

DOMINGO V. LUGTU, DEMETRIO SANCHEZ, AS PROVINCIAL FISCAL OF BATAAN, AND PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. THE COURT OF APPEALS AND ROSA L. CANCIO, RESPONDENTS.

G.R. NO. L-42037. March 21, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This petition for review seeks to set aside the decision* of respondent Court of Appeals, promulgated on 17 September 1975, granting private respondent's petition for certiorari in CA-G.R. No. 04122-SP, entitled "Rosa L. Cancio vs. Hon. Abraham P. Vera, etc., et al.," and setting aside the orders of the trial court dated 19 June 1974, 11 January 1975 and 15 February 1975 which authorized the discharge of petitioner Domingo V. Lugtu from the information so that he could be utilized as witness for the government.

Petitioner Domingo V. Lugtu, together with private respondent Rosa L. Cancio and Clodualdo F. Vitug were charged in an information filed by the Provincial Fiscal of Bataan in the Court of First Instance of said province, with the crime of estafa committed as follows:

"x x x accused Domingo V. Lugtu, Clodualdo F. Vitug and Rosa L. Cancio, with intent to cause damage and to defraud another with deceit, conspiring, confederating and mutually helping one another, said accused Clodualdo Vitug and Rosa L. Cancio induced and succeeded to make their co-accused Domingo V. Lugtu to open a checking account with Continental Bank, Guagua Branch, and after which made and caused him to purchase Check Boks [sic] and thereafter Domingo Lugtu signed said checks in blank and delivered same to his co-accused Clodualdo Vitug, an Acting Paying Teller of the Philippine National Bank, who knowing fully well that accused Domingo Lugtu had no sufficient funds in the bank, accused Clodualdo Vitug, with grave abuse of confidence and in excess of his authority, did then and there wilfully, unlawfully and feloniously fill out the following checks payable to 'CASH' x x x drawn against the Continental Bank, after which, said accused Clodualdo Vitug taking undue advantage of the position as such Acting Paying Teller of the Philippine National Bank at Balanga, Bataan, endorse, encash and pay the above-mentioned checks to himself in the aggregate amount of ONE HUNDRED SEVENTY TWO THOUSAND AND FOUR HUNDRED (P172,400.00) PESOS, but upon presentation of said checks to the drawee bank for payment, the aforementioned checks were dishonored and returned unpaid because of insufficiency of funds and/or 'no arrangement' and despite repeated demands made to the accused to remit, pay or deposit the corresponding amounts of said checks, accused failed and refused to remit, pay or deposit the corresponding amount of the checks to the damage and prejudice of the Philippine National Bank x x x"[1]

At the arraignment, all the accused pleaded not guilty. After presenting three (3) witnesses, the Provincial Fiscal filed with the trial court a motion to discharge the accused Domingo V. Lugtu for the purpose of utilizing him as state witness against his co-accused. The motion was denied by Judge Abraham P. Vera. A motion for reconsideration was filed by the Provincial Fiscal and the private prosecutor, attaching thereto an affidavit dated 8 February 1974 of Lugtu, to which motion accused Rosa L. Cancio filed an opposition. The parties submitted their respective reply, rejoinder and comment. Thereafter, in an Order dated 19 June 1974, Judge Vera

reconsidered his earlier order, after finding that "the prosecution has fully complied with the requirements outlined by Sec. 9, Rule 119 of the Rules of Court," and authorized the discharge of Lugtu from the information so that he could be utilized as government witness. Accused Cancio filed a motion for reconsideration of the said Order of 19 June 1974, wherein she called the attention of the trial judge to an earlier Sinumpaang Salaysay, dated 10 March 1973, executed by the same Lugtu before the PC of Bataan. In an Order dated 11 January 1975, the court a quo denied Cancio's motion. Her second motion for reconsideration was likewise denied on 15 February 1975.

Alleging that the trial judge committed a grave abuse of discretion, or acted in excess of his jurisdiction in issuing the three (3) orders abovementioned, accused Cancio filed with the Court of Appeals a petition for certiorari, praying that the three (3) orders adverted to be reversed. On 17 September 1975, respondent appellate court promulgated the now questioned decision, setting aside the three (3) assailed orders of the court a quo and ordering the reinstatement of Lugtu to the information.[2] Herein petitioners' motion for reconsideration of the decision was denied by respondent court on 24 November 1975 for lack of merit.[3] Hence, this petition.

The principal issue to be resolved in this recourse is whether or not respondent appellate court erred in finding that the conditions required under Section 9, Rule 119 of the Rules of Court were not present when the trial court approved the discharge of accused Lugtu from the information.

Section 9, Rule 119 of the Rules reads as follows:

"SEC. 9. Discharge of one of several defendants to be witness for the prosecution. - When two or more persons are charged with the commission of a certain offense, the competent court, at any time before they have entered upon their defense, may direct one or more of them to be discharged with the latter's consent that he or they may be witnesses for the government when in the judgment of the court:

- (a) There is absolute necessity for the testimony of the defendant whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;
- (c) The testimony of said defendant can be substantially corroborated in its material points;
- (d) Said defendant does not appear to be the most guilty;
- (e) Said defendant has not at any time been convicted of any offense involving moral turpitude."

In ruling that the first and second conditions required in the above-quoted section are not present, respondent appellate court considered the sworn statement (Sinumpaang Salaysay) dated 10 March 1973 executed by accused Lugtu wherein he admitted his responsibility in the commission of the offense. Another factor that persuaded the respondent court to take its position, is the testimony of the three (3) prosecution witnesses who had already testified on the modus operandi of the swindle, by which Lugtu opened a checking account with the Continental Bank in Guagua, Pampanga, issued checks that were cashed by accused Vitug with the PNB Branch in Balanga, Bataan, and thereafter it was found that the checks were not covered by sufficient funds. These circumstances, according to respondent appellate court, constitute direct evidence, available to the prosecution, of the offense committed, such that the testimony of Lugtu is not absolutely necessary.

Petitioners contend, on the other hand, that Lugtu's Sinumpaang Salaysay of 10 March 1973 was not yet presented or before the trial court at the time it resolved their (petitioners) motion for reconsideration of its first order denying their motion for discharge of Lugtu. It was only brought to the attention of the trial judge after private respondent Cancio filed her motion for reconsideration of the 19 June 1974 order authorizing the discharge of

Lugtu. However, according to the petitioners, the said sworn state-ment (10 March 1973) was in fact passed upon by the trial judge in his order dated 15 February 1975, to wit:

"x x x 'After considering the arguments of opposing counsels and carefully scrutinizing the 'Sinumpaang Salaysay' of Accused Lugtu before the PC C2C Marino Ravelo at the Bataan Constabulary Commands in Camp Tolentino at Balanga, Bataan on March 10, 1973, the Court is of the opinion that there is no reasonable ground to set aside its previous order discharging the accused Domingo Lugtu from the information so that he could be utilized as State witness' x x x"[4]

As for the testimony of the three (3) prosecution witnesses, petitioners assert that, as correctly ruled by the trial court, the said testimony can substantially corroborate the testimony of Lugtu in its material points. The testimony of the three (3) witnesses centered on the modus operandi of the swindle perpetrated by the three (3) accused.

According to petitioners, the trial court after thoroughly and exhaustively examining and evaluating the facts and evidence on record, found Lugtu not to be the most guilty. Being a poor and ignorant man, he was easily convinced by Vitug and Cancio (his employer) to open the account with the Continental Bank in Guagua, which led to the commission of the offense.

In the words of the trial judge:

"A perusal of the Motion for Reconsideration and the Affidavit of accused Lugtu attached thereto explicitly show that the said accused, who the records show is unable to post a bond, was introduced by his employer, accused Rosa L. Cancio, to Clodualdo Vitug, then working as a teller of the Balanga, Bataan branch of the Philippine National Bank. After the introduction, accused Lugtu, upon prodding of accused Vitug and Cancio, was made to open a current account with the Continental Bank at Guagua, Pampanga. Thereafter, accused Lugtu was told by his co-accused, Vitug and Cancio, to buy a checkbook and then was made to sign all the checks therein in blank. The accused Lugtu protested to accused Cancio why he was the one being made to open the account and to sign the blank checks and he received the answer that if the accused [sic] were opened in the name of accused Vitug, the bank might learn about it and he (Vitug) might lose his job."[5]

Finally, petitioners state that both the court a quo and the respondent appellate court found that Lugtu has not at any time been convicted of any offense involving moral turpitude.

The petition is impressed with merit.

From the records and evidence thus far adduced, it appears that there is absolute necessity for the testimony of petitioner Lugtu. It should be noted that in the information, the three (3) accused were charged with conspiring and confederating with one another in the commission of the crime charged (estafa).

Respondent appellate court erred when it considered the testimony of the three (3) prosecution witnesses and the Sinumpaang Salaysay dated 10 March 1973 executed by Lugtu admitting his responsibility, as direct evidence, available to the prosecution, of the crime charged. For, respondent court itself acknowledged that "the three prosecution witnesses that were presented by the prosecution only mentioned the accused Vitug and the respondent Lugtu. The petitioner (Cancio) has never been brought into the picture."[6] Respondent court was likewise aware that "(u)nder the information there is only one conspiracy alleged which is among the three accused and not only between the petitioner and accused Vitug. The prosecution has adduced evidence as to the conspiracy between respondent Lugtu and the accused Vitug. What apparently has not been clearly established is the involvement of the petitioner (Cancio) in the conspiracy."[7] Such being the case, we agree with the finding of the trial court that the testimony of Lugtu would be the direct evidence to link the events starting from the opening of the checking account up to the time the checkbook in question found its way to the Philippine National Bank branch in Balanga.

The discharge of an accused should be availed of only when there is absolute necessity for the testimony of said accused whose discharge is requested, as when he alone has knowledge of the crime, and not when his testimony would simply corroborate or otherwise strengthen the evidence in the hands of the prosecution.[8]

As to Lugtu's Sinumpaang Salaysay of 10 March 1973 to which respondent court gave much weight, in the words of the Solicitor General, the statement merely complements and supplements the 8 February 1974 affidavit of Lugtu and that the first sworn statement (10 March 1973), which was executed before a constabulary soldier who asked the questions of Lugtu, does not contain all the details as compared to the second statement of 8 February 1974. More-over, since there is no showing that the said Sinumpaang Salaysay of 10 March 1973 was executed by Lugtu in the presence or with the aid of counsel in compliance with Article IV, Section 20, of the (1973) Constitution, the same is inadmissible in evidence.

The finding of respondent appellate court that Lugtu is just as guilty as the accused Vitug and should not be discharged as he does not appear to be not the most guilty, is untenable.

"The Rules do not disqualify an accused sought to be discharged as witness for the state merely on the ground that he has committed a falsification himself, or that he had actually committed the crime charged. The Rules say that it is necessary that the 'said defendant does not appear to be the most guilty,' from which the conclusion follows that the guilt of an accused of the crime charged is no reason why he may not be excluded as witness for the State. As a matter of fact, the candid admission of an accused, of his participation in a crime, is a guaranty that if he will testify in court he will testify truthfully; so that even if an accused actually participated in the offense charged in the information, he may still be made a witness." [9]

The facts of record show that the trial judge who was in a position to evaluate the evidence available so far, did not abuse his discretion. It is settled that the discharge of an accused lies within the sound discretion of the trial court which has the exclusive responsibility to see that the conditions prescribed by the Rule (for discharge of an accused) exist.[10]

WHEREFORE, respondent court's Decision dated 17 September 1975 and its Resolution dated 24 November 1975 are hereby SET ASIDE. The Orders of the trial court dated 19 June 1974, 11 January 1975 and 15 February 1975 in Criminal Case No. 390 are hereby REINSTATED. The Regional Trial Court of Bataan corresponding to the former Court of First Instance of Bataan is directed to proceed with the trial on the merits of Criminal Case No. 390.

This decision is immediately executory.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

* Penned by Associate Justice Emilio A. Gancayco with the concurrence of Associate Justices Ramon Gaviola and Mariano Serrano.

[1] Rollo, pp. 6-7

[2] Annex A, pp. 28-43, *ibid.*

[3] Annex D, pp. 54-56, *ibid.*

[4] Rollo, p. 12

[5] Rollo, p. 16

[6] Annex A, p. 35, *ibid.*

[7] *Ibid.*, p. 33

[8] *Flores v. Sandiganbayan*, G.R. No. 63677 August 12, 1983, 124 SCRA 109

[9] *People vs. Court of Appeals*, G.R. No. 55532, July 31, 1984, 131 SCRA 107

[10] *People vs. Court of Appeals*, *supra*; *People vs. Court of Appeals*, G.R. 62881 August 30, 1983, 124 SCRA 338; *People vs. Tabayoyong*, G.R. No. L-31084 May 29, 1981, 104 SCRA 724

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