

REYNALDO PULIDO Y FOJAS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-28217. July 31, 1970

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Petition for review of a resolution of the Court of Appeals (Case No. 02780-Cr.) denying a motion for reconsideration and new trial.

Charged and tried in the Court of First Instance of Manila with the crimes of bribery and falsification of a private document, Reynaldo Pulido y Fojas was convicted of the first offense charged and acquitted of the second. He was sentenced to not less than 3 months and 11 days of *arresto mayor* and not more than 1 year, 8 months and 21 days of *prision correccional*, plus a fine of Ten Thousand Pesos (P10,000.00) with subsidiary imprisonment, and 8 years and 1 day of temporary special disqualification.

Upon his appeal, through a special division, the Court of Appeals affirmed the judgment of the court *a quo* by a vote of 4 (Justices Esguerra, Lucero, Cañizares and Martin) to 1 (Justice Gatmaitan) on 28 February 1967. After his petition for certiorari was rejected by the Supreme Court (G. R. No. L-27490), appellant Pulido petitioned the Court of Appeals for a new trial on allegedly newly discovered evidence (a) that the special division of five of the Court of Appeals, which affirmed his conviction, was illegally constituted, because Justices Lucero and Esguerra of the Majority were disqualified to sit, and (b) that one Frisco Panganiban, after the decision of the Court of Appeals, had written to appellant Pulido revealing that it was he (Panganiban) who really received the bribe money. The petition for new trial was re-jected by the special division, this time with Justices Gatmaitan and Cañizares dissenting. Appellant Pulido resorted to this Court for the second time, insisting that he should be declared entitled to a new trial.

We find no merit in the argument that Justice Lucero of the Court of Appeals was disqualified to sit in the case because his son, Antonio Lucero, Jr., appeared for accused Evelio Geroche at the preliminary investigation of the case for falsification, and Attorney Jose C. Zulueta, a first cousin of the Justice's wife, had appeared as counsel also for Geroche in the bribery case; for herein appellant Pulido was anyway acquitted in the case for falsification, and the case against Geroche was dismissed when he became a prosecution witness at the start of the trial. Evidently, all intervention and interest of the attorneys above named ceased when their client was discharged, and thereafter, it became immaterial to them or to Justice Lucero whether or not Geroche's testimony should be believed by the trial court or not, since the acquittal of Geroche was already irreversible. The appearance of Attorneys Lucero, Jr. and Zulueta, therefore, could not induce bias in Justice Lucero when he, on appeal, voted for affirmance of Pulido's conviction and sentence by the trial court.

Equally worthless is the argument that Appellate Justice Esguerra should be disqualified because, as Chief of the Legal Staff of the Office of the President, he sat in the administrative investigation of appellant for his peculation

while employed in the Central Bank. As head of the Legal Staff, Justice Esguerra's opinion was irrelevant to the criminal case, which was prosecuted by the City Fiscal of Manila. Justice Esguerra's opinion on the case would have been advisory to the President, at most, and, as this Court has ruled in the Emergency Powers Cases (Rodriguez vs. Insular Treasurer, 45 Official Gazette, 4457), such advisory opinion constitutes no ground for judicial disqualification.

"Furthermore, the fact that Justice Padilla, while Secretary of Justice had advised the President on the question of emergency powers, does not disqualify him to act in these cases for he cannot be considered as having acted previously in these actions as counsel for any of the parties. The President is not here a party" (Case cited).

By his insistence on the applicability of the second paragraph of section I of Revised Rule 137, to the effect that -

"A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just and valid reasons other than those mentioned above"

appellant Pulido in effect admits that there exist none of the legal grounds for disqualification described in the first paragraph of said Rule. While the Justices affected could voluntarily refrain from participating in the case had they felt that there were just and valid reasons for such action, their refusal to yield to appellant's solicitations is evidence that there were no such reasons, and their discretion in the matter is fully entitled to respect.

We are aware that if it should appear that appellant's case was not given a fair and impartial review due to bias or prejudice, even if there be no ground for, disqualification, this Court can, and will order a new trial in the interest of justice.[1] But appellant has made no attempt to show any such prejudice or bias, and what is more, the affirmance of appellant's conviction was concurred in by two other justices of the Court of Appeals (Martin and Cañizares) against whom nothing is alleged, and that concurrence is proof that Justices Esguerra and Lucero were not swayed by prejudice; otherwise, the other justices would have joined in the dissent of Justice Gatmaitan. And in fact, Pulido's original appeal from the decision was rejected by this Court (L -27490).

Granting that appellant herein had no knowledge of the justices composing the special division before the decision was rendered, and could not make his challenges prior to that occasion, the stubborn fact remains that no reason is shown why Justices Lucero and Esguerra should be disqualified and their views set aside.

Neither can this Court regard the letter of Frisco Panganiban as constituting adequate ground for new trial, even if the writer thereof, after asking appellant Pulido for the favor of securing employment for one of his children, avows that it was he (Panganiban) who actually received the bribe money from prosecution witness Geroche. For as stated in the brief of the Solicitor General (pages 24-25),

"It is obvious that the weight of the proffered newly discovered evidence is practically nil. It comes from a polluted source. What is more, such evidence can only be categorized as impeaching in nature or corroborative to that of the accused petitioner, hence, it will not, constitute ground for new trial (4 Moran op. cit. p. 298). The said Frisco Panganiban was asking the accused-petitioner for a favor -- the employment of his children and in such situation his propensity to prevaricate is strong considering the desire to ingratiate himself to the accused-petitioner in order to merit the favor he was asking. And so, the alleged newly discovered letter comes from one who has no compunction of admitting that he was the one who received and pocketed the bribe money. In other word's, he was so willing to be the scapegoat -- for the favor of securing employment for his children. But it is not explained why State witness Geroche will ever give such substantial amount of P10,000.00 to a total stranger to him, whose connection with or influence among officials of the Central Bank is not even shown. Considering that the proffered newly discovered evidence or the testimony of its writer, Frisco Panganiban, even if admitted and considered by the Court, is valueless, it cannot prevail over positive evidence, with much corroboration of the prosecution's witnesses and jibing documentary evidence (See decision, CA-G.R No. 02780-Cr, p. 16, supra). Hence, the same cannot discredit the testimony of State witness

Evelio Geroche who declared that he gave the bribe money of P10,000.00 to the accused petitioner Reynaldo Pulido personally (p. 19, t.s.n., Dec. 19, 1959)."

WHEREFORE, the order of the Court of Appeals denying Reynaldo Pulido's motion for new trial is affirmed, with costs against said appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Teehankee, and Villamor, JJ., concur.
Fernando and Barredo, JJ., did not take part.

[1] Dais vs. Torres, 57 Phil. 897.

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