

## LAURO G. MARQUEZ, PETITIONER VS. HON. GABRIEL VALERO, ETC., ET AL.

*G.R. No. L-20313. May 30, 1966*

Ponente: REGALA, J.

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### REGALA, J.:

On September 6, 1962, during the continuation of the trial in Criminal Case No. 2639 of the Court of First Instance of Sulu, People of the Philippines versus Laura G. Marquez, et al., for the killing of Meinhart Spielman, after the last witness for the defense had testified, the counsel for the accused, in the form of manifestation, stated in open court the desire of the defense to have the hearing postponed in order that they may have time to take the depositions of witnesses they proposed to present in further support of the defense of the accused. Counsel argued that because of the distance of the residence of their witnesses, the court's coercive powers could not extend beyond the 50-kilometers limit provided for in Section 9, Rule 29 of the Rules of Court and, therefore, a deposition would be in order.

The court, however, treating the manifestation of the said attorney as a formal application for the examination of witnesses for the defendant before trial, denied the same for the reason that the petition or motion was not made in accordance with then Section 4, Rule 115, now Section 4, Rule 117 of the Rules of Court.

On September 10, 1962, counsel for the accused again filed an urgent motion for leave to take depositions, reiterating what he stated in his verbal motion, and citing therein cases in support of his motion.

The lower court denied the motion with a suggestion, however, that the matter be brought to this Court, considering that there are no provisions of law which are definite and conclusive on the subject matter.

In view of the fact that Criminal Case No. 2639 of the Court of First Instance of Sulu has been terminated with the acquittal of the accused Lauro G. Marquez, the question involved in this petition, which is only incidental to the said Criminal case, has become moot and academic.

Wherefore, the petition is hereby dismissed. No costs.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ, concur.

Petition dismissed.

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