

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE JOSE R. HERNANDEZ, IN HIS CAPACITY AS PRESIDING JUDGE, BR. 158, RTC-PASIG CITY, ATTY. LIGAYA P. SALAYON AND ATTY. ANTONIO M...

G.R. NOS. 154218 & 154372. August 28, 2006

Ponente: PUNO, J.

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PUNO, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking the reversal of the Joint Decision[1] of the Court of Appeals (CA) in CA-G.R. SP Nos. 68922 and 69703 which affirmed the Order[2] issued by respondent Judge Jose R. Hernandez, presiding judge of Branch 158 of the Regional Trial Court (RTC) of Pasig City, dismissing Criminal Case Nos. 118823-31, 118848-91, 118902-9063 and 119099-204 for violation of private respondents Llorente and Salayon's right to speedy trial.

First, the facts.

The instant case stemmed from a complaint filed by Aquilino Pimentel, Jr., a senatorial candidate in the May 1995 elections, against private respondents Salayon and Llorente, Chairman and Vice-Chairman, respectively, of the City Board of Canvassers of Pasig City, and a certain Reynaldo San Juan, Campaign Manager of senatorial candidate Juan Ponce Enrile, for allegedly decreasing Pimentel's votes in the Statement of Votes per precinct and in the City Certificate of Canvass for Pasig City. Pimentel filed a petition with this Court, docketed as G.R. No. 133509, which sought the reversal of the resolutions of the COMELEC dismissing his complaint for lack of probable cause. On February 9, 2000, we promulgated our Decision in said case, granting Pimentel's petition and ordering the COMELEC "to file forthwith with the proper [RTC] the necessary criminal information for violation of Section 27(b) of [Republic Act] No. 6646,[3] otherwise known as the Electoral Reforms Law of 1987, against private respondents Ligaya Salayon and Antonio Llorente." [4]

Pursuant thereto, the COMELEC filed a total of 321 informations for violation of Section 27(b) of R.A. No. 6646 against private respondents Llorente and Salayon on the following dates: a) nine (9) informations were filed on August 28, 2000, docketed as Criminal Case Nos. 118823-118831; b) forty-four (44) informations on August 29, 2000, docketed as Criminal Case Nos. 118848-118891; c) one hundred sixty-two (162) informations on August 31, 2000, docketed as Criminal Case Nos. 118902-119063; and d) 106 informations on September 7, 2000, docketed as Criminal Case Nos. 119099-119204. The four sets of informations were raffled to Branches 164, 158, 153 and 69, respectively, of the RTC of Pasig City.

Private respondent Llorente filed an Urgent Ex-Parte Motion for Consolidation[5] of Criminal Case Nos. 118823-118831 (pending before Branch 164) with Criminal Case Nos. 118848-118891 (pending before Branch 158). This motion was granted by Branch 164,[6] thereby consolidating the nine (9) informations pending before it with the 44 other informations pending with Branch 158.

Subsequently, private respondent Llorente filed three (3) Omnibus Motions before Branches 158, 153 and 69 of the RTC of Pasig City, asking them: 1) to consolidate all the cases filed against him for violation of Section 27(b) of R.A. No. 6646; 2) to declare the multiple informations filed against him as constituting only one offense; 3) to treat the 321 informations filed against him as only one information for violation of Section 27(b) of R.A. No. 6646; and 4) to allow him to post bail to only one information.

After finding private respondent Llorente's prayer to consolidate to be "meritorious and there being no objection" from the prosecution, Judge Ericcio C. Ygaña of Branch 153 granted the same and remanded Criminal Case Nos. 118902-119063 to the Office of the Clerk of Court of the RTC of Pasig City for proper disposition.[7] Similarly, Judge Lorifel Lacap Pahimna of Branch 69 granted private respondent Llorente's motion to consolidate, finding that "it is for the convenience of the parties that these cases (Criminal Case Nos. 119099-119204) be consolidated with those cases pending before Branch 158 considering that all cases involved common questions of fact and law and the parties may have to introduce common evidence in support of their respective positions in these cases." Judge Pahimna forwarded the cases pending before Branch 69 to Branch 158 "unless the presiding judge of said branch interposes objection to such consolidation." Moreover, the other issues raised by private respondent Llorente were referred to Branch 158 for appropriate action.[8]

On September 27, 2000, Senior State Prosecutor Rogelio Bagabuyo filed his Notice of Appearance with Branch 158 of the RTC of Pasig City.[9] He likewise filed an Urgent Omnibus Motion To: 1) hold in abeyance the implementation of the orders of the court prior to his appearance as counsel; 2) remand all the cases pending before it to the Office of the Clerk of Court of the RTC of Pasig City; 3) hold in abeyance the resolution of all motions filed by private respondent Llorente with the court; 4) order the Office of the Clerk of Court of the RTC of Pasig City to hold in abeyance the re-raffling of all the "dagdag-bawas" cases against private respondents; and 5) allow him ample time to secure from the Supreme Court a transfer of venue of the cases from Pasig City to Manila or Pasay City.[10]

Private respondent Llorente filed an Opposition (to the Prosecution's Urgent Omnibus Motion dated 25 September 2000)[11] with Branch 158 of the RTC of Pasig City. On December 13, 2000, petitioner, through Senior State Prosecutor Bagabuyo, filed with Branch 158 of the RTC of Pasig City its Comment/Opposition to [the] Omnibus Motions filed by Accused Llorente,[12] reiterating its prayers in its Omnibus Motion dated September 25, 2000.

On March 2, 2001, respondent Judge issued an Order, the dispositive portion which reads:

WHEREFORE, accused Llorente's Omnibus Motion dated September 5, 2000, Omnibus Motion dated September 6, 2000 and Omnibus Motion dated September 8, 2000 are granted allowing the consolidation of cases against accused Llorente pending before Branches 69, 153 and 164 of this Court with those pending before this branch. The multiple acts alleged in the 321 Informations filed against him are declared to constitute only one violation of Section 27(b) of Republic Act No. 6646. There should then be only one information against accused Llorente. This benefit applies also to accused Salayon. Public Prosecutor's (sic) Bagabuyo's Omnibus Motion dated September 25, 2000 is denied.

The arraignment and pre-trial of both accused is (sic) set on March 20, 2001 at 8:30 in the morning.

SO ORDERED.[13]

The trial court noted that during the hearing on private respondent Llorente's motion on September 12, 2000, the prosecution, then through Director Jose P. Balbuena of the COMELEC, was heard on the matter of consolidation of the cases and in fact gave its consent thereto. Even the representative from the office of Senator Aquilino Pimentel, Jr., an Atty. Luis Gana, did not register any objection thereto. In ruling that only one information for violation of Section 27(b) of R.A. No. 6646 should have been filed, the trial court held:

[I]n this case[,] the unity of criminal intent is manifested by the fact that the several acts of tampering[,] while allegedly done separately over a three-day period, were perpetuated on one single occasion which is the canvassing of the votes cast in the May 8, 1995 elections in Pasig City, and, significantly, perpetuated only on one single document, the SoV, a document of fifty-eight (58) pages. While there maybe several acts of tampering, this Court could attribute only one crime against accused Llorente. This is what the Comelec did in *People vs. Maria Arsenia Garcia, et al.* docketed as Criminal Case No. 3485-A before the Regional Trial Court of Alaminos, Pangasinan. The multiple acts of tampering by the accused were treated by the COMELEC as one offense or a single count of (sic) the violation of Section 27(b) of R.A. 6646. There is no reason then why accused Llorente should be treated differently.[14]

On March 25, 2001, petitioner moved for the reconsideration of the March 2, 2001 Order of the trial court.[15] Private respondent Llorente filed his Comment and Opposition,[16] to which petitioner filed its rejoinder.[17]

In his Order[18] dated May 11, 2001, respondent Judge denied petitioner's motion for reconsideration of the March 2, 2001 Order and set the arraignment and pre-trial of private respondents "on June 15, 2001 at 8:30 in the morning."

On June 15, 2001, private respondents Llorente and Salayon were arraigned and pleaded "not guilty." Senior State Prosecutor Bagabuyo was absent during the arraignment but the same nevertheless proceeded in the presence of Public Prosecutor Jose Danilo C. Jabson, the assigned prosecutor in the trial court. The trial court held:

Both accused, assisted by their respective counsels, after having been informed of the charge filed against them and its attending consequences, entered a plea of NOT GUILTY.

Pursuant to the Order of March 2, 2001, the three hundred [twenty-one] (321) informations filed against both accused were treated to be only a single offense for which they should be made answerable. It is for this reason that both accused were arraigned and entered their plea to a single or one information only.

Having entered their plea, set the pre-trial of this case on June 29, 2001 at 8:30 in the morning.[19]

On June 27, 2001, petitioner filed an Omnibus Motion to Postpone and Motion for Reconsideration[20] of the Order dated June 15, 2001 of the trial court, asking the trial court to nullify the arraignment of respondents for lack of notice to the prosecution. The June 29, 2001 hearing was reset to July 6, 2001 in view of the prosecution's filing of the Omnibus Motion to Postpone and Motion for Reconsideration. The July 6, 2001 hearing was cancelled as Senior State Prosecutor Bagabuyo did not appear, a representative having telephoned the trial court that he was indisposed. The hearing was reset to July 26, 2001.[21] However, the hearing on July 26, 2001 was again cancelled and reset to August 2, 2001 for Senior State Prosecutor Bagabuyo's failure to appear, thus:

Since Prosecutor Rogelio Bagabuyo is again not available for today's hearing because he is indisposed as relayed to this Court by his representative, Atty. Jay I. Dejaresco, and through a telephone call from his secretary Orlando Nicolas, as prayed for, and over the vehement objection of counsels for both accused, the pre-trial/trial scheduled today is cancelled and reset on August 2, 2001 at 8:30 in the morning.

x x x

In the event that there will again be no appearance from Prosecutor Bagabuyo at the next scheduled hearing, the Legal Department of the COMELEC shall then make its appearance and take over the prosecution of this case.

SO ORDERED.[22]

After considering the respective positions of the prosecution and the private respondents, the trial court issued its Order dated August 2, 2001[23] denying the prosecution's Omnibus Motion to Postpone and Motion for

Reconsideration. It found that contrary to the prosecution's claim that it was not notified of the arraignment on June 15, 2001, the records revealed that the Order of the trial court dated May 11, 2001 which set the date of the arraignment and pre-trial on June 15, 2001 was received by the Department of Justice on May 17, 2001. As a consequence, the arraignment of private respondents Llorente and Salayon proceeded as scheduled. The Motion for Reconsideration of the trial court's March 2, 2001 Order was likewise denied for being in the nature of a second motion for reconsideration which is a prohibited pleading under the Rules of Court. Despite the denial of the prosecution's motions, the pre-trial and trial were cancelled and reset to September 4, 2001 in view of the prosecution's manifestation that it was appealing the trial court's order to a higher court. The court warned that "[i]n the event that the prosecution shall not be able to get any restraining order to stop the proceedings in this case, the hearing on said date shall proceed as scheduled." [24]

Accordingly, petitioner, through Senior State Prosecutor Bagabuyo, filed a petition for Certiorari, Prohibition, Mandamus, Injunction with Prayer for a Temporary Restraining Order with the CA, docketed as CA-G.R. No. SP No. 65966. On August 16, 2001, said petition was dismissed outright for having been filed without the participation of the Office of the Solicitor General (OSG), in violation of Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code. [25] Petitioner filed a Motion for Reconsideration, to no avail. [26] Unhindered, petitioner filed a Motion for Extension of Time to File Petition for Review on Certiorari [27] with this Court on October 30, 2001, pursuant to Section 2, Rule 45 of the Rules of Court. We granted petitioner's motion in our Resolution dated December 12, 2001. Petitioner filed its Petition for Review on January 10, 2002, docketed as G.R. No. 150317. We resolved to deny the petition on January 30, 2002 for having been filed out of time and for Senior State Prosecutor Bagabuyo's failure to sign the petition. [28] Petitioner again filed a Motion for Reconsideration with this Court, to no avail. [29]

Meantime, in the trial court, the hearing set on September 4, 2001 did not proceed due to Senior State Prosecutor Bagabuyo's absence. Another representative from the office of Senator Pimentel, an Atty. Galimpin, appeared in court and requested for a postponement. Again, the court received a call from the secretary of Senior State Prosecutor Bagabuyo that the latter had his tooth extracted, hence, could not appear in court. The trial court found this excuse quite odd since Atty. Galimpin informed the court that he saw Senior State Prosecutor Bagabuyo at the Office of the Clerk of Court in the first floor of the same building where the court sits. Private respondents moved for the dismissal of the instant cases due to the denial of their right to speedy trial. The trial court denied their motion and gave the prosecution the last opportunity to prosecute the instant cases, setting the next hearings on October 3 and 15, 2001, with the admonition that failure to proceed will be dealt with accordingly. [30]

On October 3, 2001, the prosecution refused to proceed with pre-trial and trial, giving as reason its pending petition before the CA. Private respondent Llorente reiterated his motion to dismiss the case on the ground of violation of his right to speedy trial. The trial court granted private respondents a period of three (3) days therefrom within which to formalize their motions to dismiss and the prosecution was also given three (3) days from receipt of private respondents' motions within which to file its comment or objection. [31]

Private respondent Llorente filed his Motion to Dismiss dated October 4, 2001. [32] Before petitioner could file an opposition, it filed its Motion to Inhibit [33] dated October 5, 2001, asking Judge Hernandez to voluntarily inhibit himself from hearing the instant cases and remand the same to the Clerk of Court of Pasig City for re-raffling. Later, the prosecution likewise filed its Opposition (to [Private Respondent's Motion to] Dismiss with Prayer to Hold in Abeyance its Resolution until after Resolution of our Motion to Inhibit). Private respondent Llorente filed his Reply (to Prosecution's Opposition dated October 7, 2001) and Comment-Opposition (to Prosecution's Prayer for Inhibition). The prosecution filed its Rejoinder (to Reply to Opposition to the Motion to Dismiss with Prayer to Hold in Abeyance its Resolution until after Resolution of our Motion to Inhibit) and Counter-Comment (to the

Opposition to Motion to Inhibit). Private respondent Salayon filed a Manifestation dated October 6, 2001, adopting all the allegations mentioned in the Motion to Dismiss of his co-respondent Llorente. On October 15, 2001, the parties opted not to have a hearing after having agreed to put all their arguments in their respective pleadings.[34]

On November 23, 2001, the trial court rendered its assailed order, the dispositive portion of which states:

WHEREFORE, the Motion to Dismiss dated October 4, 2001 filed by accused Antonio M. Llorente, adopted by co-accused Ligaya P. Salayon, is granted and this case is dismissed. The cash bail posted by each accused is ordered released to them.

SO ORDERED.[35]

Petitioner, through Senior State Prosecutor Bagabuyo, then filed with this Court a Petition for Certiorari, Prohibition and Mandamus[36] dated February 1, 2002 under Rule 65 of the Rules of Court, docketed as G.R. Nos. 151461-151781. Petitioner prayed that:

- Upon the filing hereof, this case be consolidated with [the] Petition for Review, filed last January 10, 2002 [with the Supreme Court], and docketed as G.R. No. 150317;
- The Order dismissing the instant cases be recalled, set aside and the 321 criminal cases filed against both accused Salayon and Llorente be reinstated; after which they be arraigned for the 321 counts for the violation of Section 27(b) of R.A. 6646;
- The Order, dated June 15, 2001, be declared as null and void and set aside;
- All the cases that used to be pending before the respondent, Honorable RTC-158 be ordered remanded to the Office of the Clerk of Court for re-raffle to the other branches, except those where these cases were originally assigned to; or in the alternative,
- An Order be issued changing venue from the City of Pasig to either Manila, Pasay or Makati; and,
- Plaintiff-petitioner prays for such other relief consistent with law and equity on the matter.[37]

Pursuant to Section 6, Rule 56 of the Rules of Court, we referred said petition to the CA for appropriate action.[38] In the CA, the case was docketed as CA-G.R. SP No. 69703.

Meantime, on February 2, 2001, petitioner, this time through the OSG, filed a Motion for Extension of Time to File a petition for certiorari under Rule 65 directly with the CA, docketed as CA-G.R. SP No. 68922. The motion having been granted,[39] petitioner, through the OSG, filed its petition[40] contending that respondent Judge "committed grave abuse of discretion and/or acted without or in excess of jurisdiction in issuing the order of dismissal dated November 23, 2001 allegedly on account of the speedy trial rule." [41]

Subsequently, CA-G.R. SP Nos. 69703 and 68922 were consolidated.[42]

On July 4, 2002, the CA rendered its assailed Joint Decision in CA-G.R. SP Nos. 69703 and 68922, the dispositive portion of which states:

WHEREFORE, premises considered, the petitions in CA-G.R. SP No. 68922 and CA-G.R. SP No. 69703 are hereby both DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. The assailed Order dated November 23, 2001 issued by Branch 158 of the Regional Trial Court of Pasig City in Criminal Case Nos. 118823-31; 118848-91; 118902-9063; and 119099-204, all entitled "People of the Philippines v. Ligaya P. Salayon and Antonio M. Llorente," is hereby AFFIRMED and UPHELD.

No pronouncement as to costs.

SO ORDERED.[43]

The CA noted that as to CA-G.R. SP No. 69703, Senior State Prosecutor Bagabuyo filed an Urgent Motion to Withdraw Petition dated April 21, 2002 with the Supreme Court despite our referral of the case to the CA. The CA held that the petition instituted by Senior State Prosecutor Bagabuyo should be "effectively withdrawn" as the same was filed without the participation of the OSG, in violation of Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code. At any rate, the CA likewise found no merit in the petition instituted by the OSG. It held that petitioner was essentially assailing an error of judgment and not of jurisdiction, hence, its resort to a special civil action for certiorari under Rule 65 of the Rules of Court instead of an ordinary appeal was erroneous. Even assuming that petitioner's recourse was proper, the CA held that respondent Judge did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when he rendered his assailed Order dated November 23, 2001. The ruling of the trial court was found to be supported by Sections 6 and 9 of the Revised Rules of Criminal Procedure, Sections 9 and 13 of R.A. No. 8493 and Sections 14(2) and 16, Article III of the 1987 Constitution. It restated the principle that "[t]he right to speedy trial means one free from vexatious, capricious and oppressive delays, its salutary objective being to assure that an innocent person may be freed from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and considerations of whatever legitimate defense he may interpose." [44] The CA found that the cancellation of the hearings in the trial court by the prosecution without any valid grounds was "certainly vexatious, capricious and oppressive." Citing *People v. Abaño*, [45] it held that "the dismissal of the cases following a number of postponements at the instance of the prosecution is not an abuse of discretion." The CA likewise held that "delay resulting from extraordinary remedies against interlocutory orders," as an exclusion to the computation of the 80-day period within which to commence trial under Section 3(3), Rule 119 of the Rules of Court, should be read in harmony with Section 7 of Rule 65 of the Rules of Court. Hence, in the case at bar, the mere expedient of petitioner's filing before the CA of a petition for certiorari, prohibition and mandamus under Rule 65 questioning the trial court's interlocutory order did not interrupt the running of the 80-day period. Moreover, petitioner's reliance on Section 3(7) of Rule 119 is also misplaced as the trial court did not state in its orders granting continuance that the ends of justice in granting the continuance outweigh the best interest of the public and the right of the accused to a speedy trial. Finally, the CA pointed out that the prosecution failed to commence with the trial even after the lapse of 122 days from the arraignment of private respondents.

Hence, the instant petition on certiorari under Rule 45 in which petitioner raises the following issues:

- [WHETHER] THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN HOLDING THAT THE WRIT OF CERTIORARI IS NOT WARRANTED INASMUCH AS WHAT IS BEING IMPUGNED IS "AN ERROR OF JUDGMENT."
- [WHETHER] THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN UPHOLDING THE DISMISSAL OF THE 321 CRIMINAL CASES AGAINST PRIVATE RESPONDENTS.[46]

The issues to be resolved are: a) whether a special civil action for certiorari under Rule 65 is the proper remedy from the dismissal of the cases before the trial court on the ground of the denial of private respondents' right to speedy trial; and b) whether the CA erred in finding that respondent Judge did not commit grave abuse of discretion in dismissing the instant criminal cases against private respondents upon a finding that the right of private respondents to speedy trial has been violated.

We shall first resolve the procedural issue.

Petitioner contends that its petition for certiorari under Rule 65 with the CA was the proper remedy since

respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he consolidated the 321 criminal cases into one information and dismissed the "criminal case" on the ground of the denial of private respondents' right to speedy trial, without giving the prosecution the chance to present evidence. Citing *People v. Velasco*,^[47] petitioner contends that the dismissal of the "criminal case" against private respondents is tantamount to their acquittal which, as a general rule, the prosecution cannot appeal from in the absence of a statute clearly conferring that right. In any case, the alleged existence of the remedy of appeal does not always foreclose the remedy of a petition for certiorari under Rule 65.

Petitioner's remedy with the CA was correct.

Section 1, Rule 122 of the Revised Rules of Criminal Procedure provides that "[a]ny party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy."

As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment in favor of the defendant in a criminal case in the absence of a statute clearly conferring that right.^[48] Thus, errors of judgment are not appealable by the prosecution. Appeal by the prosecution from the order of dismissal of the criminal case by the trial court may be allowed only on errors of jurisdiction when there was denial of due process resulting in loss or lack of jurisdiction.^[49] This is so as while it is true that double jeopardy will attach in case the prosecution appeals a decision acquitting the accused, an acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really "acquit" and therefore does not terminate the case as there can be no double jeopardy based on a void indictment.^[50]

In the case at bar, the trial court dismissed the cases against private respondents for the denial of their right to speedy trial. In a long line of cases, we have held that a dismissal on the ground of the denial of the accused's right to a speedy trial will have the effect of acquittal that would bar further prosecution of the accused for the same offense.^[51] Thus, we have held that where after such dismissal the prosecution moved for the reconsideration of the order of dismissal and the court re-set the case for trial, the accused can successfully claim double jeopardy as the said order was actually an acquittal, was final and cannot be reconsidered.^[52] Hence, petitioner was correct in filing a petition for certiorari under Rule 65, alleging that "respondent judge committed grave abuse of discretion and/or acted without or in excess of jurisdiction in issuing the order of dismissal dated November 23, 2001 allegedly on account of the speedy trial rule" as an appeal was not available to it. Where the dismissal of the case was allegedly capricious, certiorari lies from such order of dismissal and does not involve double jeopardy, as the petition challenges not the correctness but the validity of the order of dismissal and such grave abuse of discretion amounts to lack of jurisdiction which prevents double jeopardy from attaching.^[53]

Having settled that a petition for certiorari under Rule 65 with the CA was the proper remedy from the dismissal of the instant cases by the trial court, the crucial issue is: was the CA correct in ruling that a writ of certiorari was not warranted inasmuch as the respondent Judge did not act in grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the instant cases against private respondents for the denial of their right to speedy trial?

A writ of certiorari is warranted when 1) any tribunal, board or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and 2) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.^[54] An act of a court or tribunal may be considered as in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.^[55]

We affirm the CA's ruling that no such grave abuse of discretion was shown to exist in respondent Judge's dismissal of the instant cases.

The right of the accused to a speedy trial is guaranteed under Sections 14(2) and 16, Article III of the 1987 Constitution.[56] In 1998, Congress enacted R.A. No. 8493, otherwise known as the "Speedy Trial Act of 1998." The law provided for time limits in order "to ensure a speedy trial of all criminal cases before the Sandiganbayan, [RTC], Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court." On August 11, 1998, the Supreme Court issued Circular No. 38-98, the Rules Implementing R.A. No. 8493. The provisions of said circular were adopted in the 2000 Revised Rules of Criminal Procedure. As to the time limit within which trial must commence after arraignment, the 2000 Revised Rules of Criminal Procedure states:

Sec. 6, Rule 119. Extended time limit.--Notwithstanding the provisions of section 1(g), Rule 116 and the preceding section 1, for the first twelve-calendar-month period following its effectivity on September 15, 1998, the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period, the time limit shall be eighty (80) days.

R.A. No. 8493 and its implementing rules and the Revised Rules of Criminal Procedure enumerate certain reasonable delays as exclusions in the computation of the prescribed time limits. They also provide that "no provision of law on speedy trial and no rule implementing the same shall be interpreted as a bar to any charge of denial of speedy trial as provided by Article III, Section 14(2), of the 1987 Constitution." [57] Thus, in spite of the prescribed time limits, jurisprudence continues to adopt the view that the concept of "speedy trial" is a relative term and must necessarily be a flexible concept.[58] In *Corpuz v. Sandiganbayan*, [59] we held:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. x x x

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an ad hoc basis. In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. (citations omitted)

In the cases at bar, in finding that private respondents were denied of their right to speedy trial, respondent Judge recounted the following incidents in the trial court:

The Court considers the accused[s] arraignment of June 15, 2001 and notes that the pre-trial was initially set on June 29, 2001. This initial setting did not proceed, as earlier, the Prosecution, through State Prosecutor Bagabuyo, filed an Omnibus Motion to Postpone and Motion for Reconsideration. The Court, nevertheless, set the hearing to July 5, 2001 and gave proper notice to the Prosecution. This July 6 setting also did not proceed as a staff of Prosecutor Bagabuyo made a telephone call with this Court seeking for a postponement as Prosecutor Bagabuyo was not feeling well. The Court issued its Order of July 6, 2001 setting the pre-trial again

to July 26, 2001 at 8:30 a.m. The July 26 pre-trial hearing likewise did not proceed, as Prosecutor Bagabuyo was indisposed. This matter was relayed to this Court in a telephone call of Orlando Nicolas, secretary of Prosecutor Bagabuyo. During the hearing, Atty. Jay I. Dejaresco, a lawyer from the office of Senator Aquilino Pimentel, appeared and confirmed the inability of Prosecutor Bagabuyo to appear during the pre-trial hearing. The Court also requested Atty. Dejaresco to inform Senator Pimentel on the delay caused by the non-appearance of the Prosecutor. The hearing was reset to August 2, 2001, the date suggested by Atty. Dejaresco.

The August 2, 2001 hearing was held, but the Prosecution, through Prosecutor Bagabuyo, manifested that it would question the Order of this Court dated June 15, 2001 and the Court's Order on said date denying the Prosecution's Motion for Reconsideration to the Order of June 15, 2001. As requested, the Court granted the Prosecution 30 days to file the proper petition before the higher court, and the pre-trial and trial was reset anew to September 4, 2001. The Court [h]as impressed with the commitment of the Prosecution that in the event no restraining order was issued to stop the proceedings in this case, the pre-trial and trial shall proceed on September 4, 2001. But the hearing of September 4, 2001 did not proceed on account of the absence of Prosecutor Bagabuyo. Another representative from the office of Senator Pimentel, a certain Atty. Rolando Galimpin, appeared and requested for another postponement. Like before, the Court received a call from the secretary of Prosecutor Bagabuyo that the latter had his tooth extracted and would not be in a position to appear at the hearing. This Court found the motion for postponement odd because Atty. Galimpin informed the Court he saw Prosecutor Bagabuyo at the Office of the Clerk of Court, which is located at the first floor of the building where this Court sits. Even then, the Court denied the accused[s] oral motion to dismiss and gave the Prosecution the last opportunity to prosecute this case. The Prosecution was given two dates, October 3 and 15, 2001, the dates Prosecutor Bagabuyo would be available as represented by Atty. Galimpin. Despite these dates of October 3 and 15, 2001, the Prosecution still failed to proceed to pre-trial and trial. Given the period of time to prosecute this case as above narrated, the last opportunity on October 3 and 15, 2001, this Court resolves that this case must now be dismissed. The accused[s] right to speedy trial under Section 9, Rule 116 (sic) of the Revised Rules of Criminal Procedure has been violated.[60]

Clearly, the one hundred eleven (111) days that have elapsed from the time private respondents were arraigned on June 15, 2001 up to the filing of the Motion to Dismiss by private respondents on the ground of the denial of their right to speedy trial on October 4, 2001 is beyond the 80-day limit provided under the law and the rules. The incidents that transpired before the trial court likewise show that the postponements at the instance of the prosecution were not justified. As found by the CA:

The Court a quo has sufficiently justified its order of dismissal for failure to prosecute in violation of the constitutional right of the accused to a speedy trial as mandated by Section 14(2) and Section 16 of Article III of the 1987 Constitution. The right to speedy trial means one free from vexatious, capricious and oppressive delays, its salutary objective being to assure that an innocent person may be freed from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatever legitimate defense he may interpose.[61]

x x x

The cancellation of the hearings by the prosecution without any valid ground is certainly vexatious, capricious and oppressive and it has been held that the dismissal of the case following a number of postponements at the instance of the prosecution is not an abuse of discretion,[62] and especially taking into account the periods in Rule 119 which are explicitly provided.[63]

Petitioner invokes the exclusions provided in Section 3(a)(3) and (f), Rule 119 of the 2000 Revised Rules of Criminal Procedure which state:

Sec. 3. Exclusions.-- The following periods of delay shall be excluded in computing the time within which trial

must commence:

a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

x x x

3) Delay resulting from extraordinary remedies against interlocutory orders;

x x x

f) Any period of delay resulting from a continuance granted by any court *motu proprio*, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

Petitioner contends that there was no inordinate delay on the part of the prosecution to justify a dismissal of the cases based on a violation of the private respondents' right to speedy trial. The date of arraignment was June 15, 2001. Senior State Prosecutor Bagabuyo filed a certiorari petition questioning the arraignment before the CA on August 6, 2001. Thus, a total of 51 days elapsed before the filing of the CA petition. On August 24, 2001, Senior State Prosecutor Bagabuyo received a copy of the CA Resolution dismissing his petition. On September 6, 2001, he filed a motion for reconsideration of the CA Resolution. At this point, only 64 days have passed since the arraignment. On October 17, 2001, Senior State Prosecutor Bagabuyo received a copy of the CA Resolution denying his motion for reconsideration. On October 30, 2001, he filed a motion for extension of time to file a petition under Rule 45 with this Court. Prior to his filing of this motion for extension, 76 days have lapsed from the date of arraignment. This Court granted him 30 days within which to file the petition or until December 1, 2001. Hence, when Judge Hernandez issued an Order of dismissal dated November 23, 2001, the 80-day period mandated under Section 6 of Rule 119 has not yet lapsed. Deducting the time it took Judge Hernandez to resolve petitioner's Omnibus Motion to Postpone and Motion for Reconsideration dated June 27, 2001, only 41 days had lapsed after private respondents' arraignment on June 15, 2001. Section 3 of Rule 119 provides that "delay resulting from extraordinary remedies against interlocutory orders" is excluded in computing the time within which trial must commence. This provision is not in conflict with Section 3(f) of Rule 119 as they speak of two different kinds of delay. If Section 3(f) is not applicable, Section 3(a) definitely is.

We are not persuaded. As correctly held by the CA, "delay resulting from extraordinary remedies against interlocutory orders" must be read in harmony with Section 7, Rule 65 of the Rules of Court which provides that the "[p]etition [under Rule 65] shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." This was clearly spelled out by respondent Judge when, in addition to granting a 30-day continuance in view of the manifestation of the prosecution that it would file an appeal from the interlocutory order of the trial court with a higher court, the trial court, in its August 2, 2001 Order, gave a warning that "[i]n the event that the prosecution shall not be able to get any restraining order to stop the proceedings in this case, the hearing on [September 4, 2001] shall proceed as scheduled." Despite this warning, however, Senior State Prosecutor Bagabuyo did not appear for the prosecution on the September 4, 2001 hearing set by the trial court and the court only received a call from the secretary of said Senior State Prosecutor that the latter had his tooth extracted and would not be in a position to appear at the hearing. What made the manner of postponement worse was that Atty. Galimpin, the private prosecutor, informed the trial court that he saw Senior State Prosecutor Bagabuyo at the Office of the Clerk of Court, which is located at the first floor of the same building where the trial court sits.

Petitioner's reliance on Section 3(f) of Rule 119 is also misplaced as nowhere in the Orders granting continuance

did respondent Judge set forth that his order was based on findings that "the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial," as required under the law and the Rules of Court. To the contrary, the successive continuances granted by the trial court were compelled by the repeated absence of the public prosecutor or his refusal to proceed with the pre-trial and trial. The orders of the court contained repeated warnings that "[i]n the event that there will again be no appearance from Prosecutor Bagabuyo at the next scheduled hearing, the Legal Department of the COMELEC shall then make its appearance and take over the prosecution of this case." In its September 4, 2001 Order denying private respondents' oral motions to dismiss and giving the prosecution another chance to prosecute the cases by resetting the hearings to October 3 and 15, 2001, the trial court gave an admonition that the prosecution's failure to appear will be dealt with accordingly. Even when Senior State Prosecutor Bagabuyo appeared on October 3, 2001, the prosecution refused to proceed with the pre-trial and trial of the cases on the ground of the pendency of its petition with the CA. This, despite the fact that as early as August 16, 2001, the CA has dismissed CA-G.R. No. SP. No. 65966 which raised the issue of the validity of the private respondents' arraignment. As the trial court held:

The Court notes the petition for certiorari that Prosecutor Bagabuyo filed before the Court of Appeals docketed as CA-GR SP No. 65966 questioning the propriety of [the] June 15, 2001 Order of this Court and the Honorable Court of Appeals dated August 16, 2001 dismissed the petition outright. It also notes the resolution of the said Court dated October 9, 2001 denying the Prosecution's Motion for Reconsideration. Given these resolution, the Prosecution had no option under the circumstances but to proceed to pre-trial and trial during the October 15, 2001 hearing. All and still, the Prosecution stood on its ground not to prosecute this case and would only have itself to blame for the dismissal of this case.[64]

Petitioner also contends in the instant petition that respondent Judge's decision declaring the 321 Informations against private respondents for violation of Section 27(b) of R.A. No. 6646 as only one Information, the arraignment of the accused to only one information and his Decision dismissing the "case" against private respondents give rise to the following questions: 1) Which one of the 321 Informations did private respondents plead "not guilty" to? and 2) What case did Judge Hernandez dismiss when he stated that "this case is dismissed"?

The contention is unavailing. Contrary to petitioner's claim, a reading of the June 15, 2001 Order of the trial court during arraignment leaves no room for vagueness. It states:

Pursuant to the Order of March 2, 2001, the three hundred [twenty-one] (321) informations filed against both accused were treated to be only a single offense for which they should be made answerable. It is for this reason that both accused were arraigned and entered their plea to a single or one information only.[65]

What this argument reflects is petitioner's stubborn insistence not to recognize the trial court's interlocutory Orders dated March 2, 2001 and June 15, 2001, granting private respondent Llorente's motion to consider all the 321 informations filed against each of them as constituting only one offense and declaring the arraignment of private respondents to only one information, respectively. Notably, petitioner's Motion for Reconsideration of this Order on March 25, 2001 has been denied by the trial court and was denied again when re-raised by petitioner with the trial court in its Omnibus Motion to Postpone and Motion for Reconsideration on June 27, 2001. On appeal to the CA raising said issue, the CA dismissed the appeal for the non-participation of the OSG and the CA likewise denied the motion for reconsideration it filed. Petitioner filed a petition with this Court raising the same issue and was likewise denied on January 30, 2002 for having been filed out of time. We likewise denied its Motion for Reconsideration on April 24, 2002. Hence petitioner can no longer raise the same issue in this petition. In *Zarate v. Director of Lands*,[66] we held that:

A well-known legal principle is that when an appellate court has once declared the law in a case, such declaration continues to be the law of that case even on a subsequent appeal. The rule made by an appellate

court, while it may be reversed in other cases, cannot be departed from in subsequent proceedings in the same case. The "Law of the Case," as applied to a former decision of an appellate court, merely expresses the practice of the courts in refusing to reopen what has been decided. Such a rule is "necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal." Again, the rule is necessary as a matter of policy in order to end litigation. "There would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions, or speculate of chances from changes in its members."

Petitioner's contention that the prosecution was clearly deprived of its day in court when it was not afforded the right to be present during the private respondents' arraignment and to proceed to trial cannot stand scrutiny. Again, the issue of the validity of the arraignment of the private respondents without the presence of Senior State Prosecutor Bagabuyo has already been established with finality in the prosecution's previous appeal with the CA in CA-G.R. SP. No. 65966 and with this Court in G.R. No. 150317 and, thus, constitutes the law of the case between the parties. Petitioner cannot re-raise said issue in this petition. Moreover, petitioner's failure to proceed to trial, as clearly shown by the events that transpired in the trial court, was due to its own fault.

In order that a judgment or order of acquittal may be successfully challenged in a petition for certiorari under Rule 65, the petitioner must prove that the trial court, in acquitting the accused, committed not merely errors of judgment, but grave abuse of discretion amounting to lack or excess of jurisdiction.[67] No such grave abuse of discretion can be attributed to respondent Judge in dismissing the instant cases for the denial of private respondents' right to speedy trial.

A last note. The first and the foremost state principle announced in our Constitution is that "the Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." [68] Our people express their mighty sovereignty mainly thru the election ballot where they decide, free from any fetter, who will represent them in government. In a representative government, the choice by the people of who will be their voice is nothing less than sacred, hence, its desecration is unpardonable. Regrettably, the prosecutor failed in vindicating this constitutional principle whose wisdom has not been diminished by the erosions of time. The lack of zealousness on the part of the prosecution to prove that the senatorial elections held in May 1995 was marred by the condemnable practice of "dagdag-bawas" which led to the dismissal of the criminal charges against the private respondents cannot but be lamented. The inexplicable failure has left this Court no alternative except to affirm the dismissal of said charges for the constitutional right of the accused to speedy trial cannot be held hostage by the disinterest and mistakes of the prosecution in discharging its duty.

IN VIEW WHEREOF, the petition is denied. The Joint Decision dated July 4, 2002 of the Court of Appeals in CA-G.R. SP Nos. 68922 and 69703 is affirmed.

No cost.

SO ORDERED.

Sandoval-Gutierrez, Azcuna and Garcia, JJ., concur. Corona, J., on leave

[1] Dated July 4, 2002; Rollo, pp. 32-46.

[2] Dated November 23, 2001; Id. at 82-92.

[3] Section 27. Election Offenses.- In addition to the prohibited acts and election offenses enumerated in Sections 261 and 262 of Batas Pambansa Blg. 881, as amended, the following shall be guilty of an election offense: x x x

b) Any member of the board of election inspector or board of canvassers who tampers, increases, or decreases the votes received by a candidate in any election or any member of the board, who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes.

[4] *Pimentel v. COMELEC*, G.R. No. 133509, February 9, 2000, 325 SCRA 196, 209.

[5] CA-G.R. SP No. 69703 Rollo, pp. 64-65.

[6] Order dated August 31, 2000; *Id.* at 67.

[7] *Id.* at 71.

[8] *Id.* at 72.

[9] It appears that prior to Senior State Prosecutor Bagabuyo's appearance, it was Jose Balbuena, Director IV of the COMELEC's Law Department, who acted as government prosecutor. On September 19, 2000, Balbuena filed with Branch 158 of the RTC of Pasig City a Motion to Withdraw as government prosecutor in Crim. Case Nos. 118848-91 and 118823-31. In his stead, Senior State Prosecutor Bagabuyo was deputized as the sole prosecutor for the so-called "dagdag bawas" cases in accordance with COMELEC Resolution No. 3233 dated September 14, 2000. Rollo, pp. 57-58, 61-63.

[10] Dated September 25, 2000; CA-G.R. SP No. 69703 Rollo, pp. 76-81.

[11] *Id.* at 84-101.

[12] *Id.* at 103-113.

[13] Rollo, p. 56.

[14] *Id.* at 55-56.

[15] CA-G.R. SP No. 69703 Rollo, pp. 129-149.

[16] *Id.* at 151-159.

[17] *Id.* at 196-206.

[18] Rollo, pp. 65-74.

[19] CA-G.R. SP No. 69703 Rollo, p. 62.

[20] Rollo, pp. 65-70.

[21] CA-G.R. SP No. 69703 Rollo, p. 216.

[22] *Id.* at 231.

[23] Rollo, pp. 163-164.

[24] *Id.* at 75.

[25] *Id.* at 77-79.

[26] Resolution dated October 9, 2001; *Id.* at 80.

[27] CA-G.R. SP No. 69703 Rollo, pp. 233-320.

[28] SC Resolution (Third Division) dated January 30, 2002 in *People v. Salayon and Llorente*, G.R. No. 150317.

- [29] SC Resolution (Third Division) dated April 24, 2002 in *People v. Salayon and Llorente*, G.R. No. 150317.
- [30] Order dated November 23, 2001; Rollo, pp. 89-90.
- [31] CA-G.R. SP No. 69703 Rollo, p. 330.
- [32] Rollo, pp. 165-172.
- [33] CA-G.R. SP No. 69703 Rollo, pp. 614-633.
- [34] *Id.* at 331.
- [35] Rollo, p. 91.
- [36] *Id.* at 185-236.
- [37] *Id.* at 235-236.
- [38] CA-G.R. SP No. 69703 Rollo, p. 332.
- [39] CA-G.R. SP No. 68922 Rollo, p. 8.
- [40] *Id.* at 8-30.
- [41] *Id.* at 15.
- [42] See notation, CA-G.R. SP No. 69703 Rollo, p. 312.
- [43] Rollo, p. 46.
- [44] Citing *Acebedo v. Sarmiento*, No. L-28025, December 16, 1970, 36 SCRA 247.
- [45] 97 Phil. 28 (1955).
- [46] Rollo, p. 19.
- [47] G.R. No. 127444, September 13, 2000, 340 SCRA 207.
- [48] See *People v. Velasco*, *supra*, p. 238.
- [49] See *Heirs of Tito Rillorta v. Firme*, L-54904, January 29, 1988, 157 SCRA 518, 523.
- [50] *People v. CA*, G.R. No. 132396, September 23, 2002, 389 SCRA 461, 476.
- [51] See *People v. Tampal*, G.R. No. 102485, May 22, 1995, 244 SCRA 202; *Philippine Savings Bank v. Spouses Bermoy*, G.R. No. 151912, September 26, 2005, 471 SCRA 94, 107, citing *People v. Bans*, G.R. No. 104147, 8 December 1994, 239 SCRA 48; *People v. Declaro*, G.R. No. 64362, February 9, 1989, 170 SCRA 142; *People v. Quizada*, L-61079-81, April 15, 1988, 160 SCRA 516.
- [52] See *Lagunilla v. Reyes*, 111 Phil. 1020 (1961); *Regalado*, Remedial Law Compendium Vol. II (2001), p. 494; *Agpalo*, Handbook on Criminal Procedure (2001), p. 396.
- [53] See *Regalado*, Remedial Law Compendium Vol. II (2001), p. 503.
- [54] Section 1, Rule 65 of the Revised Rules of Court.
- [55] *Angeles v. Secretary of Justice*, G.R. No. 142612, July 29, 2005, 465 SCRA 106, 113-114 (citations omitted).

[56] Section 14(2), Article III of the 1987 Constitution provides that the accused "shall enjoy the right x x x to have a speedy, impartial, and public trial." Section 16, Article III of the Constitution likewise states that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies."

[57] Section 17 of R.A. No. 8493; Section 15, SC Circular No. 38-98; Section 10, Rule 119, 2000 Revised Rules of Criminal Procedure.

[58] *Solar Team Entertainment, Inc. v. People*, G.R. No. 140863, August 22, 2000, 338 SCRA 511, 520, citing Joaquin G. Bernas, *The Constitution of the Republic of the Philippines, A Commentary*, Vol. I (1987), p. 421; See also *Caballes v. CA*, G.R. No. 163108, February 23, 2005, 452 SCRA 312, 332, citing *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004, 442 SCRA 294.

[59] *Supra*.

[60] *Rollo*, pp. 89-90.

[61] Citing *Acebedo v. Sarmiento*, No. L-28025, December 16, 1970, 36 SCRA 247.

[62] Citing *People v. Abaño*, 97 Phil. 28 (1955).

[63] *Rollo*, pp. 42-43.

[64] *Id.* at 90.

[65] *Id.* at 64.

[66] 39 Phil. 747, 749-750 (1919), as cited in *Padillo v. CA*, G.R. No. 119707, November 29, 2001, 371 SCRA 27, 41.

[67] *People v. CA*, G.R. No. 128986, June 12, 1999, 308 SCRA 687, 699 (1999).

[68] Section 1, Art. 11, 1987 Constitution.

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