

JOEL B. CAES, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT (FOURTH SPECIAL CASES DIVISION), HON. ALFREDO M. GORGONIO, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL...

G.R. Nos. 74989-90. November 06, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

We deal with a simple matter that should not detain us too long. Fittingly, we shall decide it in favor of individual liberty rather than upon rebuttable presumptions and dubious implications.

The facts are simple and mostly undisputed.

On November 21, 1981, petitioner Joel Caes was charged in two separate informations with illegal possession of firearms

and illegal possession of marijuana before the Court of First Instance of Rizal.[1] The cases were consolidated on December 10, 1981.[2]

Arraignment was originally scheduled on January 11, 1982, but was for some reason postponed.[3]

On August 31, 1982, Caes was arraigned and pleaded not guilty.[4] Trial was scheduled for October 13, 1982, but this was reset upon agreement of the parties.[5]

On November 15, 1982, the trial was again postponed for reasons that do not appear in the record.[6]

On December 20, 1982, the trial was again postponed because the prosecution witnesses were absent.[7]

On January 19, 1983, the third resetting of the case was also canceled, no reason appearing in the record.[8]

On February 21, 1983, no trial could be held again, the prosecution witnesses being absent.[9]

On March 21, 1983, the trial was reset once more, again because the prosecution witnesses were absent.[10]

On April 19, 1983, the trial of the case had not yet started. It was reset because the prosecution witnesses were again absent.[11]

On June 3, 1983, a sheriffs return informed the trial court that the prosecution witnesses, namely, Capt. Carlos Dacanay and Sgt. Bonifacio Lustado, had been personally served with subpoena to appear and testify at the hearing scheduled on June 6, 1983.[12]

On June 6, 1983, the trial was again postponed, this time because there was no trial fiscal.[13]

On July 12, 1983, trial was reset for lack of material time.[14]

On September 6, 1983, the trial was once more reset by agreement of the parties.[15]

On October 19, 1983, the trial was reset to November 14, 1983.[16]

On November 14, 1983, the prosecution moved for the provisional dismissal of the case because its witnesses had not appeared. On the same date, Judge Alfredo M. Gorgonio issued the following order:

In view of the failure of the prosecution witnesses to appear on several scheduled hearings and also for the hearing today which is an indication of lack of interest, upon motion of the trial fiscal for the provisional dismissal of these cases and with the conformity of the accused, the above-entitled cases are hereby ordered Provisionally Dismissed, with costs de officio.[17]

On January 9, 1984, a motion to revive the cases was filed by Maj. Dacanay (he had been promoted in the meantime) and Sgt. Lustado, who alleged that they could not attend the hearing scheduled on November 14, 1983, for lack of notice.[18] Copy of the motion was furnished the City Fiscal of Caloocan City but not the petitioner.

On May 18, 1984, the respondent judge issued the following order:

Acting on the "Motion for the Revival of the Case" dated December 5, 1983 filed by the complaining witnesses to which no opposition has been filed either by the Fiscal or the defense, and considering that the dismissal of these cases was only provisional, for reasons stated in the motion, the same is granted.

WHEREFORE, let these cases be set anew for hearing on June 13, 1984 at 8:30 in the morning.[19]

A motion for reconsideration filed by the petitioner dated June 7, 1984, was denied on October 9, 1984, and the revived cases were set for hearing on November 19, 1984.[20]

The petitioner questioned the judge's order on certiorari with this Court, which referred his petition to the respondent court. The petition there was dismissed for lack of merit on May 20, 1986, and reconsideration was denied on June 17, 1986.[21] Caes then came to us again.

The present petition is based on two arguments, to wit: (a) that the motion to revive the cases was invalid because it was not filed by the proper party nor was a copy served on the petitioner; and (b) the revival of the cases would place the petitioner in double jeopardy in violation of the Bill of Rights.

We sustain the petitioner on both counts.

It is axiomatic that the prosecution of a criminal case is the responsibility of the government prosecutor and must always be under his control.[22] This is true even if a private prosecutor is allowed to assist him and actually handles the examination of the witnesses and the introduction of other evidence.[23] The witnesses, even if they are the complaining witnesses, cannot act for the prosecutor in the handling of the case. Although they may ask for the filing of the case, they have no personality to move for its dismissal or revival as they are not even parties thereto nor do they represent the parties to the action. Their only function is to testify. In a criminal prosecution, the plaintiff is represented by the government prosecutor, or one acting under his authority, and by no one else.

It follows that the motion for the revival of the cases filed by prosecution witnesses (who never even testified) should have been summarily dismissed by the trial judge. The mere fact that the government prosecutor was furnished a copy of the motion and he did not interpose any objection was not enough to justify the action of these witnesses. The prosecutor should have initiated the motion himself if he thought it proper. The presumption that he approved of the motion is not enough, especially since we are dealing here with the liberty of a person who had a right at least to be notified of the move to prosecute him again. The fact that he was not so informed made the irregularity even more serious. It is curious that the motion was granted just the same, and ex parte at that and

without hearing, and the petitioner's subsequent objection was brushed aside.

On the second issue, the position of the public respondent is that double jeopardy has not attached because the case was only provisionally dismissed and it was with the conformity of the accused. The petitioner denies that he consented to the dismissal and submits that the dismissal was final notwithstanding its description.

Fittingly described as "res judicata in prison grey," the right against double jeopardy prohibits the prosecution of a person for a crime of which he has been previously acquitted or convicted. The purpose is to set the effects of the first prosecution forever at rest, assuring the accused that he shall not thereafter be subjected to the danger and anxiety of a second charge against him for the same offense.

It has been held in a long line of cases[24] that to constitute double jeopardy, there must be: (a) a valid complaint or information; (b) filed before a competent court; (c) to which the defendant had pleaded; and (d) of which he had been previously acquitted or convicted or which was dismissed or otherwise terminated without his express consent.

There is no question that the first three requisites are present in the case at bar. What we must resolve is the effect of the dismissal, which the petitioner contends finally and irrevocably terminated the two cases against him. His submission is that the dismissal was not provisional simply because it was so designated, more so since he had not expressly consented thereto.

It is settled that a case may be dismissed if the dismissal is made on motion of the accused himself or on motion of the prosecution with the express consent of the accused.[25] Such a dismissal is correctly denominated provisional. But a dismissal is not provisional even if so designated if it is shown that it was made without the express consent of the accused. This consent cannot be presumed nor may it be merely implied from the defendant's silence or his failure to object. As we have held in a number of cases, such consent must be express, so as to leave no doubt as to the defendant's conformity.[26] Otherwise, the dismissal will be regarded as final, i.e., with prejudice to the refile of the case.

There are instances in fact when the dismissal will be held to be final and to dispose of the case once and for all even if the dismissal was made on motion of the accused himself. The first is where the dismissal is based on a demurrer to the evidence filed by the accused after the prosecution has rested. Such dismissal has the effect of a judgment on the merits and operates as an acquittal. In *People v. City of Silay*,[27] for example, the trial court dismissed the case on motion of the accused on the ground of insufficiency of the prosecution evidence. The government came to this Court on certiorari, and the accused pleaded double jeopardy. Our finding was that the case should not have been dismissed because the evidence submitted by the prosecution was not insufficient. Even so, the petitioner had to be denied relief because the dismissal amounted to an acquittal on the merits which was therefore not appealable. Justice Munoz-Palma said: "However erroneous the order of the respondent Court is, and although a miscarriage of justice resulted from said order, such error cannot now be righted because of the timely plea of double jeopardy."

The other exception is where the dismissal is made, also on motion of the accused, because of the denial of his right to a speedy trial. This is in effect a failure to prosecute. Concerning this right, the ruling in the old case of *Conde v. Rivera*[28] is still valid doctrine. Here the prosecution was dismissed because the accused was made to "dance attendance on courts" and subjected to no less than eight unjustified postponements extending over a year that unduly delayed her trial. In dismissing the charges against her, Justice Malcolm declared for a unanimous Supreme Court:

On the one hand has been the petitioner, of humble station, without resources, but fortunately assisted by a persistent lawyer, while on the other hand has been the Government of the Philippine Islands which should be

the last to set an example of delay and oppression in the administration of justice. The Court is thus under a moral and legal obligation to see that these proceedings come to an end and that the accused is discharged from the custody of the law.

We lay down the legal proposition that, where a prosecuting officer, without good cause, secures postponements of the trial of a defendant against his protest beyond a reasonable period of time, as in this instance for more than a year, the accused is entitled to relief x x x.

The case at bar is not much different from *Conde*. As the record shows, the petitioner was arraigned on August 31, 1982, but was never actually tried until the cases were dismissed on November 14, 1983, following eleven postponements of the scheduled hearings, mostly because the prosecution was not prepared. The accused was never absent at these aborted hearings. He was prepared to be tried, but either the witnesses against him were not present, or the prosecutor himself was absent, or the court lacked material time. Meantime, the charges against him continued to hang over his head even as he was not given an opportunity to deny them because his trial could not be held.

Under these circumstances, *Caes* could have himself moved for the dismissal of the cases on the ground of the denial of his right to a speedy trial. This would have been in keeping with *People v. Cloribel*,^[29] where the case dragged for almost four years due to numerous postponements, mostly at the instance of the prosecution, and was finally dismissed on motion of the defendants when the prosecution failed to appear at the trial. This Court held "that the dismissal here complained of was not truly a dismissal but an acquittal. For it was entered upon the defendants' insistence on their constitutional right to speedy trial and by reason of the prosecution's failure to appear on the date of trial."

The circumstance that the dismissal of the cases against the petitioner was described by the trial judge as "provisional" did not change the nature of that dismissal. As it was based on the "lack of interest" of the prosecutor and the consequent delay in the trial of the cases, it was final and operated as an acquittal of the accused on the merits. No less importantly, there is no proof that *Caes* expressly concurred in the provisional dismissal. Implied consent, as we have repeatedly held, is not enough;

neither may it be lightly inferred from the presumption of regularity, for we are dealing here with the alleged waiver of a constitutional right. Any doubt on this matter must be resolved in favor of the accused.

We conclude that the trial judge erred in ordering the revival of the cases against the petitioner and that the respondent court also erred in affirming that order. *Caes* having been denied his constitutional right to a speedy trial, and not having expressly consented to the "provisional" dismissal of the cases against him, he was entitled to their final dismissal under the constitutional prohibition against double jeopardy.^[30]

The Court expresses its stern disapproval of the conduct in these cases of the Office of the City Prosecutor of Caloocan City which reveals at the very least a lack of conscientiousness in the discharge of its duties. The informations appear to have been filed in haste, without first insuring the necessary evidence to support them. The prosecution witnesses repeatedly failed to appear at the scheduled hearings and all the prosecution did was to perfunctorily move for a resetting, without exerting earnest efforts to secure their attendance. In the end, it moved for the "provisional" dismissal of the cases without realizing, because it had not studied the matter more carefully, that such dismissal would have the effect of barring their reinstatement. Characteristically, it was also non-committal on the motion to revive the cases filed by the prosecution witnesses only, thereby surrendering, by its own silence, its authority in conducting the prosecution.

It is possible that as a result of its inattention, the petitioner has been needlessly molested if not permanently stigmatized by the unproved charges. The other possibility, and it is certainly worse, is that a guilty person has

been allowed to escape the penalties of the law simply because he may now validly claim the protection of double jeopardy. In either event, the responsibility clearly lies with the Office of the City Prosecutor of Caloocan City for its negligence and ineptitude.

WHEREFORE, the petition is GRANTED. The challenged decision of the respondent court dated May 20, 1986, and the orders of the trial court dated May 18, 1984, and October 9, 1984, are SET ASIDE. The dismissal of Criminal Cases Nos. C-16411(81) and C-16412(81) is hereby declared as final.

Let a copy of this decision be sent to the Secretary of Justice.

SO ORDERED.

Narvasa (Chairman), Gancayco, Grino-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. II & 12.

[2] Record, p. 17.

[3] Ibid., p. 15.

[4] Rollo, p. 13.

[5] Record, p. 21.

[6] Ibid., p. 22.

[7] Id., p. 23.

[8] Id., p. 24.

[9] Id., p. 27.

[12] Id., p. 29.

[11] Id., p. 29.

[12] Id., p. 30.

[13] Id., p. 33.

[14] Id., p. 35.

[15] Id., p. 39.

[16] Id., p. 41.

[17] Rollo, p. 14.

[18] Ibid., pp. 15-16.

[19] Id., p. 17.

[20] Id., p. 20.

[21] Id., pp. 23-25; 29-30. Javellana, J., ponente, with Zosa, Mendoza and Tenzuan, JJ., concurring.

[22] Rule 110. Sec. 5. par. 1.

[23] *Herrero v. Diaz*, 75 Phil. 489.

[24] *People v. Ylagan*, 58 Phil. 851; *Mendoza v. Altneda Lopez*, 64 Phil. 820; *People v. Obsania*, 23 SCRA 1249.

[25] *People v. Ylagan*, *ibid*.

[26] *Pendatum v. Aragon*, 93 Phil. 799; *People v. Hinaut*, 105 Phil. 304; *Soils v. Agloro*, 64 SCRA 370.

[27] 74 SCRA 248.

[28] 45 Phil. 650.

[29] SCRA 805.

[30] See *People v. Obsania*, *supra*.

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