

THIRD DIVISION

[G.R. No. 187728, September 12, 2011]

**CHURCHILLE V. MARI AND THE PEOPLE OF THE PHILIPPINES,
PETITIONERS, VS. HON. ROLANDO L. GONZALES, PRESIDING
JUDGE, REGIONAL TRIAL COURT, BRANCH 39, SOGOD,
SOUTHERN LEYTE, AND PO1 RUDYARD PALOMA Y TORRES,
RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Order^[1] of the Regional Trial Court of Sogod, Southern Leyte (RTC), dated January 16, 2009, dismissing the criminal case for rape against PO1 Rudyard Paloma y Torres (private respondent), and the Resolution^[2] dated March 16, 2009, denying petitioners' motion for reconsideration, be annulled and set aside.

The records reveal the following antecedent facts.

On October 25, 2004, petitioner AAA, private complainant below, executed a sworn statement before an Investigator of the 8th Regional Office, Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG) in Tacloban City, where she stated that she was raped by herein private respondent on October 10, 2004 at her boarding house at Sogod, Southern Leyte. A preliminary investigation of the case was commenced on November 4, 2004 before the Presiding Judge of the Municipal Circuit Trial Court (MCTC) of Sogod. A warrant of arrest was issued against private respondent, so he voluntarily surrendered to the Chief of Police of Sogod on November 18, 2004 and was then incarcerated at the Sogod Municipal Jail.

On November 20, 2004, private respondent filed a Motion for Bail. Hearings on the motion commenced on December 7, 2004, but petitioner failed to appear. Only private respondent presented evidence. Thus, on March 16, 2005, the MCTC of Sogod issued an Order allowing private respondent to post bail set at P200,000.00. After posting a surety bond, private respondent was released from confinement.

Pursuant to the issuance of A.M. No. 05-8-26, divesting first-level courts of authority to conduct preliminary investigation of criminal complaints cognizable by Regional Trial Courts, records of the subject case were transmitted to the Provincial Prosecutor's Office of Southern Leyte.^[3] The Prosecutor's Office issued a Resolution dated May 26, 2008, finding probable cause against private respondent and, accordingly, an Information for Rape was filed on June 11, 2008. A warrant of arrest was immediately issued against private respondent.

On June 27, 2008, private respondent was committed to detention^[4] and, on June 30, 2008, the RTC issued an Order^[5] stating that accused had voluntarily surrendered to the Office of the Clerk of Court and arraignment was set for July 31, 2008. In the meantime, on July 3, 2008, private respondent filed a Motion to Admit Cash Bond in Lieu of Surety Bond; thus, in an Order dated July 10, 2008, the RTC cancelled the July 31, 2008 schedule for arraignment and reset the arraignment and hearing on said motion for August 20, 2008. At said scheduled date for arraignment and hearing on the motion, nobody appeared for the prosecution. Hence, the RTC issued the Order^[6] dated August 20, 2008 resetting the arraignment for October 31, 2008 and stating that:

x x x this Court hereby orders the public prosecutor x x x and/or his assistant prosecutor x x x to appear and prosecute this case on the next scheduled hearing from arraignment up to the termination of the trial of this case otherwise this Court will order the dismissal of this case for failure to prosecute or *nolle prosequi*.^[7]

On October 28, 2008, petitioner AAA, private complainant below, filed through her private counsel, a Motion for Cancellation of Hearing,^[8] manifesting that Atty. Pedro Felicen, Jr. had been granted the authority to prosecute by the Provincial Prosecutor and praying that the scheduled arraignment on October 31, 2008 be cancelled due to the pendency of private complainant's petition for transfer of venue before this Court. The authorized private prosecutor did not appear on said hearing date. The hearing on October 31, 2008 proceeded as the RTC ruled, in its Order^[9] issued on the same day, that unless restrained by a higher court, the mere pendency of a petition for transfer of venue is not sufficient reason to suspend the proceedings. Moreover, counsel for accused invoked the accused's right to a speedy trial and, thus, private respondent was arraigned in the presence of the Provincial Prosecutor who was designated by the RTC to represent the prosecution for the purpose of arraignment. Pre-trial was set for November 13, 2008. Nevertheless, said schedule for pre-trial was cancelled (per Order^[10] dated November 4, 2008) as the Presiding Judge of the RTC had to attend a PHILJA Seminar, and pre-trial was reset to November 24, 2008. On November 24, 2008, the day of the pre-trial itself, the private prosecutor again filed a Motion for Cancellation of Hearing, again using as justification the pendency of the petition for transfer of venue. The RTC issued an Order on even date, reading as follows:

During the scheduled pre-trial conference of this case, the public prosecutors of Leyte, the private prosecutor and the private complainant failed to appear despite proper notices sent [to] them. A motion for cancellation of hearing was filed by the authorized private prosecutor, Pedro Felicen, Jr. for reasons stated therein to which this Court finds to be not meritorious, hence, the same is denied. x x x the public prosecutor as well as the counsel for the accused were directed to make their oral comments on the first endorsement of the Hon. Deputy Court Administrator, regarding the motion to transfer venue of this case to any of the RTC, at Tacloban City, x x x.

x x x Thereafter, the pre trial proceeded by discussing matters concerning the amicable settlement, plea bargaining agreement, stipulation of facts, pre-marking of documentary exhibits, number of witnesses, trial dates and nature of the defense. There being no other matters to discuss on pre-trial in order to expedite the early disposition of this case, the pre-trial proper is now deemed terminated.^[11]

The said Order also scheduled the initial hearing for trial on the merits for December 12, 2008. On December 12, 2008, no one appeared for the prosecution, prompting counsel for accused private respondent to move for dismissal of the case on the ground of failure to prosecute. Private respondent's motion to dismiss was denied per Order^[12] dated December 12, 2008, and hearing was reset to January 16, 2009.

Again, on the very day of the January 16, 2009 hearing, the private prosecutor filed an Urgent Motion for Cancellation of Hearing, stating that it was only on January 14, 2009 that he was furnished a copy of the notice of the January 16, 2009 hearing and he had to attend a previously scheduled hearing for another case he was handling, set for the very same date. Thus, in the Order dated January 16, 2009, the RTC disposed, thus:

x x x Again notably absent are the private prosecutor, the two public prosecutors designated by the Department of Justice to prosecute this case as well as the private complainant herself.

A last minute urgent motion to reset was filed by the private prosecutor, but the same is denied being in violation of the three (3) day rule in filing written postponements. After hearing the arguments coming from both the public prosecutor assigned to this Court and counsel for the defense, the Court deems it proper to act on the urgency of the matter prayed for by the said counsel. Considering that the accused has been languishing in jail since June, 2008 up to the present and to allow him to stay in jail for a single minute, it is quite unreasonable and would violate his right to speedy trial.

WHEREFORE, finding the motion of the counsel for the accused to be based on grounds that are meritorious, this Court pursuant to x x x the rule on speedy trial (RA 8433) [should be "8493"] hereby orders this case dismissed for failure of the prosecution to prosecute or *nolle prosequi*.^[13]

Petitioners filed a motion for reconsideration, but the RTC denied the same per Resolution dated March 16, 2009.

Hence, the present petition for *certiorari*, alleging that public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rashly and precipitately dismissing the rape case against private respondent. Respondents counter that there was no grave abuse committed by the trial court and setting aside the dismissal of the rape case would put private respondent in double

jeopardy.

The Court finds the petition bereft of merit.

Firstly, petitioners failed to observe the doctrine on hierarchy of courts. In *Garcia v. Miro*,^[14] the Court, quoting *Vergara, Sr. v. Suelto*,^[15] ruled thus:

The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is, and should continue, to be the policy in this regard, a policy that courts and lawyers must strictly observe.**^[16] (Emphasis supplied.)

On this point alone, the petition is already dismissible. However, on several occasions, this Court found compelling reasons to relax the rule on observance on hierarchy of courts. In *Pacoy v. Cajigal*,^[17] the Court opted not to strictly apply said doctrine, since the issue involved is double jeopardy, considered to be one of the most fundamental constitutional rights of an accused. Hence, the Court also finds sufficient reason to relax the rule in this case as it also involves the issue of double jeopardy, necessitating a look into the merits of the petition.

Petitioners insist that the RTC dismissed the criminal case against private respondent too hurriedly, despite the provision in Section 10 of the Speedy Trial Act of 1998 (Republic Act No. 8493), now incorporated in Section 3, Rule 119 of the Rules of Court, to wit:

SEC. 3. *Exclusions.* - The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of **delay resulting from other proceedings concerning the accused**, including but not limited to the following:

x x x x