



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ATTY. SEGUNDO B. G.R. No. 205952
BONSUBRE, JR.,

Petitioner, Present:

- versus -

ERWIN YERRO, ERICO
YERRO and RITCHIE
YERRO,

Respondents.

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

FEB 11 2015

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated November 24, 2011 and the Resolution³ dated August 15, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 01102 which affirmed the Order⁴ dated August 3, 2005 of the Regional Trial Court of Cebu City, Branch 6 (RTC) in Crim. Case No. CBU-51009 denying due course to petitioner Atty. Segundo B. Bonsubre, Jr.'s (petitioner) notice of appeal but only insofar as the said case's criminal aspect was concerned.

¹ *Rollo*, pp. 2-13.

² Id. at 18-26. Penned by Acting Executive Justice Pampio A. Abarintos with Associate Justices Ramon Paul L. Hernando and Nina G. Antonio-Valenzuela concurring.

³ Id. at 27-28. Penned by Executive Justice Pampio A. Abarintos with Associate Justices Ramon Paul L. Hernando and Pamela Ann Abella Maxino concurring.

⁴ CA *rollo*, pp. 12-13. Penned by Presiding Judge Anacleto L. Caminade.

N

The Facts

This case stemmed from a criminal complaint⁵ for *estafa* filed by petitioner against respondents Erwin Yerro, Erico Yerro, and Ritchie Yerro (respondents) before the RTC, docketed as Crim. Case No. CBU-51009.⁶

In the course of the proceedings, the counsel on record, private prosecutor Atty. Norberto Luna, Jr.⁷ (Atty. Luna), manifested that there was an on-going settlement between petitioner and respondents, and that they would file the necessary motion relative thereto.⁸ Thus, in an Order⁹ dated September 12, 2000, the prosecution was given 10 days from said date to submit such motion and directed the prosecution to furnish the accused's (*i.e.*, respondents') counsel a copy of the same for their comment; after which, the case would be deemed submitted for resolution.¹⁰

Although a Compromise Agreement¹¹ was reached between petitioner and respondents relative to the civil aspect of the case, the prosecution failed to furnish the RTC a copy of the same and file the necessary motion as manifested. **As a result, the RTC, in an Order¹² dated September 18, 2001 (September 18, 2001 Dismissal Order), dismissed the case for failure of the prosecution to comply with the court's directive, as well as to take any further step to prosecute the case, in view of the accused's (*i.e.*, respondents') constitutional right to speedy trial.**¹³

On **June 15, 2004**, *or more than 2 years from the issuance of the September 18, 2001 Dismissal Order*, petitioner, through a new collaborating counsel, Atty. Bernarditto M. Malabago (Atty. Malabago), filed a motion for reconsideration,¹⁴ claiming that he learned of the September 18, 2001 Dismissal Order only on June 7, 2004, and that he believed in good faith that the case was merely archived in accordance with the terms of the Compromise Agreement.¹⁵ Several hearings were conducted on petitioner's pending motions, including an amended motion for reconsideration and second amended motion for reconsideration.¹⁶

⁵ Not attached to the records of the case.

⁶ See *rollo*, pp. 18-19.

⁷ See CA *rollo*, p. 36.

⁸ *Rollo*, p. 4.

⁹ CA *rollo*, p. 34. Penned by Pairing Judge Ireneo Lee Gako, Jr.

¹⁰ Id. See also *rollo*, p. 4.

¹¹ CA *rollo*, pp.17-18.

¹² Id. at 35.

¹³ Id.

¹⁴ See Formal Entry of Appearance with Motion for Reconsideration dated June 11, 2004; id. at 36-39.

¹⁵ Id. at 36-37. See also *rollo*, p. 5.

¹⁶ *Rollo*, p. 20.

The RTC Ruling

In an Order¹⁷ dated April 4, 2005, the RTC denied petitioner's motions, holding that the dismissal, which was **grounded on failure to prosecute, had long become final and executory** and thus can no longer be the subject of a motion for reconsideration. On account thereof, the court already lost jurisdiction over the case. Nevertheless, the RTC held that an independent civil action may be instituted by the petitioner to collect the amount stipulated under the Compromise Agreement.¹⁸ Dissatisfied, petitioner filed a notice of appeal.¹⁹

In an Order²⁰ dated August 3, 2005, the RTC denied due course to the appeal relative to the criminal aspect of the case since the dismissal was grounded on the accused's (*i.e.*, respondents') right to speedy trial, but gave due course to the notice of appeal with respect to the case's civil aspect, to wit:

It appears that the notice of appeal was filed within the reglementary period of fifteen (15) days. **The Court, however, could not give due course to the notice of appeal in so far as the criminal aspect is concerned because the [September 18, 2001 Dismissal Order] is very clear that the dismissal is grounded on the right of accused [i.e., respondents] to speedy trial.** This ground is in effect adjudication of the merits of the criminal aspect. **However, the Court will give due course to the notice of appeal in so far as the civil aspect is concerned.** As stated, the same was filed within the period to perfect an appeal.

Wherefore, the Court gives due course to the notice of appeal in so far as the civil aspect is concerned provided, however, that appellant, private complainant in this case, is directed to pay the docketing fee and within five (5) days from notice and denies due course to the notice of appeal in so far as the criminal aspect is concerned.²¹ (Emphases and underscoring supplied)

Undeterred, petitioner filed a petition for *certiorari*²² before the CA, averring in the main that the RTC acted with grave abuse of discretion in rendering the August 3, 2005 Order denying petitioner's notice of appeal with respect to the criminal aspect of the case.²³ In particular, he claimed that respondents were estopped from invoking their constitutional right to speedy trial given that they had already mutually agreed under the

¹⁷ CA *rollo*, pp. 14-16.

¹⁸ Id. at 15.

¹⁹ Not attached to the records of the case. See *rollo*, p. 21.

²⁰ CA *rollo*, pp. 12-13.

²¹ Id. at 12.

²² Id. at 2-10.

²³ See id. at 5-6.

Compromise Agreement to provisionally dismiss the case until its full settlement.²⁴

The CA Ruling

In a Decision²⁵ dated November 24, 2011, the CA dismissed the *certiorari* petition.²⁶

It confined its ruling to the propriety of the denial of due course to petitioner's notice of appeal, holding that the dismissal of the criminal case for failure to prosecute had long attained finality and thus can no longer be the subject of review.²⁷ The CA held that the lapse of two (2) years and nine (9) months from the time the case was dismissed on September 18, 2001 was enough for the RTC to deny due course to the appeal.²⁸ In this relation, it did not give merit to petitioner's claim that he was unaware of the dismissal, observing that it was his duty to be more vigilant in safeguarding his rights given that he himself is a lawyer, and adding too that he cannot escape the consequences of his inaction when he failed to submit the Compromise Agreement for the court's approval.²⁹ The CA further stated that since the remedy of appeal was lost through petitioner's own fault, the latter cannot seek refuge in a *certiorari* petition, which is not a substitute for a lost appeal.³⁰

Petitioner sought reconsideration³¹ but was once more denied in a Resolution³² dated August 15, 2012, hence, the instant petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA erred in upholding the RTC's ruling denying due course to petitioner's notice of appeal with respect to the criminal aspect of the case.

The Court's Ruling

The petition lacks merit.

²⁴ See *id.* at 7-8.

²⁵ *Rollo*, pp. 18-26.

²⁶ *Id.* at 25.

²⁷ *Id.* at 22.

²⁸ *Id.* at 23.

²⁹ *Id.* at 24.

³⁰ *Id.* at 25.

³¹ See Motion for Reconsideration dated December 28, 2011; CA *rollo*, pp. 124-134.

³² *Rollo*, pp. 27-28.

Essentially, petitioner's course of action is anchored on the propriety of the September 18, 2001 Dismissal Order that was grounded on failure to prosecute in consideration of respondents' right to speedy trial. Petitioner asserts that the same was issued without due process as respondents did not move for the case's dismissal and that no violation of the right to speedy trial was committed, adding that the prosecution was very much interested in prosecuting the case but the proceedings were merely held in abeyance in view of the impending settlement between the parties.³³ He also argues that the above-mentioned Order has not attained finality since, in fact, it was his counsel, Atty. Malabago, who went to the court and discovered its existence.³⁴ Thus, he posits that the date of discovery of said counsel should be deemed as the date of receipt.

The submissions have no merit.

At the outset, it must be borne in mind that a **dismissal grounded on the denial of the right of the accused to speedy trial has the effect of acquittal that would bar the further prosecution of the accused for the same offense.** In *People v. Judge Hernandez*,³⁵ the Court explained the parameters of this rule:

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. 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. This is so as while it is true that double jeopardy will attach in case the prosecution appeals a [D]ecision 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.

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. 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.** x x x.³⁶ (Emphasis and underscoring supplied)

³³ *Rollo*, pp. 7-8.

³⁴ *Id.* at 9-10.

³⁵ 531 Phil. 289 (2006).

³⁶ *Id.* at 305-306.

Perforce, the September 18, 2001 Dismissal Order grounded on the denial of respondents' right to speedy trial is a final order that is not appealable³⁷ and is immediately executory.³⁸

While the remedy of *certiorari* may be availed of in order to challenge the judgment or order of acquittal, **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.**³⁹ Under its classic formulation, grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.⁴⁰

In this case, no such grave abuse of discretion can be attributed to the RTC in dismissing the case for denial of the respondents' right to speedy trial. Aside from the lapse of **two (2) years and nine (9) months** from the time the case was dismissed to the time petitioner sought for a reconsideration of the same, it is also not disputed that it was petitioner who caused the inordinate delay. As culled from the records, it was the private prosecutor who sought for a temporary suspension of the case during the September 12, 2000 hearing with a manifestation that they would file the necessary motion relative to the settlement. Despite having executed a Compromise Agreement – which this Court notes was not notarized – petitioner and his counsel failed to furnish the RTC a copy of the same or comply with the directive to submit the necessary motion. Even when the respondents reneged on their obligation under the Compromise Agreement having failed to pay not only the first two (2) installments, which was already a ground to revive the criminal case under paragraph 3 (d) thereof,⁴¹ but rather all 36 monthly installments, still, petitioner and his counsel failed to lift a finger to prosecute the case.⁴² Such inordinate and unjustified delay

³⁷ *People v. Asis*, G.R. No. 173089, August 25, 2010, 629 SCRA 250, 256.

³⁸ See *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014.

³⁹ *People v. Judge Hernandez*, supra note 35, at 317.

⁴⁰ *Julie's Franchise Corp. v. Hon. Judge Ruiz*, 614 Phil. 108, 116 (2009).

⁴¹ Paragraph 3 (d) of the Compromise Agreement states:

3. That the FIRST PARTY in order to buy peace will obligate themselves to perform the following to wit:

x x x x

d) The remaining obligation of ₱150,000.00 shall be paid according to the terms and conditions of the promissory note to be executed by the parties therein;

x x x x (CA rollo, p. 17.)

⁴² See rollo, p. 55.

on the part of the prosecution clearly prejudiced the respondents. Hence, there can be no gainsaying that their right to speedy trial had been violated.

Petitioner's contention that the September 18, 2001 Dismissal Order should have been reconsidered as it was issued in violation of his right to due process is untenable. In a plethora of cases, it has been held that the due process requirement is met simply when there is an opportunity to be heard.⁴³ In this case, petitioner cannot claim that he was not given an opportunity to be heard considering that it was the prosecution's silence and inaction that led to the eventual dismissal of the case for failure to prosecute.

Similarly, petitioner's theory anent the belated discovery of the September 18, 2001 Dismissal Order by the collaborating counsel, Atty. Malabago, does not deserve any credence, given that he admitted that a copy of the said Order was cared-off to his first counsel, Atty. Luna, but was not actually received by him because of his change of address. This, to the Court's mind, constitutes negligence as the said lawyer should have informed the RTC of any change of address so that court processes could be properly served at such new address. In this light, and absent any of the limited exceptions to the rule, the negligence of counsel binds the client.⁴⁴ Also, on another significant point, while counsel is expected to amply protect the interest of his client, the latter cannot just sit back and await the outcome of the case.⁴⁵ As correctly pointed out by the CA, petitioner should have been vigilant in safeguarding his rights, considering that he himself is a lawyer. He should have taken the initiative of making the proper inquiries from his counsel or the trial court as to the status of his case. Failing in which, petitioner only has himself to blame.

Finally, petitioner's asseveration that there was no violation of the respondents' right to speedy trial as both parties mutually agreed to provisionally dismiss the case until full settlement of the obligation under paragraph 5⁴⁶ of the Compromise Agreement likewise does not persuade.

⁴³ *Allied Banking Corp. v. CA*, 461 Phil. 517, 539 (2003); *Adiong v. CA*, 422 Phil. 713, 721 (2001); *Cañete Jr. v. National Labor Relations Commission*, 374 Phil. 272, 281 (1999).

⁴⁴ "[W]hile it is settled that negligence of counsel binds the client, this rule is not without exception. In cases where reckless or gross negligence of counsel x x x deprives the client of due process of law, or when the application would result in outright deprivation of the client's liberty or property, or where the interest of justice so requires, relief is accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence." (*Multi-Trans Agency Phils. Inc. v. Oriental Assurance Corp.*, 608 Phil. 478, 492-493 [2009].)

⁴⁵ *Air Phils. Corp. v. Int'l. Business Aviation Services Phils., Inc.*, 481 Phil. 366, 384 (2004).

⁴⁶ Paragraph 5 of the Compromise Agreement states:

5) That the dismissal of the above entitled case will only be provisional (with the consent of the accused) until such time that full payment of the total obligation of ₱362,000.00 be made which the SECOND PARTY will finally execute an affidavit of desistance for the dismissal of the case. (CA rollo, p. 18)

The provisional dismissal of a criminal case, which is a dismissal without prejudice to the reinstatement thereof,⁴⁷ is governed by Section 8, Rule 117 of the Rules of Court which reads:

SEC. 8. *Provisional dismissal.* – A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

Under the afore-cited provision, a case is provisionally dismissed if the following requisites concur:

- (a) The prosecution with the express conformity of the accused, or the accused, moves for a provisional dismissal (*sin perjuicio*) of his case; or both the prosecution and the accused move for its provisional dismissal;
- (b) The offended party is notified of the motion for a provisional dismissal of the case;
- (c) The court issues an Order granting the motion and dismissing the case provisionally; and
- (d) The public prosecutor is served with a copy of the Order of provisional dismissal of the case.⁴⁸

In the case at bar, none of the foregoing requisites were met. While it may appear that the respondents consented to a provisional dismissal of the case under the Compromise Agreement, the prosecution neither presented the same for the court's approval nor filed the required motion to that effect such that no order was in fact issued granting the provisional dismissal of the case. Hence, petitioner's assertion that the respondents are estopped from invoking their right to speedy trial is without basis.

Accordingly, the September 18, 2001 Dismissal Order grounded on the denial of respondents' right to speedy trial being a final order that cannot be subject of reconsideration or an appeal, no error can be imputed against the CA in upholding the RTC Ruling denying due course to petitioner's notice of appeal relative to the criminal aspect of the case. That being said,


⁴⁷ *Condrada v. People*, 446 Phil. 635, 640 (2003).

⁴⁸ *Los Baños v. Pedro*, 604 Phil. 215, 229 (2009).

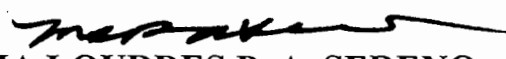
the Court reminds petitioner that nothing precludes him from preserving his interest over the case but only with respect to its civil aspect as aptly observed by the courts *a quo*.

WHEREFORE, the petition is **DENIED**. The Decision dated November 24, 2011 and the Resolution dated August 15, 2012 of the Court of Appeals in CA-G.R. SP No. 01102 are hereby **AFFIRMED**.


SO ORDERED.


ESTELA M. HERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

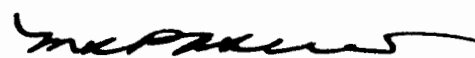

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


JOSE PORTUGAL BEREZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice