

SECOND DIVISION

[G.R. No. 141646, February 28, 2003]

**PABLO CONDRADA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND HON. ARNULFO C. BUGTAS, PRESIDING
JUDGE, REGIONAL TRIAL COURT OF BORONGAN, EASTERN
SAMAR, BRANCH 2, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari assailing the Resolution^[1] dated September 29, 1999 of the Regional Trial Court (RTC) of Borongan, Eastern Samar, Branch 2, which upheld the reinstatement of the criminal case for rape against petitioner Pablo Condrada, and its Resolution^[2] dated January 14, 2000 which denied petitioner's motion for reconsideration.

Petitioner was charged with rape in Criminal Case No. 10770 presently pending before the RTC of Borongan, Eastern Samar, Branch 2. When he was arraigned on February 26, 1999, petitioner pleaded not guilty to the charge against him.

On March 31, 1999, the date set by the trial court for the initial hearing, the prosecution moved that the same be postponed due to the absence of the complainant and her witnesses. The hearing was reset on April 29, 1999.

On April 29, 1999, the prosecution again moved to postpone the hearing due to the absence of the complainant and her witnesses. Petitioner objected to the motion on the ground that his right to speedy trial was being violated by such postponements. The trial court granted the prosecution's motion and reset the hearing on May 31, 1999. It also directed that the subpoenae to the complainant and her witnesses be coursed through the National Bureau of Investigation which handled the investigation of the case.

During the hearing on May 31, 1999, the prosecution requested for another postponement. Petitioner moved for at least a temporary dismissal of the case. The prosecution manifested that it would not object to a temporary dismissal. Thus, on the same date, the trial court issued an order temporarily dismissing the case.^[3]

On June 22, 1999, the prosecution filed a Motion for Reinstatement and/or Revival of Criminal Case No. 10770. Appended to said motion was the affidavit of private complainant that the subpoenae sent to her for the trial of the case did not reach her because in the meantime she had transferred her residence.

The trial court set the hearing on the motion for reinstatement on June 25, 1999. Petitioner opposed the motion contending that the revival or reinstatement of the case will place him in double jeopardy. On September 29, 1999, the Court issued a

resolution reinstating the said case and reiterating the issuance of a warrant of arrest for petitioner.

Petitioner filed a motion for reconsideration of said resolution insisting that the reinstatement of the case will place him in double jeopardy.

On January 14, 2000, the court issued a resolution denying the motion for reconsideration of petitioner. Consequently, Criminal Case No. 10770 is still pending before the trial court.

Aggrieved, petitioner filed the instant petition on February 1, 2000. He claims that Criminal Case No. 10770 cannot be revived because the dismissal of the case on May 31, 1999 is permanent in character, having been made in consideration of his right to speedy trial.^[4]

The Solicitor General, on the other hand, contends that the case was dismissed not because petitioner's right to speedy trial has been violated by the postponements of the trial on several instances, but because petitioner through counsel moved that the case be dismissed at least even temporarily to which the public prosecutor interposed no objection.^[5] The Solicitor General points out that the prosecution moved for the postponement of the trial several times in good faith and for valid reasons.^[6] He likewise argues that the revival of the case does not place the petitioner twice in jeopardy for the same offense because the dismissal of the case on May 31, 1999 was made at petitioner's instance.^[7]

The issues for resolution are (1) Whether or not the dismissal of Criminal Case No. 10770 by the trial court in its Order of June 25, 1999 is permanent in character so as to operate as an acquittal of the petitioner for the crime charged; and (2) Whether or not the reinstatement of Criminal Case No. 10770 places the petitioner in double jeopardy.

There is no merit in the petition.

A permanent dismissal of a criminal case may refer to the termination of the case on the merits, resulting in either the conviction or acquittal of the accused; to the dismissal of the case due to the prosecution's failure to prosecute; or to the dismissal thereof on the ground of unreasonable delay in the proceedings, in violation of the accused's right to speedy disposition or trial of the case against him. In contrast, a provisional dismissal of a criminal case is a dismissal without prejudice to the reinstatement thereof before the order of dismissal becomes final or to the subsequent filing of a new information for the offense^[8] within the periods allowed under the Revised Penal Code or the Revised Rules of Court.

In the present case, it is clear from the records that the dismissal ordered by the trial court on May 31, 1999 was a temporary dismissal of the case, and not a permanent dismissal on the ground that the right of the accused to speedy trial had been violated by the delay in the prosecution of the said case. The trial court apparently denied petitioner's motion to have Criminal Case No. 10770 dismissed on the ground of his right to speedy trial when despite said motion made in open court on April 29, 1999, it ordered the resetting of the hearing of the case on May 31, 1999. In subsequently granting petitioner's request for the dismissal of Criminal