

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. HON. FELINO D. ABALOS, JUDGE OF THE COURT OF FIRST INSTANCE, BRANCH II, 16TH JUDICIAL DISTRICT, AND MOHAMMAD USSAM DAMBONG, RESPOND...

G.R. No. L-29039. November 28, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This is a special civil action for certiorari and mandamus with preliminary mandatory injunction, to annul an order of Honorable Felino D. Abalos, as Judge of the Court of First Instance of Sulu, directing that the testimony of a rebuttal witness for the prosecution in Criminal Case No. 3158 of said Court be stricken from the records. Soon after the filing of the petition herein, We issued a temporary restraining order directing that the continuation of the trial of said case be suspended until further orders.

On or about March 9, 1966, an information was filed with said court, presided over by respondent Judge, accusing Mo-hammad Ussam Dambong, Jikiri Dambong, Amiril Habissi and Ahmad Intoman, of the crime of double murder upon Abdulhadi Maoludani and Maoludani Habissi, with multiple frustrated murder upon the persons of Sarahani Maoludani, Marajuko Maoludani and Abdulrajik Maoludani, allegedly committed on February 6, 1961, in Guimba Asin, municipality of Panamao, province of Sulu. When the case was called for trial, the prosecution introduced evidence tending to show that defendant Mohammad Ussam Dambong had, on February 6, 1961, gone to the place aforementioned, accompanied by his co-defendants, and then fired at and killed Maoludani Habissi and Abdulhadi Maoludani, as well as shot and wounded the other persons named in the information. After the reception of said evidence for the prosecution, the defense proceeded with the presentation of its own evidence, in the course of which, defendant Mohammad Ussam Dambong testified that the casualties and the injuries adverted to above were due to shots fired, not by him, but by Abdulkadil Habbisi, because, as a police sergeant in the performance of his duty, he (Mohammad Ussam Dambong) had merely fired into the air, to stop a fight between two (2) groups of persons, to one of which the victims belonged. The defense having, thereafter, completed the introduction of its evidence, on April 24, 1968, the prosecution called Madjid Andi as rebuttal witness.

After the preliminary questions propounded to him, the defense objected to further questions, upon the ground that Madjid Andi appeared to have witnessed the occurrence and that his testimony should have been introduced when the prosecution presented its evidence in chief. Respondent Judge sustained the objection, but, later, reconsidered his resolution, as the prosecution explained that it had discovered Madjid Andi sometime after the introduction of its evidence in chief and that the testimony of said witness would merely rebut that of defendant Mohammad Ussam Dambong. Thereupon, the prosecution resumed the examination of Madjid Andi, who said that he was present when the shooting involved in the case took place, that Maoludani Habissi and Abdulhadi Maoludani were shot by defendant Mohammad Ussam Dambong, not by Abdulkadil Habbisi, and that the latter was not even at the scene of the occurrence. The prosecution then asked Madjid Andi whether Mohammad

Ussam Dambong was in the courtroom. The defense objected to this question as improper for rebuttal, and one that should have been asked during the presentation by the prosecution of its evidence in chief. Respondent Judge sustained the objection and ordered the testimony of Madjid Andi stricken from the record, as improper for rebuttal.

The prosecutor having announced that Madjid Andi would be its last witness and that he (prosecutor) would appeal from the resolution of the court as soon as copy thereof had been furnished him, respondent Judge incorporated his aforementioned resolution in an order, dated May 2, 1968, directing that the testimony of said witness be "discarded from the records on the ground that the testimony are answers to questions not proper in rebuttal" and stating that "from the observation of the Court, the witness in rebuttal should have been presented as a witness in the presentation of the evidence in chief of the prosecutor", and declaring that the case would be deemed sub-mitted for decision on May 15, 1968, unless the parties sought permission to file memoranda on or before said date.

Hence, this original action for certiorari and mandamus, with preliminary mandatory injunction, filed by the prosecution against said respondent Judge and Mohammad Ussam Dambong, for the purpose stated at the beginning of this decision. In his answer to the petition herein, respondent Judge reiterated the views expressed by him during the trial, as well as in the resolution and the order complained of. Respondent Mohammad Ussam Dambong filed an answer defending the position taken by respondent Judge. Such position is utterly untenable.

Referring particularly to the question whether or not respondent Judge erred in ordering the testimony of Madjid Andi stricken from the records, We note that the information alleges that defendant Mohammad Ussam Dambong had fired at and killed Maoludani Habissi and Abdulhadi Maoludani, as well as wounded several other specified persons. Naturally, the evidence for the prosecution tended to prove that Mohammad had committed these acts. Upon the other hand, Mohammad was entitled to establish the contrary - that he did not kill or wound said persons. He, however, went further, to which he was entitled, by testifying that it was Abdulkadil Habbisi who killed and wounded the persons above-mentioned. This was a new matter, not covered directly by the evidence for the prosecution. It is true that, if, as testified to by its witnesses, it was Mohammad Ussam Dambong who caused the deaths and the injuries already adverted to, it would follow that Abdulkadil Habbisi was not the author thereof. The prosecution was entitled, however, as a matter of strict legal right, to introduce positive evidence to this effect, instead of relying upon a mere inference from its evidence in chief. In fact, it was to the interest of the trial court, in the discharge of its duty to find the truth, to receive said rebuttal evidence for the prosecution. What is more, a failure to introduce it on rebuttal could have been regarded as a sign of weakness in the evidence for the prosecution. Then, too, it would have been ridiculous for the prosecution, during the presentation of its evidence in chief, to try to prove that the crimes charged in the information had not been committed by Abdulkadil Habbisi.

Under the circumstances, it is obvious that, in directing that the testimony of Madjid Andi be stricken from the record and not allowing said witness to identify the person who committed the crime aforementioned, respondent Judge had committed a grave abuse of discretion amounting to excess of jurisdiction.

Trial courts have ample discretion to determine whether or not the parties should be allowed to introduce evidence in rebuttal. Moreover, its resolutions on these matters are interlocutory in nature and will not generally be reviewed, except on appeal taken from a decision rendered on the merits. Judicial discretion, however, is not unlimited. It must be exercised reasonably, with a view to promoting the ends of justice, one of which is to ascertain the truth. Hence, whenever discretion is vested, it must be understood to be a sound one, inasmuch as the interest of justice, equity and fair play cannot be advanced otherwise. This is particularly true with respect to rules of procedure, especially those governing the admission or exclusion of evidence. As a matter of general practice, it is deemed best to resolve doubts in favor of the admission of the contested evidence, without prejudice to such

action as the court may deem fit to take in deciding the case on the merits.[1] This practice has added importance as regards the evidence for the prosecution in criminal cases, for, once the accused has been acquitted, there is no means to secure a review by appeal, no matter how erroneous the action of the lower court may have been. Hence, We have been constrained to suspend the proceedings in the criminal action involved in the case at bar, to forestall a possible miscarriage of justice.

In issuing a writ of certiorari against a trial Judge who had rejected, inter alia, certain rebuttal evidence for the prosecution in a criminal case, We had occasion to point out, in *People v. Montejo*[2], that:

"Upon a review of the record, we are fully satisfied that the lower court had, not only erred, but, also, committed a grave abuse of discretion in issuing the resolutions complained of, in reject-ing the aforementioned direct and rebuttal evidence for the prosecution, and in not permitting the same to propound the questions already adverted to. It is obvious to us that said direct and rebuttal evidence, as well as the aforementioned questions, are relevant to the issues involved in Criminal Case No. 672. Although it is not possible to de-termine with precision, at this stage of the proceed-ings, how far said exhibits may affect the outcome of that case, it is elemental that all parties therein are entitled to a reasonable opportunity to establish their respective pretense. In this connection it should be noted that, in the light of the allegations of the amended information in said case and of the records before us, the issue of the guilt or inno-cence of the accused therein is bound to hinge heavily upon the veracity of the opposing witnesses and the weight attached to their respective testimo-ny. Hence, the parties should be allowed a certain latitude in the presentation of their evidence, lest they may be so hampered that the ends of justice may eventually be defeated or appear to be defeated. The danger of leading to such result must be avoid-ed, particularly in cases of the nature, importance and significance of the one under consideration."

We, likewise, called attention to the following view, ex-pressed in *Prats & Co. v. Phoenix Insurance Co.*³ as far back as February 21, 1929:

"In the course of long experience we have observed that justice is most effectively and expe-ditiously administered in the courts where trivial objections to the admission of proof are received with least favor. The practice of excluding evidence on doubtful objections to its materiality or technical objections to the form of the questions should be avoided. In a case of any intricacy it is impossible for a judge of first instance, in the early stages of the development of the proof, to know with any certainty whether testimony is rele-vant or not; and where there is no indication of bad faith on the part of the attorney offering the evidence, the court may as a rule safely accept the testimony upon the statement of the attorney that the proof offered will be connected later. Moreover, it must be remembered that in the heat of the battle over which he presides a judge of first instance may possibly fall into error in judging the relevancy of proof where a fair and logical connection is in fact shown. When such a mistake is made and the proof is erroneously ruled out, the Sup-reme Court, upon appeal, often finds itself em-barrassed and possibly unable to correct the ef-fects of the error without returning the case for a new trial - a step which this court is always very loath to take. On the other hand, the admis-sion of proof in a court of first instance, even if the question as to its form, materiality, or rele-vancy is doubtful, can never result in much harm to either litigant, because the trial judge is supposed to know the law; and it is its duty, upon final con-sideration of the case, to distinguish the relevant and material from the irrelevant and immaterial. If this course is followed and the cause is prose-cuted to the Supreme Court upon appeal, this court then has all the material before it necessary to make a correct judgment."

and commented that:

"There is greater reason to adhere to such policy in criminal cases where questions arise as to admissibility of evidence for the prosecution, for the unjustified exclusion of evidence may lead to the erroneous acquittal of the accused or the dismissal of the charges, from which the People can no longer appeal."

as We granted a similar writ, in *People v. Yatco*⁴, against ano-ther trial court that had ordered the exclusion of an

extra-judicial confession sought to be introduced as part of the evidence for the prosecution.

WHEREFORE, the order complained of is hereby annulled, and respondent Judge, accordingly, directed to receive the afore-mentioned testimony of Madjid Andi, as well as to allow him to identify the person who caused the deaths and the injuries involved in the criminal case already adverted to, with the costs of this instance against respondent Mohammad Ussam Dambong.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

[1] Director of Lands v. Roman Catholic Archbishop, 41 Phil. 120, 124; U.S. v. Alviar, 36 Phil. 804; Thompson on Trials, Sec. 346; Carver v. U.S., 164 U.S. 694, 41 L. ed. 602; French v. Hall, 119 U.S. 152, 30 L. ed. 375.

[2] L-14595, May 31, 1960.

3 52 Phil. 807, 816-817.

4 L-9181, November 28, 1955.

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