oral motion of the private prosecutor is hereby granted.

WHEREFORE, as prayed for, the hearing for today as well as for tomorrow are hereby both cancelled and the hearing of these cases is set on January 8, 15 and 22, 1992 at 9:00 o'clock in the morning."[10]

3) The January 8, 1992 order

"Justice Alfredo M. Lazaro in his capacity as private prosecutor verbally moved in open court for the cancellation of the trials set for today as well as those set for this month of January on the ground that the prosecution is in the process of finalizing a petition for review on certiorari before the Supreme Court alleging failure on the part of the Court to observe due process in one (1) of its previous orders.

Atty. Emmanuel Thomas H. Neria vigorously objected to said motion and at the same time moved for the dismissal of these cases invoking the constitutional right of the accused to a speedy trial.

After considering the oral manifestations of both counsel in support of their respective motions and considering the delicate nature of these cases this Court believes that justice maybe better served should the instant motion for cancellation be granted.

WHEREFORE, premises considered, the trials set for today and on January 15 as well as on January 22, 1992 are hereby cancelled and the same re-set to February 26, March 6 and 12, 1992 with a warning, however, that should the prosecution fail to present any evidence on February 26, 1992 the Court will be constrained to dismiss these cases on the ground invoked by Atty. Emmanuel Thomas H. Neria."[11]

4) The February 26, 1992 order

"In view of the manifestations of the Public and Private Prosecutors to the effect that they are still in the process of filing a petition for certiorari questioning the two (2) previous orders of this Court before the Supreme Court, duly confirmed by the Assistant Solicitor General who was also present, the trial of these cases set for today is hereby cancelled and the same reset to March 6 and 12, 1992, both at 9:00 o'clock in the morning as previously scheduled, it being understood that should the prosecution again fail to present any evidence on said date the Court will be constrained to dismiss these cases, unless restrained by higher authorities."[12]

The right to a speedy trial is deemed violated only when the proceeding is attended by vexatious, capricious and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. In determining whether or not an accused has been denied his right to a speedy trial, courts apply the balancing test, in which the conduct of both the prosecution and the accused is weighed, and such factors as length of the delay, reason for the delay, the accused's assertion or non-assertion of his right, and prejudice to the accused resulting from the delay, are considered.[13] Even then, the inquiry as to whether or not an accused has been denied a speedy trial is not susceptible to precise quantification.[14] There can be no hard and fast rule measured mathematically in terms of years, months or days.[15] At best, this right is relative, taking into account the circumstances of each case.

Guided by the foregoing jurisprudential rules, it cannot be said that petitioners were denied their right to a speedy trial. The delays in the trial of the cases against them were permissible.

The October 9, 1991 order of the trial court which postponed the hearings set for October 10, 16 and 17, 1991 to November 15, 20 and 21, 1991 was based on a justified ground, namely, "pendency of the Omnibus Motion which on the basis of the reliefs therein prayed for may be considered a prejudicial question which should be first resolved before delving into the merits of the case." [16] The omnibus motion which was filed by the prosecution sought the cancellation of the bail bonds and issuance of warrants of arrest. We agree with the trial court that the reliefs prayed for therein may be considered a prejudicial question. We clarify, however, that the term "prejudicial question" was cited by the trial court not as defined under Section 5, Rule 111 of the Rules of Court, [17] but in the sense that the resolution of the motion is a logical antecedent of the trial on the merits of the cases. Our rules on criminal procedure have established several stages in the prosecution of cases. These rules were devised as matters of necessity and practicality, intended to be observed with diligence by the courts as well as by the parties, for the orderly conduct of litigation.

The January 8, 1992 order of the trial court which postponed the hearings set for January 8, 15 and 22, 1992 to February 26, March 6 and 12, 1992 and the February 26, 1992 order which postponed the hearing set for that day to March 6 and 12, 1992 were likewise based on justified grounds, namely, "the prosecution is in the process of finalizing a petition for review on certiorari before the Supreme Court alleging failure on the part of the Court to observe due process in one (1) of its previous orders" [18] and "they (prosecutors) are still in the process of filing a petition for certiorari questioning the two (2) previous orders of this Court before the Supreme Court." [19] On March 3, 1992, the prosecution filed the aforementioned petition before respondent court. The prosecution did not thereby employ any dilatory tactic but was constrained to file the highly meritorious petition. As in fact, it was granted by respondent court. It is noteworthy that petitioners did not bother to question respondent court's ruling in this regard but limited the issues in the present petition to the dismissal of their petition.

However, we find that the November 20, 1991 order of the trial court which postponed the hearings set for November 20 and 21, 1991 to January 8, 15 and 22, 1992 since the "State Prosecutor might still be sick" [20] was clearly not based on a justified ground. Nevertheless, we rule that the right of the accused to a speedy trial is not violated by granting one continuance on this ground.

It is true that respondent court failed to state in its questioned decision the law and the fact on which the dismissal of petitioners' petition before it was based. It merely declared in the dispositive portion thereof that: "SP No. 27472, on the other hand, is hereby DISMISSED for lack of merit, considering that the delays incurred herein were due to unavoidable circumstances and were therefore reasonable in nature." [21] However, petitioners' motion for reconsideration provided respondent court the opportunity to correct itself by discussing quite exhaustively the rationale for the dismissal of their petition. [22] Thus, their claim of denial of procedural due

process is unavailing.

Finally, whatever error might have been committed by respondent court in its questioned decision and resolution could only amount to an error of judgment. The special civil actions of certiorari, prohibition and mandamus cannot be utilized under the guise that respondent court has committed a grave abuse of discretion. Besides, petitioners received a copy of respondent court's resolution denying their motion for reconsideration on December 7, 1992.[23] Thus, they had until December 22, 1992 within which to elevate the case to this Court by way of a petition for review on certiorari under Rule 45. They failed to do so, instead, they filed the present petition on January 28, 1993,[24] which was amended on February 10, 1993.[25] In the case of *Federation of Free Workers, et al. v. Inciong, et al.*,[26] we held that:

"While the special civil action of certiorari may be availed of in the alternative situation where an appeal would not constitute a plain, speedy and adequate remedy, this is on the theoretical assumption that the right to appeal is still available in the case. If, however, the remedy by appeal had already been lost and the loss was occasioned by petitioner's own neglect or error in the choice of remedies, certiorari cannot lie as a substitute or a tool to shield the petitioner from the adverse consequences of such neglect or error. The two remedies are mutually exclusive and not alternative or successive (*Manila Electric Company v. Court of Appeals*, G.R. No. 88396, July 4, 1990, 187 SCRA 200, 205)."

WHEREFORE, the petition is hereby DISMISSED. The decision of the Court of Appeals dated July 31, 1992 and its resolution dated November 25, 1992 are AFFIRMED.

SO ORDERED.

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

[1] Section 14(2), Article III of the 1987 Constitution.

[2] Section 1(h), Rule 115 of the Rules of Court.

[3] *Andres, et al v. Cacdac, etc., et al.*, G.R. No. L-45650, 113 SCRA 216 (1982).

[4] *People v. Declaro, etc., et al.*, G.R. No. 64362, 170 SCRA 142 (1989).

[5] *Mercado v. CFI, et al.*, 66 Phil. 215; *Gunabe, et al. v. Director of Prisons*, 77 Phil. 993; *Bermisa v. Court of Appeals, et al.*, G.R. No. L-32506, 92 SCRA 136 (1979).

[6] Rollo, p. 104.

[7] Rollo, p. 108.

[8] Rollo, pp. 254-255.

[9] Rollo, p. 84.

[10] Rollo, p. 87.

[11] Rollo, p. 89.

[12] Rollo, p. 92.

[13] *Gonzales v. Sandiganbayan, et al.*, G.R. No. 94750, 199 SCRA 298 (1991).

[14] *Martin v. Ver, etc., et al.*, G.R. No. 62810, 123 SCRA 745 (1983); *People v. Gines, etc., et al.*, G.R. No.

83463, 197 SCRA 481 (1991).

[15] Domingo v. Minister of National Defense, G.R. No. 55212, 124 SCRA 529 (1983).

[16] Supra.

[17] Section 5, Rule 111 of the Rules of Court provides: Elements of prejudicial question.- The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

[18] Supra.

[19] Supra.

[20] Supra, underscoring supplied.

[21] Supra

[22] Supra.

[23] Rollo, p. 66.

[24] Rollo, p. 2.

[25] Rollo, p. 53.

[26] G.R. No. L-49983, 208 SCRA 157 (1992).

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