

94 Phil. 1018

[G.R. No. L-6481. May 17, 1954]

JESUS GUIAO, PETITIONER AND APPELLEE, VS. ALBINO L. FIGUEROA, IN HIS CAPACITY AS PROVINCIAL FISCAL OF THE PROVINCE OF PAMPANGA, RESPONDENT AND APPELLANT.

D E C I S I O N

LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Pampanga in an action of mandamus, ordering the provincial fiscal to include Emiliano Manalo and Porfirio Dizon as accused in Criminal Case No. 1453 of said court.

The record discloses that in the trial of Criminal Case No. 1273, People of the Philippines vs. Atilano Gopez, et al., for the crime of kidnapping with murder (against one Felix Lampa), the provincial fiscal introduced said Porfirio Dizon and Emiliano Manalo as witnesses for the State. Porfirio Dizon testified that in the morning of November 23, 1950, the accused Atilano Gopez, Melchor Esguerra, and Benjamin Tolentino went to his house in Dolores, Bacolor, Pampanga; that the three accused carried firearms; that he was asked by them to act as guard for a certain sugar plantation; that while he was on guard, a certain person passed by and Esguerra whistled at him, and the latter approached and talked with Esguerra; that Esguerra told to him that the person (who was Felix Lampa) was brought by them to the backyard of one Iscong Lacsamana; and that after that Dizon left the three in said place.

Emiliano Manalo testified that in the afternoon of November 23, 1950, while he was going home, he saw Benjamin Tolentino, Melchor Esguerra, and Felix Lampa near the house of Francisco Lacsamana; that

he asked Tolentino why Felix Lampa was with them, and Tolentino answered that Jesus Guiao and Eulogio Serrano wanted to talk with him, that he went home and changed his working clothes, and after a while Eulogio Serrano, Jesus Guiao, Atilano Gopez, and Melchor Esguerra passed by his house, and Atilano Gopez called him, telling him that the captain wanted to see him; that the captain was Eulogio Serrano, who asked him to bring his gun along with him; that he went with them, and in the house of Iscong Lacsamana they saw Benjamin Tolentino and Felix Lampa; that Serrano charged Lampa with trying to convince Guiao to testify on the Maliwalu incident, and upon Guiao ratifying this charge, Serrano ordered Atilano Gopez to tie Felix Lampa, and Atilano Gopez, in turn, asked Manalo to do so; that Serrano, Gopez, Guiao, Tolentino, Esguerra, and Manalo brought Lampa to a place called *alfareza*, reaching it between eight and nine o'clock in the evening; that upon reaching the place, they were ordered to dig a hole, and the three of them did so, including Manalo; that thereafter Felix Lampa was brought to the hole, and Serrano ordered Gopez to shoot him, which he did, notwithstanding the protestation of innocence on the part of Lampa. (See Annexes A and B attached to Petition.)

In view of the testimonies given by the said Porfirio Dizon and Emiliano Manalo in said Criminal Case No. 1273, the lower court ordered a reinvestigation of the case and suspended its trial, with a view to including as accused all persons who might be guilty of the crime. After the reinvestigation an amended information was filed, and two new accused were included, namely, Jesus Guiao and Eulogio Serrano. But Porfirio Dizon and Emiliano Manalo were not included. In view of the failure of the provincial fiscal to include these two persons, a motion for contempt was filed against the fiscal, but this motion was dismissed on the ground that if the fiscal committed an error of judgment, or even abuse of discretion, the recourse against him was not an action for contempt but one for mandamus. Due to this order of the court, the action for mandamus was filed by Jesus Guiao to compel the fiscal to include Porfirio Dizon and Emiliano Manalo as accused in his information, in Criminal Case No. 1453.

In his answer to the petition for mandamus, the provincial fiscal

admits the substance of the testimonies of Porfirio Dizon and Emiliano Manalo as above indicated. He alleges that after the reinvestigation ordered by the court had been conducted, he included Eulogio Serrano and Jesus Guiao in the amended information, but "did not include Porfirio Dizon and Emiliano Manalo as co-accused in said Criminal Case No. 1453 because they are indispensable witnesses for the prosecution aside from the fact that they are the least guilty." No trial was held and the Court of First Instance decided the petition for mandamus on the pleadings.

It will be noted that the transcript of the testimonies of Porfirio Dizon and Emiliano Manalo in Criminal Case No. 1273 is attached to the petition for mandamus as Annexes A and B. On the basis of the pleadings the lower court held that in accordance with section 1 of Rule 106 of the Rules of Court, it is the duty of the fiscal to include all the persons who are responsible for the crime, and that if any or some of them are the least guilty, the determination of this fact rests in the sound discretion of the trial court and not upon the fiscal, citing the case of Monroe vs. Sanchez, G. R. No. L-2286 promulgated June 17, 1948. It, therefore, granted the petition.

The question now before this Court is whether a fiscal may be compelled by mandamus to include in an information persons who appear to be responsible for the crime charged therein, but whom the fiscal believes to be indispensable witnesses for the State. The provision of Section 1 of Rule 106 of the Rules of Court expressly states that criminal actions shall be brought "against all persons who appear to be responsible therefor." The original provisions contained in General Orders No. 58 provided that all prosecutions shall be "against the persons charged with the offenses." The change in the law was introduced in Act No. 2709, two of whose provisions were as follows:

SECTION 1. Every prosecution for a crime shall be in the name of the United States against all persons who appear to be responsible therefor, except in the cases determined in section two of

this Act.

SEC. 2. When two or more persons are charged with the commission of a certain crime, the competent court at any time before they have entered upon their defense, may direct any of them to be discharged, that he may be a witness for the Government when in the judgment of the Court:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b)

There is no other direct evidence available for the proper prosecution of the crime committed, except the testimony of the accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty;

(e)

Said accused has not at any time been convicted of the crime of perjury or false testimony or of any other crime involving moral turpitude.

The pertinent provision of section 1 of Rule 106 is taken from section 1, while section 9 of Rule 115 from section 2.

A perusal of Act 2709 discloses the legislative intent to require that all persons who appear to be responsible for an offense should be included in the information. The use of the word "shall" and of the phrase "except in the cases determined" shows that section 1 is mandatory, not directory merely. The mandatory nature of the section is demanded by a sound public policy, which would deprive prosecuting officers of the use of their discretion, in order that they may not shield or favor friends, proteges, or favorites. The law makes it a legal duty for them to file the charges against whomsoever the evidence may show to be responsible for an offense. This does not mean, however, that prosecuting officers have no discretion at all; their discretion

lies in determining whether the evidence submitted is sufficient to justify a reasonable belief that a person has committed an offense. What the rule demands is that all persons *who appear responsible* shall be charged in the information, which implies that those against whom no sufficient evidence of guilt exists are not required to be included.

The other aim of Act 2709 is a complement of the mandatory provision: to regulate the manner in which any of the accused may be excluded in order that he may be utilized as a State witness, and to rest the manner of the enforcement of the regulations in the sound discretion of the courts. (U. S. vs. Abanzado, 37 Phil., 658.)

In short, Act 2709 has laid down four principles, namely, (1) that all persons who appear responsible for an offense must be included in the information charging that offense; (2) that even if it is necessary to utilize any of the above persons as State witness, he shall nevertheless be included as accused; (3) that fiscals have no discretion in excluding from prosecution persons who appear responsible for a crime, but that if it becomes necessary to do so, the procedure provided in the law must be followed; and (4) that the exclusion of accused from prosecution, in order that they may be used as State witnesses, is lodged in the sound discretion of the competent court, not in that of the prosecuting officer.

In the case at bar, there is no question that Porfirio Dizon and Emiliano Manalo participated either as principals or accomplices in the kidnapping and murder of Felix Lampa, and that the only reason why the fiscal excluded them from the amended information is because he thought it more convenient, or perhaps more expeditious, to do so. When the fiscal chose to ignore his legal duty to include the said Porfirio Dizon and Emiliano Manalo as accused in the criminal case, and to follow the procedure outlined in the rules by which said persons may be discharged in order that they may be utilized as witnesses for the prosecution, it became proper and necessary for the competent court to require him to comply therewith.

One minor point needs to be considered, and that is the point raised in the brief of the Solicitor General that the petitioner-appellee Jesus Guiao has no right to institute the action of mandamus, because he has no clear right to the performance of the alleged legal duty by the provincial fiscal. We find no merit in this contention. Every person accused of a crime has a positive interest in the inclusion of all his co-conspirators; a right to demand that all of them be accorded equal treatment and be made to suffer the penalties imposed by law. Without deciding the question as to whether or not any private citizen may demand compliance by the fiscal with the provisions of section 1 of Rule 106, requiring him to file the information "against all persons who appear to be responsible for an offense," we hold that the other accused have an interest in the inclusion of their two other companions in the commission of the crime, because these are jointly and severally liable with them for indemnities that may be imposed upon them for the offense they may have committed together.

The judgment appealed from is hereby affirmed, without costs.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.
