

THIRD DIVISION

[G.R. No. 135045, December 15, 2000]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. IRENEO GAKO, JR. (PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, 7TH JUDICIAL REGION, BRANCH 5, CEBU CITY) AND VICENTE GO, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

Before us is an appeal by *certiorari* under Rule 45, Rules of Court of the Resolution^[1] of public respondent Court of Appeals (Former Third Special Division) dated August 12, 1998 in CA-G.R. SP No. 47142, entitled "PEOPLE OF THE PHILIPPINES versus HON. IRENEO GAKO, JR. ET. AL.," dismissing the petition of the Office of the Solicitor General (OSG), herein petitioner.

This instant petition stems from a murder case filed against private respondent Vicente Go (Go) and two co-accused Sonny Herodias (Herodias) and Leopoldo dela Peña (de la Peña). The victim, Rafael Galan, Sr. (Galan, Sr.), was shot dead on June 25, 1991.

Judge Priscila S. Agana (Judge Agana) originally presided over the criminal case subject of this petition. The prosecution sought to inhibit said judge for her alleged collusion with the accused when she repeatedly sustained the objections of the defense every time the prosecution attempted to establish the conspiracy to kill the victim. Judge Agana denied the motion to inhibit and dismissed the case with prejudice on the ground that the rights of the accused to a speedy trial were violated. The prosecution challenged the dismissal in the Court of Appeals, docketed as CA-G.R. SP No. 32954. In its Decision dated April 18, 1994, the Court of Appeals set aside the order of dismissal, granted the inhibition of the judge, and ordered the re-raffle of the case. The decision of the Court of Appeals gained finality when this Court dismissed the appeal of private respondent Go and co-accused Herodias in a Minute Resolution dated June 26, 1995. The criminal case was thus set for retrial. A series of delays beset the case when the judges to whom the case was raffled inhibited themselves. The case was finally presided over by public respondent Judge Ireneo Gako, Jr (Judge Gako, Jr.).

With the foregoing events as backdrop, the pertinent facts that led to the filing of this instant petition are as follows:

On July 3, 1991, de la Peña executed an Extra-judicial Confession implicating therein Herodias and Go in the conspiracy to kill and murder the victim.

On July 9, 1991, an Information was filed against the three accused namely, de la Peña, Herodias and Go, charging them with the murder of Galan, Sr. and the case

was docketed as Criminal Case No. CBU-22474. Judge Godardo Jacinto,^[2] then the Executive Judge of the Regional Trial Court of Cebu City, issued a Warrant of Arrest against the accused.

On July 22, 1991 an Urgent Motion to Confine private respondent Go in a hospital was filed.

On August 2, 1991, the hearing on said motion was conducted with the prosecution reserving its right to cross-examine Dr. Gonzales.

On August 6, 1991 an Order was issued to confine private respondent Go in a hospital without the prosecution having cross-examined Dr. Gonzales on his medical report.

On July 15, 1992, a hearing was conducted where de la Peña was presented as a witness for the prosecution. Presiding Judge Agana sustained the objections of the defense counsels each time that the prosecution attempted to establish the conspiracy to kill the victim. The prosecution filed a motion to inhibit Judge Agana, which motion was denied.

On November 20, 1992, the Information against Go and Herodias was dismissed with prejudice on the ground that their right to a speedy trial had been violated, leaving de la Peña to face trial.

The prosecution then challenged the Order of Dismissal with Prejudice before the Court of Appeals in CA-GR SP No. 32954. In its Decision dated April 18, 1994, the Court of Appeals annulled and set aside the Order of Dismissal, ordered the inhibition of Judge Agana, and ordered the raffle of the case to another branch. With the dismissal of the appeal of private respondent Go and co-accused Herodias by this Court in a Minute Resolution dated June 26, 1995, the criminal case was set anew for trial.

The case was re-raffled to RTC-17 and on October 28, 1996, an Alias Warrant of Arrest was issued against private respondent Go and co-accused Herodias.

On February 2, 1997, Dr. Matig-a, the physician of Go, filed a Clinical Summary on the illness of Go and on February 13, 1997 Go filed a Petition for Bail.

On March 7, 1997 and March 10, 1997, the prosecution presented de la Peña who was acquitted in 1993. De la Peña testified on matters which he was not allowed by then presiding Judge Agana to testify on.

On March 21, 1997, a Manifestation on the Confinement of private respondent Vicente Go was filed urging his arrest because he was out of the intensive care unit.

The motion of the prosecution to transfer the criminal case to a Special Heinous Crimes Court was denied by then presiding Judge Jesus de la Peña (Judge de la Peña). The case was finally assigned to Branch 5 with public respondent Judge Gako, Jr. as presiding judge.

On September 16 and 17, 1997, the hearing was resumed, now presided by public respondent Judge Gako, Jr.

On September 26, 1997, an Urgent Motion to Enforce the Alias Warrant of Arrest was filed praying for the arrest of private respondent Go first before his Clinical Summary Report could be heard.

On November 10, 1997, public respondent Judge Gako, Jr. issued an Order granting the Petition for Bail of private respondent Go.

On November 11, 1997, the prosecution filed a Vehement Motion to Inhibit public respondent Judge Gako, Jr. due to his alleged delay in resolving the incidents in connection with the arrest of private respondent Go.

On November 12, 1992, the prosecution moved for the reconsideration of the Order of the court dated November 10, 1997, the order which granted bail to private respondent Go.

On November 14, 1997, a Supplemental Motion to Inhibit public respondent Judge Gako, Jr. was filed by the counsel of the offended party because Judge Gako, Jr. allegedly pre-judged the evidence of the prosecution without carefully evaluating why it is short of the requirement to sustain a verdict of life imprisonment.

On November 15, 1997, a Supplemental Motion for Reconsideration was filed from the Order dated November 10, 1997 because the transcripts were allegedly not read.

On December 1, 1997, a Motion for the Issuance of *Subpoena Duces Tecum* to produce the records of Dr. Matig-a was filed to determine if the medical findings on private respondent Go were not exaggerated to prevent his arrest.

On December 11, 1997, public respondent Judge Gako, Jr. issued an Order in which he denied the prosecution's Manifestation dated March 21, 1997 on the confinement of private respondent Go, and the Urgent Motion to Enforce the Alias Warrant of Arrest dated September 26, 1997 against private respondent Go.

On January 20, 1998, public respondent Judge Gako, Jr. issued an Order denying the: (1) Motion for Reconsideration of the Order dated November 10, 1997; (2) Motion to Inhibit; and (3) Supplemental Motion to Inhibit the Presiding Judge. The prosecution received this order on February 10, 1998.

On March 20, 1998, private complainant Guadalupe Galan (Galan), the widow of the victim, filed a petition for *certiorari* under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 471460 before public respondent Court of Appeals. The petition sought to annul or set aside the orders of public respondent Judge Gako, Jr. and then acting Presiding Judge de la Peña, to wit:

"a) Order dated May 23, 1997, which set aside the earlier order of the court that granted the re-raffle of this case to a heinous crime court upon the defense's motion for reconsideration.

b) Order dated November 10, 1997, the dispositive portion of which

reads:

"WHEREFORE, in view of the foregoing, the court hereby grants bail to accused Vicente Go which is fixed at P50,000.00, after taking into consideration, and this fact has not been disputed, that said accused is presently confined in the hospital and is suffering from the following ailments:

- a) Ischemic Heart Disease, S/P Coronary Angiogram, Single Vessel Disease, LAD, Chronic Stable Angina;
- b) Essential Hypertension;
- c) NIDDM
- d) Hypercholesterolemia; and
- e) Respiratory Tract Infection

And, as per clerical summary report of Dr. Generoso Matiga, dated February 4, 1997, the confinement of accused Go in prison will cause his disease to terminate fatally.

x x x

c) Order dated December 11, 1997, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Manifestation dated March 3, 1997 and the Motion to Enforce the Alias Warrant of Arrest are hereby denied for want of merit. Besides the accused was already released on bail and the issue on the enforcement of the Alias Warrants of Arrest is already moot and academic.

d) Order dated January 20, 1998, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Omnibus Motions for Reconsideration on the order of the court granting Bail to accused Vicente Go with Supplemental pleading, xxx and thirdly, to disqualify the herein Presiding Judge, are hereby denied for lack of merit. xxx"^[3]

The petition was signed by the counsel of private complainant, Atty. Antonio Guerrero with the conformity of Vidal Gella, Prosecutor I of the Office of the City Prosecutor of Cebu City.

On March 26, 1998, public respondent Court of Appeals (Special Third Division) issued a Resolution dismissing the said petition on these grounds: (1) that the

petition was not filed by the Solicitor General in behalf of the People of the Philippines; and (2) that the certification on non-forum shopping was signed by counsel for petitioner Galan, not by petitioner herself.^[4]

On April 14, 1998, private complainant Galan, through counsel, filed a Motion for Reconsideration of said Resolution indicating that petitioner OSG was going to adopt her petition. On the same date, petitioner OSG manifested before public respondent Court of Appeals that it was joining private complainant Galan in her petition and was adopting her petition as its own.

On June 18, 1998, the Court of Appeals issued a resolution that denied said motion for reconsideration of private complainant Galan on the ground that the certification on non-forum shopping was not signed by therein petitioner Galan. The Court of Appeals also reasoned that "the fact that the OSG joined petitioner Galan in her petition did not cure the above deficiency".^[5] Petitioner OSG received copy of the resolution on June 29, 1998.

On August 3, 1998 petitioner OSG filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals docketed as CA-G.R. SP No. 47142.

On August 12, 1998, said petition of petitioner OSG was dismissed by public respondent Court of Appeals, the pertinent portions of the resolution read:

"The Court notes that said petition is practically a reproduction of the petition earlier filed by complainant Guadalupe Galan, which was dismissed on March 26, 1998. The dismissal was reaffirmed by the Court in its resolution dated June 18, 1998, copy of which was received by the OSG on June 29, 1998.

Instead of seeking, on time, the amendment of the first petition or a review of the resolution dismissing it, the OSG has come to this Court through the instant petition which not only raises the same matters ventilated in the same petition but also was filed beyond the 60-day period prescribed in Section 4, Rule 65 of the 1997 Rules of Civil Procedure.

WHEREFORE, premises considered, the Petition dated July 17, 1998, is hereby DISMISSED.

SO ORDERED."^[6]

In seeking the allowance of this instant petition, petitioner OSG relies upon the following grounds:

I. PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO THE SPECIAL CIVIL ACTION OF (sic) CERTIORARI FILED BY PETITIONER DOCKETED AS CA-G.R. SP NO. 47142.