

THIRD DIVISION

[G.R. No. 116945, February 09, 1996]

**ROMULO DELA ROSA, PETITIONER, VS. COURT OF APPEALS AND
BENJAMIN MAGTOTO, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

Does the dismissal of a criminal action for violation of the constitutional right to a speedy trial constitute a bar to a subsequent prosecution for the same offense? May the offended party, on his own and independently of the Solicitor General, appeal a trial court's order dismissing a criminal case? These are the main issues resolved in this special civil action for certiorari under Rule 65 of the Rules of Court, to set aside the Decision^[1] of the Court of Appeals^[2] promulgated on August 31, 1994 in CA-G.R. SP No. 31665 which *reversed* the Orders dated November 17, 1992 and May 24, 1993 of the Regional Trial Court of Manila, Branch 54^[3] in Criminal Cases Nos. 91-99715 to 91-99723.

Private respondent filed his Comment on November 14, 1994 while petitioner sent his Reply on November 29, 1994. By resolution dated November 13, 1995, the First Division transferred this case to the Third. After due deliberation and consultation on the foregoing submissions, the Court tasked the undersigned *ponente* with the writing of this Decision.

The Facts

The facts are not disputed.

On October 22, 1991, nine (9) separate informations (Criminal Cases Nos. 91-99715 to 91-99723) were filed against petitioner, charging the latter with violation of B.P. Big. 22 before the Regional Trial Court of Manila, Branch 54, upon complaint of private respondent.

At the scheduled arraignment set on May 18, 1992, petitioner failed to appear, prompting the trial court to issue a warrant for his arrest. The next day, petitioner filed a motion to lift the order of arrest and for the continuance of his bail bond, stating that his failure to appear was due to illness. The motion was granted by the trial court.

During the arraignment on June 10, 1992, petitioner, assisted by counsel de oficio, pleaded not guilty. The trial court set hearings on the following dates: August 4, 10, 18, 25 and September 2, 9, 16, 23, 1992.

The hearings set for August 4, 10, and 18, 1992 were all cancelled at the instance of

petitioner, who claimed that he had not yet secured the services of his counsel de parte.

On August 25, 1992, private respondent presented his first witness, Romy Antonio of the Philippine Bank of Communications. On motion of petitioner, the cross-examination of the said witness was deferred to September 2, 1992.

The trials scheduled on September 2 and 9, 1992 were likewise cancelled upon written motion of petitioner, who claimed that his counsel had prior commitments.

On September 10, 1992, private respondent moved for the postponement of the trial set for September 16, 1992, on the ground that Antonio was not available due to work-related matters. The trial court granted the motion without any objection from petitioner.

The cross-examination of witness Antonio was completed on September 23, 1992. Two additional trial dates (October 21 and November 17, 1992) were set by the trial court.

On October 19, 1992, private respondent moved for the postponement of the hearing set for October 21, 1992 due to a previous out-of-town commitment. The same was granted by the trial court without any objections from petitioner.

On November 17, 1992, counsel for private respondent, in open court, moved for the postponement of the trial set on that date on the ground that private respondent had doubts "as to his inability to bring out the details of the transaction" (Records, p. 73). Petitioner objected to the postponement and invoked his constitutional right to a speedy trial. Consequently, the trial court dismissed all the nine cases against petitioner in its questioned order dated November 17, 1992, on the following:^[4]

"Considering that according to the private prosecutor and without objection or qualification on the part of the public prosecutor, the prosecution is not ready to present the complainant who is the second and maybe the last witness for the prosecution, on the ground that the private complainant is having serious doubts as to the details of the cases and is not ready to testify; considering the manifestation of counsel for the accused invoking his client's constitutional right to speedy trial; considering that the cases had been filed before this Court on October 22, 1991 or more than a year ago and during this period the complainant should have taken steps to gather all details and refresh his memory as to all other matters pertaining to these cases, considering that as stated by the private prosecutor himself that the cases involve a large amount, and the complainant is not here today; the motion of counsel for the accused is hereby granted, (and) all these cases are dismissed x x x"

Private respondent's motion for reconsideration was denied by the trial court on May 24, 1993.

Aggrieved, private respondent appealed to the Court of Appeals, which rendered a

Decision setting aside the two orders of the trial court and reinstating the cases,^[5] as follows:

"**WHEREFORE**, the petition for certiorari is **GRANTED**. The Orders dated November 17, 1992 and May 24, 1993 of the RTC-Manila, Branch 54, are **SET ASIDE**. Criminal Cases Nos. 91-99715 to 91-99723 are **REINSTATED** and **REMANDED** to the lower court for further proceedings."

Attributing grave abuse of discretion on the part of the Court of Appeals, petitioner filed this special civil action.

The Issues: Speedy Trial and Double Jeopardy

Petitioner contends that since the dismissal of the cases against him by the trial court was based on his constitutional right to a speedy trial, the reinstatement and remand of the same would place him in double jeopardy.

In *Gonzales vs. Sandiganbayan*,^[6] we held:

"It must be here emphasized that the right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered."

Records show that the delay in the trial of the case was mainly due to petitioner's fault. As found by the respondent Court of Appeals, to wit:

"x x x. His arraignment set for May 18, 1992 was canceled due to his non-appearance. From the time he was arraigned on June 10, 1992, to the first trial date on August 4, 1992, he failed to secure the services of a lawyer. which led to the postponement of the hearing scheduled for that day and the trials set for August 10 and 18, 1992. It is unusual for private respondent dela Rosa to fail to have a lawyer on the trial dates set by the lower court. He had enough time to secure the services of a counsel de parte, or counsel of his choice to represent him. If indeed