Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-32506. July 30, 1979]

DOMINADOR BERMISA, *petitioner, vs.* **THE COURT OF APPEALS, HON. VICENTE SANTIAGO, JR., and ASSISTANT PROVINCIAL FISCAL PROCULO L. VIERNES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; SPEEDY TRIAL; DISCUSSED.**— Our organic and criminal laws expressly guarantee that in all criminal prosecutions, the accused shall enjoy the right to have a speedy trial. A speedy trial "is a trial conducted according to the law of criminal procedure and the rules and regulations, free from vexatious, capricious, and oppressive delays. "It can be one which may be had as soon after indictment as the prosecution can with reasonable diligence prepare for trial. And such a trial is denied an accused person where through the vacillation and procrastination of prosecuting officers, the accused is forced to wait many months or years for trial.

2. **ID.; ID.; ID.; ID.; DOES NOT PRECLUDE THE RIGHT OF THE STATE TO PROSECUTE CRIMINALS.**— The right of an accused to a speedy trial is guaranteed to him by the Constitution but the same shall not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals. It secures rights to a defendant but it does not preclude the rights of public justice.

3. **ID.; ID.; DISMISSAL OF THE CASE; CONSENT OF THE ACCUSED THERETO CONSTITUTES A WAIVER OF HIS RIGHT NOT TO BE PROSECUTED FOR THE SAME OFFENSE.**— The consent of petitioner to the dismissal constituted a waiver of his constitutional right not to be prosecuted for the same offense.

4. **CRIMINAL LAW; PRESCRIPTION OF CRIMES; FRUSTRATED MURDER PRESCRIBES IN TWENTY YEARS; CASE AT BAR.**— The crime of Frustrated Murder, with which petitioner

Supreme Court E-Library

is charged, is punishable by *prision mayor* in its maximum period to *reclusion temporal* in its medium period. Under the rule that when the penalty fixed by law is a compound one, the highest penalty, or *reclusion temporal,* for the computation of the prescriptive period shall be made the basis (Art. 90, last paragraph of the Revised Penal Code), the crime prescribes in twenty years. The refiling of the case on September 10, 1969, therefore, was still well within the prescriptive period of twenty years, even considering the interim period of approximately four years when prescription commenced to run again from the date of provisional dismissal up to the refiling of the criminal case.

APPEARANCES OF COUNSEL

Cesar B. Mires for petitioner.
Proculo L. Viernes for respondents.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

Appeal by *certiorari*, seeking the reversal of the Decision of respondent Court of Appeals, promulgated on August 17, 1970, denying the Petition for *Certiorari* and Prohibition filed therein by petitioner and ordering the preliminary injunction theretofore issued dissolved. Additionally, the Petition assails the Order dated March 3, 1970, denying petitioner's Motion to Quash, issued by respondent Hon. Vicente Santiago, Jr., then Presiding Judge of the Court of First Instance of Pangasinan, Urdaneta Branch. Petitioner prays ultimately that Criminal Case No. U-1425, entitled "*People vs. Dominador Bermisa*" be dismissed on the ground of infringement of his constitutional right to a speedy trial.

A review of the antecedent facts discloses that, on May 8, 1963, petitioner Dominador Bermisa was charged with the crime of Frustrated Murder before the Justice of the Peace (now Municipal Court) of San Manuel, Pangasinan (Criminal Case No. 797). Having waived his right to enter into the second

Supreme Court E-Library

stage of the preliminary investigation, the Municipal Court forwarded the case to the Court of First Instance of Pangasinan, Tayug Branch (Criminal Case No. T-1062). On November 26, 1963, the corresponding Information was filed charging petitioner with the same crime of Frustrated Murder. After protracted proceedings, petitioner was arraigned on December 22, 1964, and he entered a plea of "not guilty."

On June 2, 1965, the Prosecuting Fiscal, instead of proceeding with the trial, moved for provisional dismissal on the ground that the witnesses for the prosecution had failed to appear despite notice. Considering that the case had been pending for almost two years, the trial Court in its Order, dated June 2, 1965, "dismissed (it) provisionally with the consent of the accused and his counsel, with costs *de oficio*."

On September 10, 1969, after a lapse of 4 years, 3 months and 8 days, respondent Assistant Provincial Fiscal Proculo L. Viernes, filed before the Court of First Instance of Pangasinan, Urdaneta Branch, the second Information for Frustrated Murder (Criminal Case No. U-1425), reproducing exactly the same allegations as in the first Information.

On February 18, 1970, before entering his plea to the second Information, petitioner, thru his counsel, moved to quash the same on the ground that he had been denied his constitutional right to a speedy trial, citing the ruling in *Conde vs. Rivera, et al.*, (45 Phil. 650 [1924]) and in *Kalaw vs. Apostol, et al.* (64 Phil. 852 [1937], as follows:

> "This Court has held that there is a positive remedy in cases where the constitutional right of the accused to have a speedy trial is violated. The accused, who is deprived of his fundamental right to have a speedy trial, is entitled to ask for his release, if he is restrained of his liberty, or for the final dismissal of the case pending against him."

An opposition to the Motion to Quash was filed by respondent Fiscal.

On March 3, 1970, the day set for petitioner's arraignment, respondent Judge denied the quashal in open Court and ordered

Supreme Court E-Library

the arraignment of the accused. Over his objection, petitioner entered his plea of not guilty. Trial was set for April 22 to 24, 1970. During the same proceedings, counsel for the petitioner manifested in open Court his intention to file a Motion for Reconsideration, and, in fact, requested for three days within which to file the same "because this case really affects the life and liberty of the accused and the possibility of bringing the case to the Supreme Court is being studied."[1] To this, respondent Judge replied that the Motion for Reconsideration would be denied because it had already taken the arguments of both sides into consideration.

From the aforesaid Order of respondent Judge, petitioner, alleging grave abuse of discretion amounting to excess of jurisdiction and that he had no other plain, speedy and adequate remedy in the ordinary course of law, lodged a Petition for *Certiorari* and Prohibition with Preliminary Injunction before the Court of Appeals, docketed therein as CA-G.R. No. 45077-R, entitled "*Dominador Bermisa vs. Hon. Vicente M. Santiago, Jr., et al.*" The same was given due course and a writ of Preliminary Injunction was issued upon the filing of the required bond of ₱500.00 by the petitioner.

On August 17, 1970, respondent Court of Appeals[2] rendered its Decision dismissing the Petition and dissolving the Preliminary Injunction.

The aforestated judgment, which is assailed for not being in conformity with law and established precedents, is now the subject of this Petition. After giving due course to the same, on September 11, 1970, this Court issued a temporary Restraining Order enjoining respondent Court from executing its Decision dated August 17, 1970, and restraining respondent Judge and Assistant Provincial Fiscal from proceeding with Criminal Case No. U-1425, entitled "*People vs. Dominador Bermisa.*"

---

[1] Petitioner's Brief, p. 10.

[2] Sixth Division, composed of *JJ.* Hermogenes Concepcion, Jr., Eulogio S. Serrano, *ponente*, and Lourdes P. San Diego.

Supreme Court E-Library

Three closely related errors have been assigned by petitioner, namely, that respondent Court erred:

I

"IN REFUSING TO GRANT THE PETITION FOR *CERTIORARI* AND PROHIBITION WITH PRELIMINARY INJUNCTION, CA. G.R. NO. 45077, AND TO DISMISS FINALLY CRIMINAL CASE NO. U-1425, ENTITLED *PEOPLE VS. DOMINADOR BERMISA*, FOR FRUSTRATED MURDER NOTWITHSTANDING THE VALID REASONS STATED THEREFROM, THEREBY SANCTIONING THE UNJUSTIFIED, SCANDALOUS AND LONG DELAY CAUSED BY INEXCUSABLE FAILURE AND NEGLECT OF THE RESPONDENT ASSISTANT PROVINCIAL FISCAL TO REFILE THE ALREADY DISMISSED CRIMINAL CASE NO. T-1062 IN TAYUG BRANCH WITHIN THE PERIOD OF TIME IN COMPLIANCE WITH RULES, REGULATIONS AND DECISIONS OF THIS HONORABLE SUPREME COURT;

II

"IN HOLDING THAT THE DOCTRINES LAID DOWN IN THE CASES OF *CONDE VS. RIVERA* AND *UNSON AND KALAW VS. APOSTOL, ET AL.*, (*Supra*) ARE NOT APPLICABLE IN THE CASE AT BAR;

III

"IN NOT DECLARING THE FINAL DISMISSAL OF CRIMINAL CASE NO. U-1425 — *PEOPLE VS. DOMINADOR BERMISA* PENDING IN THE COURT OF FIRST INSTANCE OF PANGASINAN, URDANETA BRANCH."

The errors raised may be consolidated into the single question of whether or not under the facts recounted, petitioner's constitutional right to a speedy trial has been violated as to warrant the final dismissal of the criminal charges against him.

Our organic and criminal laws expressly guarantee that in all criminal prosecutions, the accused shall enjoy the right to have a speedy trial. A speedy trial "is a trial conducted according to the law of criminal procedure and the rules and regulations,

Supreme Court E-Library

free from vexatious, capricious, and oppressive delays."[3] It can be one which may be had as soon after indictment as the prosecution can with reasonable diligence prepare for trial. And such a trial is denied an accused person where through the vacillation and procrastination of prosecuting officers, the accused is forced to wait many months or years for trial.[4]

A review of the facts on record constrains us to rule that the right to a speedy trial is not invocable in this case. The delay in the refiling of the case was not a delay in trial amounting to a violation of a constitutional right. There was no trial to speak of, in the legal sense, as there was no indictment, as yet.

It has been held that the right to speedy trial cannot be violated by delay between offense and indictment, though it can be violated by an inordinate delay in the return of the indictment after the arrest has been made.[5]

Where a statute requiring indictment or information within a certain period after defendant is held to answer is treated as a legislative definition of the constitutional right, the right arises when defendant is held to answer by a magistrate, and the right has been held not violated by unwarranted delay in bringing him before a magistrate following arrest.[6]

The criminal case at bar was provisionally dismissed with the consent of the accused and his counsel on June 2, 1965. Considering its nature, it was entered with a possibility of the filing of a subsequent suit. The case was refiled approximately four years thereafter, or on September 10, 1969, before another Branch of the same Court. That refiling was an act within the prerogative of the prosecution.

In the absence of any statutory provision to the contrary, there is no reason why the court may not, in the interest of justice, dismiss

---

[3] *Kalaw vs. Apostol, et al.*, 64 Phil. 852 (1937).

[4] *Conde vs. Judge, et al.*, 45 Phil. 173 (1923).

[5] 21 Am. Jur. 2d p. 283.

[6] *Ibid.*, p. 284.

Supreme Court E-Library

a criminal case provisionally, *i.e.*, without prejudice to reinstating it before the order becomes final or to the subsequent filing of a new information for the same offense.[7]

The right of an accused to a speedy trial is guaranteed to him by the Constitution but the same shall not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals.[8] It secures rights to a defendant but it does not preclude the rights of public justice.[9]

In fact, the consent of petitioner to the dismissal constituted a waiver of his constitutional right not to be prosecuted for the same offense.

> x x x where a defendant expressly consents to or move for the dismissal of the case against him, even if the court or judge states in the order that the dismissal is definite or does not say that the dismissal is without prejudice to the filing of another information, the dismissal will not be a bar to a subsequent prosecution of the defendant for the same offense.[10]

> The effect of a discharge (of a person committed on a criminal charge in case of a failure to find an indictment or file an information within a certain time) depends upon the particular statute. Under some statutes, the discharge does not prevent another indictment for the same offense, since it is considered that the effect of the discharge is merely to relieve the accused from imprisonment or from being held to bail, and not to acquit him of the crime. x x x[11]

If petitioner believed that the provisional dismissal deprived him of the right to a speedy trial, then he should have objected to the same instead of having given his consent thereto.

---

[7] *Jaca vs. Blanco*, 86 Phil. 452 (1950).

[8] 14 Am. Jur. 859.

[9] *Mercado vs. CFI, et al.*, 66 Phil. 215; *Gunabe, et al. vs. Director of Prisons*, 77 Phil. 993.

[10] *Gandicela vs. Lutero*, 88 Phil. 299 (1951).

[11] 27 Am. Jur., pp. 597-598.

Supreme Court E-Library

If the accused should deem such conditional or provisional dismissal to be unjust and prejudicial to him because he has been deprived of his right to a speedy trial, as for instance where the case has dragged on for an unreasonably long time without his fault, he could and should object to such dismissal and insist that the case be heard and decided on the merits.[12]

A contrary conclusion would run afoul of the provision on prescription of crimes, which states:

Art. 90. Prescription of Crimes — Crimes punishable by death, *reclusion perpetua* or *reclusion temporal* shall prescribe in twenty years.[13]

The crime of Frustrated Murder, with which petitioner is charged, is punishable by *prision mayor* in its maximum period to *reclusion temporal* in its medium period. Under the rule that when the penalty fixed by law is a compound one, the highest penalty, or *reclusion temporal,* for the computation of the prescriptive period shall be made the basis (Art. 90, last paragraph of the Revised Penal Code), the crime prescribes in twenty years.

The refiling of the case on September 10, 1969, therefore, was still well within the prescriptive period of twenty years, even considering the interim period of approximately four years when prescription commenced to run again from the date of provisional dismissal up to the refiling of the criminal case.

Withal, petitioner's prayer for the final dismissal on the ground that he was denied the right to a speedy trial of the criminal case against him finds no legal sanction nor doctrinal support.

WHEREFORE, the instant Petition is hereby denied for lack of merit.

Costs against petitioner.

SO ORDERED.

---

[12] *Solis vs. Agloro*, 64 SCRA 370 (1975), citing *Jaca vs. Blanco, supra.*

[13] Article 90, Revised Penal Code of the Philippines.

Supreme Court E-Library

Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

Teehankee, J. (*Chairman*), took no part.

SECOND DIVISION

[G.R. No. L-32974. July 30, 1979]

BARTOLOME ORTIZ, *petitioner, vs.* **HON. UNION C. KAYANAN, in his capacity as Judge of the Court of First Instance of Quezon, Branch IV; ELEUTERIO ZAMORA, QUIRINO COMINTAN, VICENTE FERRO, AND GREGORIO PAMISARAN,** *respondents.*

SYLLABUS

1. **CIVIL LAW; POSSESSION; POSSESSOR IN GOOD FAITH; ENTITLED TO RECEIVE THE FRUITS BEFORE POSSESSION IS LEGALLY INTERRUPTED.**— There is no question that a possessor in good faith is entitled to the fruits received before the possession is legally interrupted. Possession in good faith ceases or is legally interrupted from the moment defects in the title are made known to the possessor, by extraneous evidence or by the filing of an action in court by the true owner for the recovery of the property. Hence, all the fruits that the possessor may receive from the time he is summoned in court, or when he answers the complaint, must be delivered and paid by him to the owner or lawful possessor.

2. **ID.; ID.; ID.; RIGHT OF RETENTION, DISCUSSED.**— However, even after his good faith ceases, the possessor in fact can still retain the property, pursuant to Article 546 of the New Civil Code, until he has been fully reimbursed for all the necessary and useful expenses made by him on the property. This right of retention has been considered as one of the conglomerate