

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. VICENTE N. CUSI, JR., PRESIDING JUDGE, BRANCH I, COURT OF FIRST INSTANCE OF DAVAO, ARCADIO PUESCA ALIAS BIG BOY, WALTER APA, JOSE...

G.R. No. L-20986. August 14, 1965

Ponente: DIZON, J.

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DIZON, J.:

In Criminal Case No. 6813 of the Court of First Instance of Davao, Arcadio Puesca, Walter Apa, Jose Gustilo, Filomeno Macalinao, Ricardo Dairo, and Magno Montano were charged with robbery in band with homicide, to which they pleaded not guilty. During the trial, and while Sgt. Lurio Baño, of the Police Force of Digos, Davao, was testifying as a prosecution witness regarding the extrajudicial concession made to him by the accused Arcadio Puesca, he said that the latter, aside from admitting his participation in the commission of the offense charged, revealed that other persons conspired with him to commit the offense, mentioning the name of each and everyone of them. Following up this testimony, the prosecuting officer asked the witness to mention in court the names of Puesca's alleged co-conspirators. Counsel for the accused Macalinao, Gustilo and Dairo objected to this, upon the ground that whatever the witness would say would be hearsay as far as his clients were concerned. The respondent judge resolved the objection directing the witness to answer the question but without mentioning or giving the names of the accused who had interposed the objection. In other words, the witness was allowed to answer the question and name his co-conspirators except those who had raised the objection. The prosecuting officer's motion for reconsideration of this ruling was denied. Hence the present petition for certiorari praying that the above mentioned ruling of the respondent judge be declared erroneous and for a further order directing said respondent judge to allow witness Bano to answer the question in full.

The question involved herein is one purely of evidence. There is no question that hearsay evidence, if timely objected to, may not be admitted. But while the testimony of a witness regarding a statement made by another person, if intended to establish the truth of the facts asserted in the statement, is clearly hearsay evidence, it is otherwise if the purpose of placing the statement in the record is merely to establish the fact that the statement was made or the tenor of such statement (*People vs. Lew Yon*, 97 Cal. 224; VI Wigmore 177-8).

In the present case, the purpose of the prosecuting officer, as manifested by him in the discussions below, is nothing more than to establish the fact that the accused Puesca had mentioned to Sgt. Bano the names of those who conspired with him to commit the offense charged, without claiming that Puesca's statement or the answer to be given by Sgt. Bano would be competent and admissible evidence to show that the persons so named really conspired with Puesca. For this limited purpose, We believe that the question propounded to the witness was proper and the latter should have been allowed to answer it in full, with the understanding, however, that his answer shall not to be taken as competent evidence to show that the persons named really and actually conspired with Puesca and later took part in the commission of the offense.

On the other hand, the fact which the prosecuting officer intended to establish would seem to be relevant to

explain why the police force of the place where the offense was committed subsequently questioned and investigated the persons allegedly named by Puesca.

Premises considered, the writ is granted. The writ of preliminary injunction issued heretofore is hereby set aside.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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