

## THIRD DIVISION

[ G.R. No. 107211, June 28, 1996 ]

**FRANCISCO GUERRERO, PETITIONER, VS. HON. COURT OF APPEALS, (FORMER SPECIAL SEVENTH DIVISION), REGIONAL TRIAL COURT OF MALABON, BRANCH 72, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

"Does the constitutional right to a speedy trial include the right to a prompt disposition and judgment?" This is the question posed before this Court in the instant petition for review under Rule 45 seeking to set aside (a) the Decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> promulgated on February 18, 1992 in CA-G.R. SP No. 237237; and (b) the Resolution promulgated on September 10, 1992 denying the motion for reconsideration.

By a resolution dated November 13, 1995, the First Division of this Court transferred this case, along with several others, to the Third. After careful deliberation and consultation on the petition, comment, reply, memoranda and other submissions of the parties, this Court assigned the writing of this Decision to the undersigned *ponente*.

#### The Facts

The antecedents are not disputed. As summarized by the Solicitor General in his memorandum, they are as follows:<sup>[3]</sup>

"On November 16, 1971, an Information for Triple Homicide Through Reckless Imprudence was filed against petitioner before the Court of First Instance, Branch XXXV, Caloocan City, presided by Judge Manuel A. Argel, and docketed as Criminal Case No. C-2073, which reads:

'That on or about the 13th day of May, 1969, in the Municipality of Malabon, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then the pilot of non-commercial Aircraft, type Camanche PA-24-250 with registration marking PI-C515, then in-charge of, and has complete responsibility for, the maintenance and operation of said aircraft, without taking the necessary care and precaution to avoid accidents or injuries to persons, and without ascertaining as to whether the

quantity of fuel in the tanks of said aircraft was sufficient for the flight from Cuyapo, Nueva Ecija to MIA, Parañaque, Rizal, did, then and there willfully, unlawfully and feloniously operate, fly, pilot, maneuver and/or conduct the flight of said aircraft from the airport at Cuyapo, Nueva Ecija with four (4) passengers on board, and while the said aircraft was already airborne after several minutes, the engine quitted twice indicating that there was no more fuel, prompting the accused to make an emergency manner landing on a fishpond which he executed in a careless, negligent and imprudent manner in the Piper Camanche Owner's Handbook, and as a result of the improper execution of said emergency landing, the aircraft's landing gear collided with a dike and trees near the fishpond in Malabon, Rizal, resulting to the fatal injuries in three (3) passengers, namely, Cpl. Teodoro Neric, Jose Mari Garcia and Lourdes Garcia which directly caused their deaths.

Contrary to law.'

Due to several postponements, all filed by the petitioner, the prosecution was finally able to start presenting its evidence on September 29, 1972 after petitioner entered his pleas of 'Not Guilty.'

On August 19, 1975, the prosecution finally, rested its case.

On February 7, 1978, the defense rested its case.

On March 16, 1978, the hearing was terminated and the parties were ordered by Judge Argel to submit their respective memoranda.

On January 19, 1979, Judge Bernardo P. Pardo who ostensibly took over as presiding judge vice Judge Argel, granted private prosecutor's omnibus motion to file memorandum up to January 29, 1979.

On December 21, 1979, petitioner filed his memorandum.

It would appear that from the RTC of Caloocan City, Branch XXXV, the case was subsequently, assigned to Branch CXXV presided over by Judge Alfredo Gorgonio who apparently, did not take action thereon.

On January 30, 1989, Court Administrator Meynardo Tiro ordered the re-raffling of the case from the RTC of Caloocan City, Branch CXXV to the RTC of Navotas-Malabon which, under the provisions of B.P. 129, had jurisdiction over the case.

The case, now docketed as Criminal Case No. 7356-MN, was raffled to presiding Judge Benjamin N. Aquino of the RTC, Navotas Malabon, Branch 72.

On March 14, 1990, Judge Aquino ordered the parties to follow-up and complete the transcript of stenographic notes within 30 days considering

that the same was found to be incomplete.

On April 29, 1990, since the parties were not able to complete the transcript of stenographic notes, the court ordered the retaking of the testimonies of the witnesses.

On May 15, 1990, the private prosecutor submitted copies of the duplicate originals of the testimonies of Eusebio Garcia and Elena Obidosa (December 11, 1969), Celestino Nazareno (March 16, 1973), Cenen Miras (April 27, 1973), Ariston Agustin (February 10, 1977) and Francisco Guerrero (December 5 and 19, 1977). The private prosecutor manifested that he had communicated with one of the stenographers on record, Ms. Remedios S. Delfin, who promised to look into her files and hopefully complete the transcription of her stenographic notes.

On October 1, 1990, the presiding Judge set the retaking of the witnesses' testimony on October 24, 1990.

On October 24, 1990, the retaking of the testimonies was reset to November 9, 1990 due to petitioner's failure to appear on the scheduled hearing.

On November 7, 1990, petitioner filed a motion to dismiss on the ground that his right to speedy trial has been violated.

On November 9, 1990, presiding Judge denied the motion to dismiss and reset the retaking of the testimonies to November 21, 1990.

On November 16, 1990, petitioner filed a motion for reconsideration which was denied on November 21, 1990. The presiding judge set anew the retaking of the testimonies to December 5, 1990.

Hence, petitioner filed petition for certiorari, prohibition and mandamus for the review of the orders of the Regional Trial Court dated November 9, 1990 and November 20, 1990 anent petitioner's motion to dismiss, as well as his motion for reconsideration. The petition was anchored on the alleged violation of petitioner's constitutional right to speedy trial.

In its decision which was promulgated on February 18, 1992, the Honorable Court of Appeals dismissed the petition. In a resolution dated September 10, 1992, petitioner's motion for reconsideration was denied."

#### Errors Assigned

Petitioner now assigns the following errors<sup>[4]</sup> against the respondent Court.

"I.

The respondent Court of Appeals erred in not finding that the re-hearing of the

instant case will not suit the intended purpose and will only result in untold prejudice to the petitioner.

## II.

The respondent Court of Appeals erred in not ruling that the petitioner is entitled to a dismissal of the criminal case equivalent to an acquittal on the merits based on the violation of his right to speedy trial resulting from the failure to render a prompt disposition of judgment."

### The First Issue: Untold Prejudice

Petitioner claims that through no fault of his, seven of the ten witnesses who testified for the accused will no longer be able to testify anew.

So too, three witnesses for the prosecution have died and thus would not be able to appear during the re-hearing. And even if all witnesses would be able to testify again, "the passage of a long period of time spanning more than two decades since the incident complained of will tend to confuse or hinder than aid the accurate recall of the facts and circumstances of the case," as follows:<sup>[5]</sup>

"(a) Capt. Ricardo B. Stohner of the Civil Aeronautics Administration has reportedly migrated to either the U.S.A. or Canada, after he retired from the CAA about eight (8) years ago. Capt. Stohner's indispensable testimony as an expert witness as well as to his personal knowledge of certain material facts as described in Francisco Guerrero's Memorandum of 17 December 1979, crucial to the defense, is now lost to the petitioner.

(b) Eduardo V. Guerrero, a son of Francisco Guerrero, has been undergoing psychiatric treatment for more than two years now, as he is suffering from chronic mental illness. He is in no condition to testify. Copies of medical certificates on Eduardo's condition were submitted to the respondent courts as annexes to various pleadings.

(c) Rosario V. Guerrero, wife of Francisco Guerrero, was operated on last August for tumor of the colon and is still suffering a partial disability. She is under medical advice to avoid activities which may cause her stress, including testifying in court. Copies of medical certificates on Mrs. Guerrero's operation and condition were submitted to the respondent courts as annexes to various pleadings.

(d) The whereabouts of Alberto Atanacio, Rodolfo Fontanilla, Editha Pangilinan, and Rizal and Belen Macabole, are unknown, and despite diligent efforts exerted by petitioner, they have not been found up to the present."

At this point this argument is premature and at best speculative. As to whether the

witnesses for the defense would be available at the trial, and if available, whether they will still be in a position to recall the events that transpired in the case more than twenty five years ago is a question of fact which cannot be determined now. As pointed out by the Solicitor General in his memorandum:<sup>[6]</sup>

"Contrary to petitioner's contention, the whereabouts of his witnesses (except Rizal and Evelyn Macabole) are ascertainable should a diligent search be made by him. This can be gleaned from the return of the subpoena dated October 1, 1990 which forms part of the record of the case. Eduardo Guerrero and Rosario Guerrero were respectively served with subpoena and their alleged mental and physical incapacity to testify should best be left to the assessment of respondent trial court. Edith (sic) Pangilinan was notified of the retaking and is, thus, available. Alberto Atanacio and Rodolfo Fontanilla, on the other hand, are in Lucena City. The exact whereabouts of the last two witnesses can be ascertained if diligent efforts were exerted to locate them."

The alleged unavailability of the witnesses for the prosecution should not be the concern of the petitioner at this time. The burden of proving his guilt rests upon the prosecution. And if the prosecution fails for any reason to present evidence sufficient to show his guilt beyond reasonable doubt, he will be acquitted.

"x x x The burden of proof rests upon the prosecution and unless the State succeeds in proving his guilt, the presumption of innocence in favor of the accused-appellant applies. The conscience must be satisfied that on the accused-appellant could be laid the responsibility of the offense charged."<sup>[7]</sup>

"x x x [C]ourts must exert utmost scrupulousness in evaluating the evidence of the prosecution for it is elementary that the conviction of an accused must rest on the strength of the prosecution and not on the weakness of the defense (People vs. Cruz, 215 SCRA 339 [1992]). The prosecution must overcome the constitutional presumption of innocence by proof beyond reasonable doubt; otherwise, the acquittal of the accused is ineluctably demanded. x x x"<sup>[8]</sup>

"x x x It is safely entrenched in our jurisprudence that unless the prosecution discharges its burden to prove the guilt of an accused beyond reasonable doubt, the latter need not even offer evidence in his behalf. Acquittal then of the accused-appellant is in order."<sup>[9]</sup>

On this matter, the respondent Court,<sup>[10]</sup> citing the assailed order of the trial court argues that there are really only two witnesses of the prosecution whose testimonies need to be retaken and the rehearing should not really present a monumental problem: