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in the amount of ₱30,000.00 as payment of support for the period from June 1976 to November 1978 or thirty (30) months at ₱1,000.00 a month in compliance with the resolution of this Court dated October 9, 1978.

In view of the foregoing, the support of ₱4,000.00 should be made to commence on March 1, 1979.

WHEREFORE, the petition for *certiorari* is hereby denied and the decision of the Court of Appeals sought to be reviewed is affirmed with the modification that the support *pendente lite* at the rate of Four Thousand Pesos (₱4,000.00) a month should commence from March 1, 1979, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-49375. February 28, 1979]

LEOPOLDO SALCEDO, *petitioner*, *vs.* **HONORABLE JUDGE FILEMON H. MENDOZA and THE PEOPLE OF THE PHILIPPINES**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ACQUITTAL; DISMISSAL OF CRIMINAL ACTION PREDICATED ON AN ACCUSED'S RIGHT TO SPEEDY TRIAL AMOUNTS TO ACQUITTAL. — The dismissal of a criminal case predicated on the right of the accused to speedy trial amounts to an acquittal on the merits which bars the subsequent prosecution of the accused for the same offense. Such dismissal is not in reality a mere dismissal although it is generally so called, but an acquittal of the defendant because of the prosecution's failure

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to prove the guilt of the defendant, and it will be a bar to another prosecution for the same offense even though it was ordered by the Court upon motion or with the express consent of the defendant, in exactly the same way as a judgment of acquittal obtained upon the defendant's motion. The defendant would be placed in jeopardy of punishment for the offense charged in the information and the annulment or setting aside of the order of dismissal would place him twice in jeopardy of punishment for the same offense. The dismissal, made unconditionally and without reservation after a plea of not guilty, is not provisional in character but one which is tantamount to acquittal that would bar further prosecution of the accused for the same offense because the prosecution failed to prove the case when the trial therefor came.

2. **ID.; ID.; ID.; ID.; DOUBLE JEOPARDY; APPLIED IN CASE AT BAR.** — A dismissal of a criminal action upon motion of the accused invoking his constitutional right to speedy trial because the prosecution failed to appear on the day of the trial after it had previously been postponed twice, has the effect of an acquittal which bars another prosecution of the accused for the same offense. This is an exception to the rule that a dismissal, upon the motion or with the express consent of the accused, will not be a bar to the subsequent prosecution of the accused for the same offense as provided for in Section 9, Rule 113 of the Rules of Court.

3. **ID.; ID.; ID.; ID.; SUBSEQUENT PROSECUTION OF CASE PLACES ACCUSED IN DANGER OF BEING PUNISHED TWICE.** — The moment the dismissal of a criminal case is predicated on the right of the accused to speedy trial, even if it is upon his own motion or express consent, such dismissal in equivalent to acquittal. And any attempt to prosecute the accused for the same offense will violate the constitutional prohibition that "no person shall be twice put in jeopardy of punishment for the same offense."

4. **ID.; ID.; ID.; ID.; REINSTATEMENT THEREOF AMOUNTS TO GRAVE ABUSE OF DISCRETION.** — The dismissal of a criminal case predicated on the right of the accused to speedy trial amounts to an acquittal on the merits which bars the subsequent prosecution of the accused for the same offense, and, therefore, an order setting aside said order of dismissal or reinstating the criminal case constitutes a grave abuse of discretion.

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APPEARANCES OF COUNSEL

Atienza Law Office for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

MAKASIAR, *J.*:

This is a petition for review on *certiorari* with preliminary injunction of the order of respondent Judge Filemon H. Mendoza, dated May 8, 1978, setting aside the order of dismissal dated March 28, 1978 issued by him in Criminal Case No. C-1061 entitled "*People of the Philippines, Plaintiff, versus Leopoldo Salcedo, Accused.*"

The record shows that on November 11, 1977, Provincial Fiscal Nestor M. Andrada of Oriental Mindoro filed a criminal information for homicide through reckless imprudence against the herein petitioner Leopoldo Salcedo, docketed as Criminal Case No. C-1061 of the Court of First Instance of Oriental Mindoro, Branch I.

Upon arraignment on December 19, 1977, petitioner entered a plea of not guilty and the case was then set for trial on the merits on January 25, 1978. When the case was called for trial on that date, Provincial Fiscal Nestor M. Andrada asked for postponement to February 22, 1978, which was granted, because the accused failed to appear. When the case was called for trial on February 22, 1978, the prosecution, through Assistant Provincial Fiscal Emmanuel S. Panaligan, once more moved for its postponement and the case was reset for trial on March 28, 1978.

On March 28, 1978, when the case was called for trial, no prosecuting fiscal appeared for the prosecution. A private prosecutor, Atty. Juan P. Adzuarra, who withdrew his appearance from the case and reserved the right to file a separate civil action, moved for its postponement in order to give the prosecution another chance because they intend to request the Ministry of

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Justice to appoint a special prosecutor to handle the case. The trial court, however, denied the said motion. Whereupon, the petitioner, through counsel, Atty. Edgardo Aceron, moved for the dismissal of the criminal case against him invoking his constitutional right to speedy trial and respondent Judge issued an order dismissing the case, the pertinent portion of which reads as follows:

"Atty. Edgardo Aceron moved that considering the fact that this is the third time that this case was postponed always at the instance of the fiscal, although the first postponement was made by the provincial fiscal, in behalf of the accused who failed to appear, the Court orders the dismissal of this case with costs *de officio*.

"Although the government is interested in the prosecution of this case, the Court must also take into consideration the interest of the accused for under the Constitution he is entitled to a speedy administration of justice, hence the dismissal of this case.

"IT IS SO ORDERED" (pp. 2-3, Annex A, Petition for *Certiorari*, pp. 14-14A, rec.).

On the same day, the prosecution, through Assistant Provincial Fiscal Arthur B. Panganiban, filed a motion to reconsider the above order (Annex B, Petition, p. 15, rec.). In an order dated March 29, 1978, the trial court denied the motion "for lack of merit, there being no assurance that the prosecuting fiscal will promptly and adequately prosecute the case" (Annex C, Petition, p. 16, rec.). His first motion for reconsideration having been denied, Assistant Provincial Fiscal Panganiban filed a second motion for reconsideration which the court set for hearing to April 20, 1978 (Annex D, Petition, p. 17, rec.).

It appears that on April 20, 1978, the trial court issued an order requiring both parties to submit within five (5) days from that date their respective pleadings (Annex E, Petition, p. 19, rec.). However, the parties failed to comply with the said order. On May 8, 1978, respondent Judge entered the order here asked to be reviewed, setting aside the order of dismissal dated March 28, 1978 and ordering that the case be set for trial on June 5, 1978, as follows:

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"Considering that both parties failed to comply with the order of this Court dated April 20, 1978 giving them five (5) days from that date to submit before the Court their respective pleadings, the *Court in the interest of justice sets aside the order of this Court dated March 28, 1978.*

"Conformably with the above, let the trial of this case be set to June 5, 1978 at 1:30 o'clock in the afternoon.

"Let the parties be notified accordingly.

"SO ORDERED" (Annex E, Petition, p. 19, emphasis supplied).

Petitioner learned for the first time about the existence of the above order on June 6, 1978, thus he filed on June 16, 1978 a motion for reconsideration of the said order alleging that the dismissal of the criminal case against him was equivalent to an acquittal and reinstatement of the same would place him twice in jeopardy for the same offense (Annex F, Petition, p. 20, rec.).

On June 20, 1978, the trial court issued an order denying petitioner's motion for reconsideration and setting the case for trial on July 20, 1978 (Annex G, Petition, p. 24, rec.). Unable to obtain reconsideration of the May 8, 1978 order, petitioner filed the present petition for *certiorari* with preliminary injunction on November 29, 1978 reiterating his contention that the dismissal of the criminal case, which was upon his motion, predicated on his constitutional right to a speedy trial, amounts to an acquittal, and therefore the reinstatement of the same criminal case against him would violate his right against double jeopardy.

In Our resolution of December 8, 1978, the Court required the respondents to comment on the petition. The Solicitor General, on behalf of the respondents, filed his comment on January 26, 1979 agreeing with the petitioner that "a reinstatement of this case would operate to violate his right against double jeopardy" (p. 4, Comment, p. 31, rec.).

The stand of the petitioner and the Solicitor General is well taken. Time and again, We have said that the dismissal of a criminal case predicated on the right of the accused to speedy

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trial, amounts to an acquittal on the merits which bars the subsequent prosecution of the accused for the same offense.

Thus, in the case of *Gandicela vs. Lutero* (88 Phil. 299, 307, May 21, 1951), We said:

"If the defendant wants to exercise his constitutional right to a speedy trial, he should ask, not for the dismissal but for the trial of the case. If the prosecution asks for the postponement of the hearing and the court believes that the hearing cannot be postponed anymore without violating the right of the accused to a speedy trial, the court shall deny the postponement and proceed with the trial and require the fiscal to present the witnesses for the prosecution; and if the fiscal does not or cannot produce his evidence and consequently fails to prove the defendant's guilt beyond reasonable doubt, the Court, upon the motion of the defendant, shall dismiss the case. *Such dismissal is not in reality a mere dismissal although it is generally so called, but an acquittal of the defendant because of the prosecution's failure to prove the guilt of the defendant, and it will be a bar to another prosecution for the same offense even though it was ordered by the Court upon motion or with the express consent of the defendant, in exactly the same way as a judgment of acquittal obtained upon the defendant's motion* (*People vs. Salico*, 84 Phil. 722)" (emphasis supplied)

And in the case of *People vs. Diaz* (94 Phil. 714, 717, March 30, 1954), wherein the prosecution failed to appear on the day of the trial, We reiterated the Gandicela doctrine stating that:

"x x x Here the prosecution was not even present on the day of the trial so as to be in a position to proceed with the presentation of evidence to prove the guilt of the accused. The case was set for hearing twice and the prosecution without asking for postponement or giving any explanation, just failed to appear. *So the dismissal of the case tho at the instance of defendant Diaz may, according to what we said in the Gandicela case, be regarded as an acquittal*" (emphasis supplied).

Likewise, in *People vs. Abaño* (97 Phil. 28, May 17, 1955), wherein the court dismissed the case upon the motion of the accused for failure of the prosecution to produce its evidence, We held that:

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"The defendant was entitled to a speedy trial. x x x The defendant was placed in jeopardy of punishment for the offense charged in the information and the annulment or setting aside of the order of dismissal would place him twice in jeopardy of punishment for the same offense."

Furthermore, in *People vs. Tacneng* (L-12082, April 30, 1959), where the Court ordered the dismissal of the case upon the motion of the accused because the prosecution was not ready for trial after several postponements, this Court held that:

"x x x when Criminal Case No. 1793 was called for hearing for the third time and the fiscal was not ready to enter into trial due to the absence of his witnesses, the herein appellees had the right to object to any further postponement and to ask for the dismissal of the case by reason of their constitutional right to a speedy trial; and if pursuant to that objection and petition for dismissal the case was dismissed, *such dismissal amounted to an acquittal of the herein appellees which can be invoked as they did, in a second prosecution for the same offense*" (emphasis supplied).

Then, in *People vs. Robles* (105 Phil. 1016, June 29, 1959), a case with a similar factual setting as that of *People vs. Tacneng*, *supra*, We ruled that:

"In the circumstances, we find no alternative than to hold that the dismissal of Criminal Case No. 11065 is not provisional in character but one which is tantamount to acquittal that would bar further prosecution of the accused for the same offense."

Later, in the 1960 case of *People vs. Labatete* (107 Phil. 697, April 27, 1960), this Court pointed out that:

"x x x where the fiscal fails to prosecute and the judge 'dismisses' the case, the termination is not real dismissal but acquittal because the prosecution failed to prove the case when the trial therefor came."

And in *Lagunilla vs. Honorable Reyes and Motas* (1 SCRA 1364, April 29, 1961), where the court dismissed the case because of the apparent lack of interest of the complainant to prosecute the case, this Court again ruled that:

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"Such dismissal made unconditionally and without reservation, after plea of not guilty, and apparently predicated on the constitutional right of the accused to a speedy trial, is, x x x, equivalent to an acquittal. And being an order of acquittal, it became final immediately after promulgation and could no longer be recalled for correction or reconsideration (*People vs. Sison*, L-11669, January 30, 1959; *Catilo vs. Abaya*, 94 Phil. 1014; 50 Off. Gaz., [6] 2477; *People vs. Yelo*, 83 Phil. 618; 46 Off. Gaz. [11th Supp.] 71), with or without good reason."

In the more recent case of *People vs. Cloribel* (11 SCRA 805, August 31, 1964) where the Court again ordered the dismissal of the case upon motion of the accused because of the failure of the prosecution to appear, WE had occasion again to reiterate Our previous rulings, thus:

"x x x the dismissal here complained of was not truly a 'dismissal' but an acquittal. For it was entered upon the defendant's insistence on their constitutional right to speedy trial and by reason of the prosecution's failure to appear on the date of trial."

In the present case, the respondent Judge dismissed the criminal case, upon the motion of the petitioner invoking his constitutional right to speedy trial because the prosecution failed to appear on the day of the trial on March 28. 1978 after it had previously been postponed twice, the first on January 25, 1978 and the second on February 22, 1978.

The effect of such dismissal is at once clear. Following the established jurisprudence, a dismissal predicated on the right of the accused to speedy trial upon his own motion or express consent, amounts to an acquittal which will bar another prosecution of the accused for the same offense. This is an exception to the rule that a dismissal, upon the motion or with the express consent of the accused, will not be a bar to the subsequent prosecution of the accused for the same offense as provided for in Section 9, Rule 117 of the Rules of Court. The moment the dismissal of a criminal case is predicated on the right of the accused to speedy trial, even if it is upon his own motion or express consent, such dismissal is equivalent to acquittal. And any attempt to prosecute the accused for the

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same offense will violate the constitutional prohibition that "no person shall be twice put in jeopardy of punishment for the same offense" (New Constitution, Article IV, Sec. 22).

The setting aside by the respondent Judge on May 8, 1978 of the order of dismissal of March 28, 1978 and thereby reviving or reinstating Criminal Case No. C-1061 places the petitioner twice in jeopardy for the same offense. The respondent Judge therefore committed a grave abuse of discretion in issuing the order of May 8, 1978 setting aside the order of dismissal issued on March 28, 1978.

WHEREFORE, THE PETITION IS HEREBY GRANTED AND THE CHALLENGED ORDER DATED MAY 8, 1978 IS HEREBY SET ASIDE AS NULL AND VOID NO COSTS.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero, De Castro, and *Melencio Herrera, JJ.*, concur.