

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JUDGE GIBSON A. ARAULA, COURT OF FIRST INSTANCE OF SOUTHERN LEYTE, SAN JUAN BRANCH II; CARLITO D. SAMON, DIOSDADO S. TAMBULE, DOMI...

G.R. Nos. 56695-98. November 15, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the dismissal of four criminal cases on the ground that the accused were denied a speedy trial because the prosecution had delayed the presentation of its evidence.

Criminal Cases Nos. 510 and 511.— Fiscal Mamerto S. Daclan, Jr. filed on July 12, 1978 against Lilia Ochabillo and Teresa de la Peña Criminal Cases Nos. 510 and 511 for grave oral defamation and grave threats, respectively. On August 30, 1978, they were arraigned and pleaded not guilty. The joint trial scheduled on November 10, 1978 was reset to February 14, 1979 due to the illness of the offended party.

That scheduled trial was *motu proprio* cancelled by the trial court. It reset the hearing on July 20, 1979. That was cancelled and the hearing was transferred to August 28, 1979.

As the accused could not be contacted because they were allegedly in Manila (this allegation was denied by respondent judge), the two cases were scheduled for trial on January 29, 1980. That hearing was cancelled and reset on June 17, 1980 because the counsel for the accused asked that he be allowed to file a motion to dismiss. The June 17 hearing was cancelled at the instance of the accused.

The accused filed their motion to quash on August 12, 1980. It was denied by the trial court. The two cases were then scheduled for trial on December 18, 1980. On that date the trial fiscal did not appear. The private prosecutor was present. The counsel for the two accused manifested that he was ready for trial. He invoked the constitutional right of the accused to a speedy trial.

Inasmuch as according to Judge Gibson A. Araula the private prosecutor had no personality to prosecute the two cases in the fiscal's absence, he dismissed the two cases. The motion for the reconsideration of the dismissal order was denied in the trial court's orders dated February 26, 1981 (pp. 19, 29-30, Rollo).

Criminal Case No. 630.— Fiscal Daclan filed on October 19, 1979 (not 1976) an information for attempted rape against Domingo Naol in the San Juan Branch of the Court of First Instance of Leyte. He pleaded not guilty at his arraignment. The hearings scheduled on December 18, 1979 and February 19, 1980 were cancelled at the instance of the accused. The hearings scheduled on March 31 and July 1 and 16, 1980 were postponed for nonappearance of the accused and his counsel.

The hearing scheduled on November 4, 1980 was reset on December 17, 1980 upon motion of Provincial Fiscal Concepcion L. Gonzales because her assistants had been removed and she was the only fiscal reappointed in the

reorganization of the prosecution service.

On December 17, 1980, no fiscal appeared at the hearing. Judge Araula dismissed the case on the ground that the accused was entitled to a speedy trial. The motion for the reconsideration of that dismissal order was denied in the order dated February 26, 1981 (pp. 18, 28, Rollo).

Criminal Case No. 658.— Fiscal Daclan filed on May 27, 1980 against Carlito D. Samon and Diosdado S. Tambule an information for arson in the Court of First Instance of Southern Leyte.

The next day they pleaded not guilty upon their arraignment. The hearings scheduled on July 22 and September 16 were cancelled at the instance of the accused. The case was set for hearing on October 31, 1980.

The provincial fiscal, who, as already stated, was the only one reappointed upon the reorganization of the prosecution service, asked for the cancellation of the October 31 hearing. The case was reset on December 17, 1980. On that day, the fiscal did not appear.

Judge Araula dismissed the case after the counsel for the accused manifested that he was ready for trial. Judge Araula noted that there was lack of interest on the part of the prosecution and that the accused were entitled to a speedy trial. The judge in his order of February 25, 1981 denied the prosecution's motion for the reconsideration of the order of dismissal (pp. 17 and 27, Rollo).

It should be noted that the motions for reconsideration in the said four criminal cases were filed by Pedro Felicen, Jr., the acting assistant provincial fiscal detailed in San Juan. He claimed that he was under medical treatment for cough, intermittent high fever and chest pain from December 2 to 19, 1980 (p. 15, Rollo). His telegraphic motion for postponement in the four cases was received in the court on December 4, 1980.

Proceedings in this Court.— On March 28, 1981, Fiscal Felicen mailed to this Court a petition for certiorari and mandamus wherein he prayed that the orders of dismissal be annulled and that the four cases be set for trial.

Judge Araula in his answer alleged that he did not postpone the trial of the four cases scheduled on December 17 and 18, 1980 because Fiscal Felicen's motion for postponement referred to the criminal cases scheduled for trial during the week ending on December 12 but not those scheduled during the week ending on December 19, 1980. The judge admitted that there was no regular fiscal assigned to his court.

The Solicitor General in his comment noted that the defendants in the four cases, disregarding the rules of fair play, took advantage of the fact that no regular fiscal had been assigned to Judge Araula's sala due to the reorganization in the prosecution service. They ignored the circumstance that Fiscal Felicen, who was temporarily detailed therein, was sick.

On February 17, 1982, we issued a resolution requiring Judge Araula to reinstate the four cases, order the rearrest of all the accused and require them to file the corresponding bail bonds for their release.

Ruling.— We hold that the trial court erred in dismissing the four cases allegedly because the accused were entitled to a speedy trial. It is very patent that the delays in the disposition of the cases were attributable to the postponements sought by the accused themselves. Their invocation on December 17 and 18, 1980 of their constitutional right to a speedy trial was unwarranted.

On the other hand, the trial court knew that the prosecution service was disrupted as a consequence of the reorganization thereof in August, 1980. It was aware that no permanent fiscal had been assigned to its sala and that the fiscal temporarily detailed therein was sick and had not reported for duty (his office was near the courtroom).

Under those circumstances, the trial court should not have acted precipitately in dismissing the said cases by reason of the fiscal's nonappearance at the hearings. This is a case where the prosecution was denied due process of law. Hence, the dismissal orders are void. The instant certiorari and mandamus proceedings instituted by the fiscal to set aside the dismissal orders would not place the accused in double jeopardy (*People vs. Judge Gomez*, L-22345, May 29, 1967, 20 SCRA 293).

WHEREFORE, the dismissal orders complained of are reversed and set aside. The trial court is directed to try the four criminal cases. No costs.

SO ORDERED.

Makasiar (Chairman), Concepcion, Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

De Castro J., is on leave.

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