

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. FILOMENO B. IBAÑEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF BUKIDNON, TEOFILO SALCEDO AND MELECIO QUIRAB, RESPONDENTS.

G.R. No. L-5242. April 20, 1953

Ponente: TUASON, J.

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TUASON, J.:

This is an original petition for certiorari by the Provincial Fiscal of Bukidnon, later substituted by the People of the Philippines, against Honorable Filomeno B. Ibañez, Judge of the Court of First Instance of Bukidnon, and Teofilo Salcedo and Melecio Quirab, defendants in a criminal case for falsification of a public document. In its effects the petition is one for mandamus to compel the respondent judge to grant the discharge of Melecio Quirab from the prosecution, as prayed for by the Provincial Fiscal, in order that this accused may be used as a state witness against the other defendant, Teofilo Salcedo,

The information alleged that on or about January 21, 1951, Salcedo, as Mayor of the municipality of Malaybalay, Bukidnon, and Quirab, as a road capataz, conspiring together and confederating with each other, did wilfully falsify a voucher or payroll by stating therein that one Pascual Ma-aliao had worked for 12 days as laborer when in fact he had not been so employed. Upon the cause being called for trial, the provincial fiscal presented the aforementioned motion, alleging that there was an absolute necessity for Quirab's testimony; that there was no other direct evidence available for the proper prosecution of the offense committed; that Quirab's testimony could be substantially corroborated in its material points, and that this defendant did not appear to be the most guilty and had not at any time been convicted of any offense involving moral turpitude,

Judge Ibañez denied the motion in an order of the following tenor:

"In petition like the present one presented by the prosecution, generally the Court will take for granted that it is always justifiable in view of the fact that the prosecution is in a better position to know the facts before actual trial is had, but upon examining the records of the case, the Court believes that there is no material ground to discharge the accused, Melecio Quirab, because it is very apparent that the payroll cannot be paid without the signature of the capataz and vice versa, without the signature of the mayor. The evidence of the prosecution is mostly documentary especially with respect to the laborers appearing in the payroll and the payment for the period he was said to have been working.

"The Court thinks that what the prosecution will establish as evidence can be established even without the testimony of Mr. Quirab. Frankly speaking, the presiding judge of this Court is by nature very kind and always favors the accused. But if Melecio Quirab can be made a Government witness, why not the other accused, the mayor, be made also a government witness against Melecio Quirab? The Court is sorry to make that observation because the Court seems to think that this may be said to be a persecution, not prosecution. The importance of the signature of Mr. Quirab in the payment of that payroll is just as important as the signature of Mr. Salcedo.

"In view of the foregoing consideration, with much regret, the Court hereby denies the petition to discharge

one of the accused."

And in his answer, the respondent Judge states that the Fiscal was unable to state the points of the accusation which he said he could not prove without Quirab's cooperation, leading the court to doubt that there was real necessity for the proposed exclusion.

In this Court, as in the court below, Quirab sides with the Fiscal while Salcedo opposes the application for certiorari or mandamus.

Section 9 of Rule 115 reads:

"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 any of them to be discharged with the latter's consent that he may be a witness 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."

It is apparent from this rule that the discharge of an accused that he may turn state's evidence is expressly left to the sound discretion of the court. The court's is the exclusive responsibility to see that the conditions prescribed by the rule exist. The rule is completely silent as to any authority of the prosecution in the premises, although authority may be inherent in the office of the prosecuting attorney to propose. Section 2 of Act No. 2709 from which the preceding rule was taken, was enacted avowedly to curtail miscarriage of justice, before too common, through the abuse of the power to ask for the discharge of one or more defendants. "Absolute necessity of the testimony of the defendant whose discharge is requested," among other things, must now be shown if the discharge is to be allowed, and, as above stated, it is the court upon which the power to determine the necessity is lodged.

We have no reason to doubt Judge Ibañez' averments that the Fiscal was unable or unprepared to enlighten His Honor on the alleged need of dismissing the case against Quirab and on the relative degree of the two defendants' criminal or moral guilt. Judged by the allegations of the information which, it would seem, were the only facts laid before the court, the two defendants were at least equally guilty, and by the nature of the charges and the defendants' duties in relation to the preparation of the payroll, it was reasonable to expect that Quirab would take the stand even if he were not used as a witness for the Government. For, Quirab's signature and certification on the forged document being admitted, his sole defense had to be, as he had declared in a sworn statement, that the Mayor had ordered him to include Ma-alia's name in the payroll and that he had merely obeyed his superior officer. Whether as a witness for the Government or as a defendant fighting for his acquittal, Quirab could not afford to be silent on how and why he affixed his name to the voucher. And since the two defendants were being prosecuted under one information and tried together, Quirab's testimony, in his own defense, could be as effective against Salcedo as when given in the capacity of prosecution witness.

However the case may be, the denial of the Fiscal's motion did not, as Judge Ibañez points out, definitely close the door to its renewal at any stage of the trial before the defense commenced with its proof, when, the issues and the

evidence having crystallized, the court would be in a position to consider the said motion more intelligently. His Honor undoubtedly realized the risks to the administration of justice of a precipitate action. Dismissal of the case against a defendant that he may testify for the prosecution could not be recalled even if it should turn out later to have been unnecessary or a blunder. (Section 11, Rule 115.)

In the light of all the circumstances, Judge Ibañez made, in our opinion, a wise and cautious exercise of his judgment on the motion under consideration. We see no indication in the entire proceedings other than good faith, circumspection and the will on the part of the court to see that the ends of justice were served and the elements and limitations of the Rules of Court observed. His Honor's order deserves commendation rather than condemnation and reversal.

The petition therefore is denied, without costs.

Paras, C. J., Feria, Pablo, Bengzon, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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