Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MARITES AYTONA, Petitioner,	**G.R. No. 253649**
	Present:
- versus -	CAGUIOA, *J., Chairperson,* INTING, GAERLAN, DIMAAMPAO,* and SINGH, *JJ.*
JAIME PAULE, Respondent.	
	Promulgated:
	November 28, 2022

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DECISION

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court, assailing the Resolutions dated October 28, 2019[2] and September 14, 2020[3] (collectively, questioned Resolutions) of the Court of Appeals – Eighth Division (CA) in CA-G.R. SP No. 161179. In the questioned Resolutions, the CA dismissed the petition filed by petitioner Marites Aytona (Aytona) for failure to comply with the directive to file a memorandum.

Factual Antecedents

On the basis of complaints filed by respondent Jaime Paule (Paule), two Informations charging perjury were filed against Aytona.[4] The charges were

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* On official leave.
1 *Rollo*, pp. 10-32.
2 Id. at 33-35. Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Ramon R. Garcia and Tita Marilyn B. Payoyo-Villordon concurring.
3 Id. at 37-39.
4 No copy of the Information could be found on the records of this case.

filed on February 15, 2010,[5] docketed as Criminal Case Nos. M-PSY-10-11344-CR and M-PSY-10-11345-CR, and raffled to Branch 44, Metropolitan Trial Court of Pasay City (MeTC). Based on the records of the case, the proceedings in the cases did not even reach the conclusion of the presentation of the prosecution's first witness despite the lapse of more than five years. The timeline of incidents in this case was summarized by the MeTC in the Order[6] dated August 1, 2016 as follows:

> Records reveal that after the termination of the pre-trial in these cases, the initial trial was set on September 13, 2010 and eight (8) succeeding dates. All the said settings were reset and the initial presentation of prosecution's evidence proceeded on March 30, 2011. After the witness partial direct examination, the same was reset to April 27, 2011 which was cancelled and reset to June 15, 2011 and the prosecution witness was directed to show cause on why sanctions should not be imposed for failure to appear despite notice thereby contributing delay in the proceedings of this case. On June 15, 2011, the prosecution requested and actually marked documentary evidence on June 22, 2011 and the hearing was reset to August 24, 2011. The hearing set on August 24, 2011 and the subsequent settings were all reset until the appointment of a ***Pairing Judge***, whose first order was to reset these cases to November 15, 2012 for failure of the parties and their counsels to appear and with a warning that sanctions will be imposed against them. On November 15, 2012, the hearing was reset to March 5, 2013 which was reset to April 16 and May 21, 2013 with a warning that should the private complainant fails again to appear during the next hearing, his direct testimony shall be stricken off from the records and/or these cases maybe possibly dismissed. The hearing on April 16, 2013 was reset to May 21, 2013 where the setting was reset by the newly appointed ***Acting Presiding Judge*** to August 20, 2013 which was again reset to October 22, 2013 and on the said date the said setting was reset to December 10, 2013 with warning that failure of the prosecution to present the witness, the court will grant the motion of the defense that the testimony of the witness will be stricken off from the records. On December 10, 2013, an order was issued for the private prosecutor to submit the Judicial Affidavit of the private complainant and all his witnesses five (5) days before the scheduled hearing which was set to March 25, 2014 which was also reset to June 10, 2014 and the same was reset to September 2, 2014. The setting on September 2, 2014 was reset by the undersigned ***Presiding Judge*** to November 18, 2014 and on the said date an order was issued reiterating the court's directive in the order dated December 10, 2013 where the private prosecutor was directed to submit the Judicial Affidavit of the private complainant and all his witnesses five (5) days before the next scheduled hearing which was set to March 10, 2015. During the hearing on March 10, 2015 the prosecution was directed to submit their Judicial Affidavit at least five (5) days before the next scheduled hearing and the defense was directed to submit the medical certificate of the accused that she is undergoing medical treatment in the United States and the hearing was reset to June 2, 2015. The prosecution manifested that it is still in the process of reconstituting the records and requested for the re-marking of their exhibits before the Clerk of Court on April 15, 2015. On June 2, 2015, a warrant of arrest was issued against the accused for failure of the said accused to ask permission to allegedly undergo medical treatment in the United States and for failure of the counsel for the accused to comply with the order of the

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5 *Rollo*, p. 41.

6 Id. at 41-45. Penned by Judge Kirk M. Aniñon.

> court dated March 10, 2015. On the same date, the prosecution was again directed to submit the Judicial Affidavit of his witness/es within five (5) days before the next scheduled hearing which was set to September 28, 2015. The accused filed a Motion to Consolidate Cases with Criminal Case Nos. 10-11342 to 11343 and on June 24, 2015 an Omnibus Motion for Reconsideration and Motion to Dismiss (the pending incidents herein) which was set to July 7, 2015 and the same was reset to August 4, 2015 which was also reset to September 15, 2015. The setting on September 8, 2015 was reset to September 15, 2015 which was reset to November 3, 2015 where an order was issued consolidating the above-entitled cases to cases pending before Branch 46 of this Court who returned to this Court the records of these cases in an order dated January 6, 2016. Upon receipt of the records of the above-entitled cases, the hearing was set to March 15, 2016 which was again reset to June 14, 2016 where the defense was given a period of five (5) days to file a necessary pleading and the prosecution was given the same number of days from receipt thereof to file comment/opposition thereto and after receipt of the said pleadings, the defense moved for the resolution of the same.[7]

The crux of the controversy revolves around the "Motion to Dismiss (For Failure to Prosecute Case with a Reasonable Length of Time)" which Aytona filed on June 24, 2015, and set for hearing on July 7, 2015. Ruling on the said Motion to Dismiss, the MeTC issued the Order dated August 1, 2016 dismissing the case due to the prosecution's failure to prosecute the case. The dispositive portion of the MeTC Order reads:

> FOREGOING CONSIDERED, the above-entitled cases are hereby ordered **DISMISSED**. The direct testimony of the private complainant is hereby stricken off from the records. Likewise, the bond posted by the accused under Official Receipts No. 0458237 and 0458238 are ordered released in her favor subject to the presentation of proper documents and identification.
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> **SO ORDERED.**[8]

The MeTC dismissed the case as it ruled that the repeated resetting and continued failure of the prosecution to proceed with the presentation or to submit the Judicial Affidavits of its witnesses constituted a violation of Aytona's right to speedy trial.[9] According to the MeTC, the records of the case clearly bore the prosecution's consistency "in being unmindful of its readiness to prosecute the case within the span of five (5) years."[10] The MeTC held that the prosecution "was given ample opportunity to prove its case when the resettings began in September 13, 2010 or a period of more or less five (5) years"[11] and it added that even the non-submission of the judicial affidavit of the private complainant caused unjust delays in the prosecution of the case.[12]

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7 Id. at 42-43.
8 Id. at 45.
9 Id. at 44-45
10 Id. at 44.
11 Id. at 45.
12 Id.

The prosecution sought reconsideration, but the same was denied in an Order[13] dated December 4, 2017.

Aggrieved, Paule filed a petition for *certiorari* in the Regional Trial Court of Pasay City (RTC) docketed as SCA Case No. R-PSY-18-29643-CV. The petition for *certiorari* sought to set aside the MeTC Order dated August 1, 2016.

RULING OF THE RTC

In a Decision[14] dated January 27, 2019, the RTC granted the petition for *certiorari*, the disposition portion of which reads:

> **WHEREFORE,** the petition is **GRANTED**. Accordingly, the 01 August 2016 Order and 04 December 2017 Orders issued by Metropolitan Trial Court, Branch 44, Pasay City are **SET ASIDE**.
>
> ACCORDINGLY, the respondent court is **directed** to **continue** with the **proceedings** in **Criminal Cases Nos. M-PSY-10-11344-CR** and **M-PSY-10-11345-CR.** The **direct testimony** of petitioner **Jaime L. Paule** is **reinstated**.
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> **SO ORDERED.**[15]

The RTC ratiocinated that since the Motion to Dismiss filed by Aytona was set for hearing beyond the 10-day period provided under Sections 4[16] and 5,[17] Rule 15, of the Rules of Court, then the motion was a mere scrap of paper, which the MeTC had no right to receive, let alone act upon.[18]

As regards the violation of the right to speedy trial found by the MeTC, the RTC held that there was no violation because "the delays were also caused by the vacancy in the judicial post, the repeated absences of the private prosecutor and the complainant, as well as of the accused and her counsel during the scheduled settings, and the failure to submit the required Judicial Affidavit."[19] The RTC added that Aytona also failed to assert her right to speedy trial seasonably. Aytona supposedly did not complain, and "left the matter of the repeated postponements, as requested by the prosecution, entirely to the court's discretion."[20] The RTC criticized Aytona as "[s]he

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13 No copy of this Order was provided in the rollo.

14 *Rollo*, pp. 46-53. Penned by Presiding Judge Wilhelmina B. Jorge-Wagan.

15 Id. at 53.

16 SECTION 4. *Hearing of Motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

17 SECTION 5. *Notice of Hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

18 *Rollo*, pp. 48-49.

19 Id. at 51.

20 Id. at 52.

invoked the right to speedy trial only during trial,"[21] and added that her failure to file a motion to dismiss before the commencement of trial constitutes a waiver to invoke the right.[22]

Aytona sought reconsideration of the RTC Decision[23] on February 28, 2019. The RTC, however, denied the motion for reconsideration in an Order[24] dated April 29, 2019. Aytona then filed a Notice of Appeal signifying her intention to appeal to the CA.

On June 17, 2019, the CA directed the parties to submit their respective memoranda, in lieu of briefs, within a non-extendible period of 30 days from notice.[25] Both parties, however, failed to file their memoranda.

RULING OF THE CA

In a Resolution[26] dated October 8, 2019, the CA dismissed Aytona's appeal, citing Section 1(e), Rule 50 of the Rules of Court, explicitly granting the CA the power to dismiss appeals for failure of the appellant to file the required memorandum within the time provided. Aytona sought reconsideration, but the CA denied the same in a Resolution[27] dated September 14, 2020.

Hence, the present Petition filed by Aytona.

On March 3, 2021, the Court issued a Resolution requiring Paule to file his Comment to Aytona's petition. Paule then filed his Comment[28] on November 8, 2021.

ISSUES

(1) Whether the CA erred in dismissing Aytona's appeal for her failure to file her memorandum

(2) Whether the RTC erred in reinstating the criminal cases against Aytona

RULING OF THE COURT

The Petition is impressed with merit.

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21 Id. at52.
22 Id. at 53.
23 *See* id. at 13. No copy of this was provided in the *rollo.*
24 *See* id. No copy of this was provided in the *rollo.*
25 Id. at 33.
26 Id. at 33-35. Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Ramon R. Garcia and Tita Marilyn B. Payoyo-Villordon, concurring.
27 Id. at 37-39.
28 Id. at 71-80.

At the outset, the Court clarifies that the CA cannot be blamed for dismissing Aytona's petition for her failure to file the required memorandum. Indeed, the CA is empowered to dismiss the case if the appellant fails to file the required memorandum within the time provided by the Rules of Court.[29] Here, Aytona only filed the memorandum 123 days after the expiration of the period to file.[30] The legal secretary of Aytona's counsel supposedly misplaced the copy of the CA's order to file a memorandum, and this supposed incident allegedly caused the delay in filing the required memorandum. Even assuming that this were indeed the case, the CA was still justified in dismissing the case as the negligence was inexcusable. In a previous case, the Court has ruled:

> x x x The law office is mandated to adopt and arrange matters in order to ensure that official or judicial communications sent by mail would reach the lawyer assigned to the case. The Court has time and again emphasized that the negligence of the clerks, which adversely affects the cases handled by lawyers, is binding upon the latter. **The doctrinal rule is that the negligence of counsel binds the client** because, otherwise, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned.[31] (Emphasis supplied)

In the interest of substantive justice, however, the Court will rule on the merits of the case, considering that a constitutional right is implicated in this case.

To recall, Aytona was the accused in perjury cases before the MeTC. Aytona filed a motion to dismiss on the ground of violation of her right to speedy trial. The MeTC granted the motion, finding the five-year delay in the prosecution of the case to be violative of Aytona's right to speedy trial, and accordingly dismissed the case. Paule, in turn, filed a petition for *certiorari* before the RTC to assail the dismissal. The RTC eventually granted the petition for *certiorari*, ruling that the dismissal by the MeTC was attended with grave abuse of discretion because: 1) Aytona's motion was a mere scrap of paper as the hearing for the motion was set beyond the 10-day period provided under the Rules of Court, and 2) there was no violation of Aytona's right to speedy trial. The RTC Decision granting the petition for *certiorari* was the one assailed in the appeal to the CA, which appeal was, to recall, dismissed on procedural grounds.

While the CA was, as discussed, justified in its dismissal of the appeal, the Court decides to take cognizance of the issue of the validity of the RTC Decision considering the substantive rights involved. The Court declares that the RTC Decision was void *ab initio* for two reasons: (1) the petition filed before the RTC was filed by a person who did not have the legal personality to do so, and (2) the grant of the petition for *certiorari* constituted a violation of Aytona's right against double jeopardy.

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[29] RULES OF COURT, Rule 50, Sec. 1(e).

[30] *Rollo*, p. 38.

[31] *Balgami v. Court of Appeals*, 487 Phil. 102, 113 (2004).

Legal personality to file the petition for certiorari

Paule had no legal personality to file the petition for *certiorari*, and the RTC should have thus dismissed the said petition.

It has been a long-standing rule, reiterated recently by the Court *en banc* in *Austria v. AAA*,[32] that:

> **the party affected by the dismissal of the criminal action is the State and not the private complainant**. The interest of the private offended party is restricted only to the civil liability of the accused. In the prosecution of the offense, the complainant's role is limited to that of a witness such that when a criminal case is dismissed by the trial court or if there is an acquittal, **an appeal on the criminal aspect may be undertaken only by the State through the [Office of the Solicitor General]**.[33] (Emphasis supplied)

Thus, in this case, should any appeal or filing of a petition for *certiorari* be permissible, the same should have been filed by the public prosecutor, not Paule. To emphasize, "[t]he People is the real party in interest in a criminal case"[34] and any further proceedings on the criminal aspect of the case should have been carried out on behalf of the State, not the private complainant. "The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned."[35] This error is readily apparent, and it was incumbent upon the RTC to recognize the obvious mistake. This is especially true considering that the entire case had been dismissed, and Paule's petition was precisely asking for its reinstatement. Paule, as the offended party, could intervene only "for the sole purpose of enforcing the civil liability born of the criminal act and not of demanding punishment of the accused."[36]

On this ground alone, the RTC should have already dismissed the case. It did not do so, however, and it even granted the petition for *certiorari* and reinstated the criminal cases, in violation of Aytona's right against double jeopardy.

The RTC Decision violated Aytona's right against double jeopardy

Article III, Section 21 of the 1987 Constitution provides that "[n]o person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." To

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32 G.R. No. 205275, June 14, 2022.
33 Id.
34 *Jimenez v. Sorongon*, 700 Phil. 316, 325 (2012).
35 *Bangayan, Jr. v. Bangayan*, 675 Phil. 656, 664 (2011).
36 *Lee Pue Liong v. Chua Pue Chin Lee*, 719 Phil. 89, 102 (2013).

implement this — the constitutional right against double jeopardy — the Court included in the Rules of Court what is now Section 7, Rule 117 of the Rules of Criminal Procedure, which states that:

> SECTION 7. *Former Conviction or Acquittal; Double Jeopardy.*— When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Following the foregoing textual anchors, jurisprudence has provided that for the said right to attach, the following requisites must be present: 1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.[37]

In turn, for first jeopardy to attach, there must be: (1) a valid indictment, (2) a court of competent jurisdiction, (3) the arraignment of the accused, (4) a valid plea entered by the accused, and (5) the acquittal or conviction of the accused, or the dismissal or termination of the case without the accused's express consent.[38] As regards the fifth requisite, it is important to stress that it contemplates three separate circumstances, namely: (a) acquittal of the accused, (b) conviction of the accused by final judgment, and (c) dismissal or termination of the case without the accused's consent.

All the requisites of double jeopardy are present in this case.

It is undisputed that the Informations in this case were valid, and they were filed with a court which has jurisdiction over the case — the MeTC — thereby satisfying the first two requisites. It is likewise undisputed that the accused had been arraigned, wherein she pleaded "not guilty." Thus, the third and fourth requisites for first jeopardy to attach are likewise present. The fifth requisite is also present as the MeTC ***acquitted*** the accused. While it is true that the MeTC Order dated August 1, 2016 was issued because of Aytona's own motion to dismiss, since the ground for dismissal was the violation of the right to speedy trial, then the dismissal amounts to an acquittal.

Indeed, "the dismissal of a criminal case resulting in acquittal made with the express consent of the accused or upon his [or her] own motion will not place the accused in double jeopardy. However, this rule admits of two exceptions, namely: insufficiency of evidence and denial of the right to a

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37 *People v. Declaro*, 252 Phil. 139, 143 (1989).

38 *Raya v. People*, G.R. No. 237798, May 5, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67716>.

speedy trial."[39] Thus, when a demurrer, or a motion to dismiss on the ground of violation of the right to speedy trial, is granted, such grant amounts to an adjudication on the merits that would result in the acquittal of the accused.

In this case, the MeTC Order dismissing the case was grounded on the violation of Aytona's right to speedy trial. The MeTC summarized its findings and ratiocinated as follows:

> In the case at bar, culled from the antecedent facts of these cases will reveal that these cases were raffled to this court on February 16, 2010. The private complainant was initially presented on March 30, 2011 on partial direct examination. From March 30, 2011, for one reason or another, all the settings for the continuance of the direct testimony of the private complainant was reset until the appointment of a ***Pairing Judge*** in the year 2012. The settings were continuously reset until the appointment of a new ***Acting Presiding Judge*** in the year 2013 whose orders, particularly on December 10, 2013 included a directive addressed to the prosecution to submit the Judicial Affidavit of the complainant and all his witnesses within five (5) days before the scheduled hearings. All the subsequent settings were reset and despite the lapse of the period to comply, the prosecution did not and never complied with the order to submit private complainant's Judicial Affidavit. In the year 2014, the undersigned was appointed as the new ***Presiding Judge*** of this court and the setting scheduled on September 2, 2014 was reset to November 18, 2014. Subsequent settings were all ordered reset with a directive to the prosecution to submit Judicial Affidavit of the private complainant and all his witnesses particularly the court orders dated November 18, 2014 and March 10, 2015. To date, and despite the lapse of the period to submit the judicial affidavit of the complainant and all his witnesses, the prosecution has not complied with the said orders. The prosecution asserts that it is entitled to a denial of accused's omnibus motion. It advances that the accused's counsel has failed to submit a medical certificate of the accused to support the allegation that the accused left for the U.S.A. to seek medical attention because the court is empowered to impose conditions for the travel to guarantee the return of the accused when needed in the prosecution's mind[.] [T]he court, however, does not subscribe to the prosecution's theory. The records will clearly bare that the prosecution is consistent in being unmindful of its readiness to prosecute the case within the span of five (5) years.
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> Time and again, it has been elucidated from the numerous pronouncements of the High Court that the prosecution should not draw its strength from the weakness of the defense but from [the] strength of [its own] evidence. Clearly, the prosecution is not ready from the numerous dates and opportunities given to him by the Honorable Court as well as the complainant herself. Therefore, when the prosecution itself is complacent in its pursuit of justice consistently, it is equally reprehensible in the eyes of the law.[40]

It is clear, therefore, that the dismissal of the case amounted to an acquittal, and thus first jeopardy had already set in, as the ground for the dismissal of the case was the violation of the right to speedy trial. The

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39 *People v. Bans*, 309 Phil. 45, 50 (1994).

40 *Rollo*, pp. 44-45.

dismissal, therefore, was "final, unappealable, and immediately executory upon its promulgation"[41] and "any further prosecution of the accused would violate the constitutional proscription on double jeopardy."[42] This is commonly referred to as the "finality-of-acquittal" doctrine, which "does not apply [only] when the prosecution — the sovereign people, as represented by the State — was denied a fair opportunity to be heard. Simply put, the doctrine does not apply when the prosecution was denied its day in court — or simply, denied due process."[43] Here, there is no such denial of due process, as the prosecution was given multiple opportunities to be heard, but it instead decided not to take those opportunities, and only sought the postponement of the hearings set by the MeTC.

In any event, even if the Court were to review the propriety of the MeTC's ruling on the violation of the right to speedy trial, the result would nevertheless be the same.

The right to speedy trial, a constitutional right,[44] aims "to assure that an innocent person [is] free from the anxiety and expense of a court litigation or, if otherwise, of having his [or her] guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he [or she] may interpose."[45] With this purpose in mind, the right is thus deemed violated when: "1) the proceedings are attended by vexatious, capricious, and oppressive delays; 2) when unjustified postponements are asked for and secured; 3) when without cause or justifiable motive a long period of time is allowed to elapse without the party having his [or her] case tried."[46]

According to jurisprudence, courts look at the following factors to determine whether the right to speedy trial (or the right to speedy disposition of cases) has been violated: (a) the length of delay; (b) the reasons for the delay; (c) the assertion or failure to assert such right by the accused; and (d) the prejudice caused by the delay.[47] Based on the following factors, the MeTC did not commit any grave abuse of discretion in finding that Aytona's right to speedy trial had been violated.

Regarding the length and reasons for the delay, records reflect the fact that it had been five years since the filing of the case to the time it was dismissed. Even with the lapse of this period, however, the prosecution had not even been able to finish the direct testimony of its first witness. The reason for the delay was also inexcusable. Even if the Court were to exclude the first two years of pendency of the case because of the vacancy in the judicial post, it is still incontrovertible that the prosecution continuously failed to file the

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41 *Chiok v. People*, 774 Phil. 230, 248 (2015).
42 *Raya v. People*, supra note 38.
43 Id.
44 CONSTITUTION, Art. III, Sec. 14(2).
45 *Tan v. People*, 604 Phil. 68, 79 (2009).
46 *Domondon v. First Division, Sandiganbayan*, 512 Phil. 852, 861 (2005).
47 *Magno v. People*, 828 Phil. 453, 464 (2018).

required judicial affidavits for almost three consecutive years despite repeated orders of the MeTC to do so. It may be well to recall that on the hearing scheduled for May 21, 2013, the MeTC had already reminded the prosecution that the continued failure of Paule to appear may result in his partial direct testimony being stricken off the record, or worse, in the entire case being dismissed. Subsequent to this, beginning on the hearing scheduled on December 10, 2013, the MeTC had consistently required the prosecution to submit the judicial affidavits of its witnesses but it never did so despite the lapse of almost three years. To recall, Republic Act No. 8493, or the Speedy Trial Act, provides that "[i]n no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court pursuant to Section 3, Rule 22 of the Rules of Court."[48] There is nothing on record, however, that explains, let alone justifies, the failure of the prosecution to submit the judicial affidavits to qualify in the time exclusions recognized by the said law.[49]

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[48] Republic Act No. 8493, Sec. 6.

[49] SECTION 10. *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:
  (1) delay resulting from an examination of the accused, and hearing on his/her mental competency, or physical incapacity;
  (2) delay resulting from trials with respect to charges against the accused;
  (3) delay resulting from interlocutory appeals;
  (4) delay resulting from hearings on pre-trial motions: *Provided*, That the delay does not exceed thirty (30) days;
  (5) delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;
  (6) delay resulting from a finding of the existence of a valid prejudicial question; and
  (7) delay reasonably attributable to any period, not to exceed thirty (30) days, during which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of the accused or an essential witness.

For purposes of this subparagraph, an accused or an essential witness shall be considered absent when his/her whereabouts are unknown and, in addition, he/she is attempting to avoid apprehension or prosecution or his/her whereabouts cannot be determined by due diligence. An accused or an essential witness shall be considered unavailable whenever his/her whereabouts are known but his/her presence for trial cannot be obtained by due diligence or he/she resists appearing at or being returned for trial.

(c) Any period of delay resulting from the fact that the accused is mentally incompetent or physically unable to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or as to whom the time for trial has not run and no motion for severance has been granted.

(f) Any period of delay resulting from a continuance granted by any justice or judge *motu proprio* or on motion of the accused or his/her counsel or at the request of the public prosecutor, if the justice or judge granted such continuance on the basis of his/her findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this subparagraph shall be excludable under this section unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the

Worse, it caused a three-year delay — well over the time limit specified by law — which was entirely caused by, and attributable to, the prosecution.

In this connection, with the long delay being unjustified, it therefore undoubtedly caused prejudice to the accused — the fourth factor to be considered. It must be remembered that according to the Judicial Affidavit Rule, "[a] party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission."[50] Hence here, despite the pendency of the case for years, there was still absolutely no evidence on record in the criminal case. Years, therefore, have gone by with the proverbial sword of Damocles hanging over the accused's head — but the criminal proceedings had not even moved an inch. There could thus be no question that the long and unjustified delay has caused prejudice to the accused.

Finally, on the last factor to consider, *i.e.*, whether the accused has asserted the right, the Court rules that Aytona's act of filing the "Motion to Dismiss (For Failure to Prosecute Case with a Reasonable Length of Time)" constitutes the assertion of the right that the law looks for. "The reason why the Court requires the accused to assert his [or her] right in a timely manner is to prevent construing the accused's acts, or to be more apt, his [or her] inaction, as acquiescence to the delay."[51] In determining this, neither the Court nor the law sets a fixed time within which to assert the right, and the only guidepost is the principle that the holder of the right should not sleep on his or her rights. Here, there is nothing on record that shows Aytona slept on her rights or that she acquiesced to the delay. It was reasonable for her to have waited a while before she asserted her right, or else she might face the risk of the MeTC declaring the invocation of her right premature. All told, the Court rules that Aytona's "Motion to Dismiss (For Failure to Prosecute Case with a Reasonable Length of Time)" was filed seasonably, and constitutes the assertion of the right which the law requires.

In sum, the MeTC did not commit grave abuse of discretion when it ruled that Aytona's right to speedy trial had been violated. As the MeTC Order was grounded on the violation of the right to speedy trial, then it is considered by law a dismissal on the merits — an acquittal — which properly terminates the first jeopardy. The RTC Decision, therefore, that reinstated the criminal cases against Aytona was unconstitutional for violating her right against double jeopardy. The RTC Decision is thus void, thereby making the MeTC Order dismissing the case and acquitting Aytona final and executory.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated January 27, 2019 of Branch 111, Regional Trial Court of Pasay City in SCA Case No. R-PSY-18-29643-CV and the Resolutions dated

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granting of such continuance outweigh the best interests of the public and the accused in a speedy trial.

50 JUDICIAL AFFIDAVIT RULE, A.M. No. 12-8-8-SC, Sec. 10.

51 *Javier v. Sandiganbayan*, G.R. No. 237997, June 10, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66260>.

October 28, 2019 and September 14, 2020 of the Court of Appeals in CA-G.R. SP No. 161179 are hereby **SET ASIDE**. The Order dated August 1, 2016 of Branch 44, Metropolitan Trial Court of Pasay City in Criminal Case Nos. M-PSY-10-11344-CR and M-PSY-10-11345-CR is **REINSTATED**. Accordingly, petitioner MARITES AYTONA is **ACQUITTED** of the crimes charged. Criminal Case Nos. M-PSY-10-11344-CR and M-PSY-10-11345-CR are **DISMISSED WITH FINALITY**. Let entry of judgment be issued immediately.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

(on official leave)
JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice