

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE
JUDGE SIXTO A. DOMONDON, COURT OF FIRST INSTANCE OF
PANGASINAN, SAN CARLOS CITY (PANGASINAN) BRANCH,
FILOMENA GABRIEL, J...**

G.R. No. L-29836. February 29, 1972

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an original action of certiorari, prohibition and mandamus, with prayer for preliminary injunction, filed in the name of the People by State Prosecutor Alejandro C. Siazon of the Department of Justice.

The three private respondents, Filomena Gabriel, Jose C. Arenas and Estela Macam-Nicanor, are accused in Criminal Cases Nos. SCC-128, 129 and 130, respectively, of the Court of First Instance of Pangasinan, San Carlos City (Pangasinan) Branch, of violating the Anti-Graft And Corrupt Practices Act (Republic Act No. 3019). The charges arose in connection with the alleged leakage of test questions in the Teachers' Selective Examination given on June 18, 1966, in Lingayen, Pangasinan, and in Tarlac, Tarlac. The three cases are being tried jointly, it being alleged in the informations that there was conspiracy among the defendants. All three defendants are out on bail. Originally, there was a fourth information filed with the same court (docketed as Criminal Case No. SCC-131), against another defendant, Jessie S. Siapno; but upon the People's motion, on the ground that the said defendant would be utilized as a state witness, the trial court ordered her discharge as a defendant and dismissed the case against her.

According to petitioner, the only reason why the four defendants were not charged in a single information is that two of them (Estela Macam-Nicanor and Jessie S. Siapno) were private individuals at the time of the alleged commission of the crime, while the conspiracy insofar as the two other defendants (Filomena Gabriel and Jose C. Arenas, public school teachers in Bayambang, Pangasinan) are concerned, is with the said two private individuals separately and/or between the two of them. Incidentally, although Jessie S. Siapno was not in the government service when the examination was held on June 18, 1966, she is now a public school teacher in Manaoag, Pangasinan, having been appointed as such on July 25, 1966.

Three of the defendants, namely, Filomena Gabriel, Jose C. Arenas and Jessie S. Siapno (the discharged defendant) have each signed a sworn extrajudicial confession before agents of the National Bureau of Investigation. Only Estela Macam-Nicanor did not execute an extrajudicial confession. So far, the State has presented ten witnesses.

It is alleged in the present petition that during the continuation of the joint trial of the three cases on November 18 and 19, 1968, discharged defendant Jessie S. Siapno, who was then on the witness stand, confirmed as hers the extrajudicial confession which was allowed by the court to be marked as Exhibit "V" for the prosecution, with sub-markings from "V-1" to "V-6"; that when the said witness was asked by the prosecutor to identify her signature on each of the pages of Exhibit "V", the defense objected on the ground that the answer to the question

would tend to incriminate the witness, she being now a public school teacher; that respondent Judge then asked the witness if she had been previously informed that her testimony might be used as basis for an administrative case against her, and the answer was in the affirmative; and that although the prosecutor reminded the court that witness Siapno had been discharged by order of the court itself, after her counsel had affirmed in open court that he had no objection to her being discharged to be utilized as a state witness, respondent Judge sustained the objection.

Petitioner also alleges that when discharged defendant Siapno was asked by the prosecution to describe the test booklet which she had stated in her extrajudicial confession to have been purchased by her from defendant Estela Macam-Nicanor, the defense objected on the ground that the best evidence was the booklet itself, which objection was sustained by respondent Judge. It appears that page 8 was presented as evidence in court as Exhibit "W", and that a prosecution witness, Minas Gabertan, had testified on the witness stand that the same was part of the test booklet.

In this petition it is prayed, among others, that a preliminary injunction be issued to restrain respondent Judge from proceeding with the case until after the admissibility of Siapno's extrajudicial confession has been ruled upon; that respondent Judge be ordered to allow Siapno to identify her extrajudicial confession, and to admit the same as evidence against the private respondents when and if formally presented by the prosecution; and that respondent Judge be ordered to allow Siapno to describe the test booklet alleged by her in her extrajudicial confession to have been bought by her from respondent Estela Macam-Nicanor.

Shortly after the present petition was filed, respondent Judge Domondon was appointed to the Mangaldan Branch of the Court of First Instance of Pangasinan; another judge was appointed to the San Carlos City Branch of the court, formerly presided over by Judge Domondon. The appointments of the two judges were confirmed by the Commission on Appointments; and soon thereafter both of them began discharging their functions in their respective branches. A supplemental petition has been filed by petitioner with this Court alleging that respondent Judge Domondon did not include Criminal Cases Nos. SCC-128 to 130 among the cases which he turned over to the new presiding judge of the San Carlos City Branch, so that, unless the said cases are ordered turned over to the latter, respondent Judge Domondon would continue to try them. Petitioner accordingly prays this Court to declare that Criminal Cases Nos. SCC-128 to 130 fall within the exclusive authority of the judge permanently appointed to the San Carlos City (Pangasinan) Branch, and to prohibit respondent Judge from continuing the hearing thereof.

We vote to grant the petition.

1. The right against self-incrimination guaranteed by Section I (18), Article III of the Constitution, is a personal right which may be invoked by the witness. The privilege not to give self-incriminating evidence, while absolute when claimed, may be waived by any one entitled to invoke it (*Beltran vs. Samson, etc., et al.*, 53 Phil., 570, 578). In the present cases, witness Jessie S. Siapno has chosen to waive her right even after being reminded of it. The defendants' objection, therefore, on the ground of self-incrimination, to the prosecutor's question addressed to the said witness, as to whether or not the signatures on the extrajudicial confession Exhibit "V" belong to her, should have been overruled by respondent Judge.

Witness Siapno's waiver is understandable. Having been discharged as a defendant to be a witness for the State, she finds herself in a peculiar situation, for the order of discharge amounts to an acquittal and is a bar to future prosecution for the same offense unless she fails or refuses to testify against the other defendants (Section 11, Rule 119 of the Rules of Court).

2. The extrajudicial confession (Exhibit "V") of discharged defendant Siapno is admissible. Although as a general rule an extrajudicial confession is evidence only against the person making it, the same may be taken into

consideration as a circumstance in assessing and passing upon the weight and credibility of the testimony of an accomplice (*People vs. Narciso, et al.*, L-24484; May 28, 1968, 23 SCRA 844, 853) as well as of those of the witnesses of the opposing parties (*People vs. Raiz*, 93 Phil., 94, 99). It may likewise serve as a corroborative evidence if it is clear from other facts and circumstances that other persons had participated in the perpetration of the crime charged and proved (*People vs. Sta. Maria, et al.*, L-19929, October 30, 1965, 15 SCRA 222, 232).

Moreover, two of the three defendants in the court below, Filomena Gabriel and Jose C. Arenas, have also executed extrajudicial confessions, which in all probability will be presented in evidence in due time. Their confessions, as well as that of discharged defendant Siapno, are identical on material, points, and are corroborated by the testimony of prosecution witness Minas Gabertan. Unless, therefore, it is shown that there was collusion in making the confessions, they are admissible as circumstantial evidence against the persons implicated to show the probability of their criminal participation.

"Extra-judicial confessions independently made without collusion, which are identical with each other in their essential details and are corroborated by other evidence on record, are admissible as circumstantial evidence against the person implicated to show the probability of the latter's actual participation in the commission of the crime." (*People vs. Provo, et al.*, L-28347, January 20, 1971, 37 SCRA 19, 33, citing *People vs. Condemena*, L-22426, May 29, 1968.)

3. Discharged defendant Jessie S. Siapno should be allowed to describe the test booklet which she mentioned in her extrajudicial confession as having been bought by her from respondent Estela Macam-Nicanor.

Section 3, Rule 133 of the Rules of Court, provides:

"SEC. 3. Extrajudicial confession, not sufficient ground for conviction. -- An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti."

"Proof of corpus delicti means introduction of sufficient evidence to establish fact that a crime was committed, and proof of defendant's connection therewith is not part of corpus delicti." (9 Words and Phrases, p. 759, Perm. Ed.)

Any testimony which discharged defendant Siapno may make describing the test booklet mentioned by her in her extrajudicial confession is admissible to provide proof of corpus delicti; such testimony is apart from her confession, and she may be cross-examined thereon by the private respondents.

Private respondents also object to a description of the test booklet by witness Siapno on the ground that the same, will be violative of the best evidence rule. But another witness, Minas Gabertan, has already testified that the test booklet (consisting of 26 pages), with the exception of page 8 (presented in evidence as Exhibit "W"), was burned by her. In the circumstances the contents of the test booklet may be proved by the recollection of witnesses (Sections 2 and 4, Rule 130).

4. The failure of respondent Judge to turn over the records of Criminal Cases Nos. SCC-128 to 130 to the present presiding judge of the San Carlos City (Pangasinan) Branch, to which they properly belong, should be frowned upon as not conducive to the orderly administration of justice.

In *Luque vs. Kayanan, etc.*, L-26826, August 29, 1969 (29 SCRA 165, 183), we said:

"* * * It surely is not in keeping with the sound administration of justice for a judge of a branch of a court to take for himself a case belonging to another branch of the same court without justifiable reason therefor. Such a procedure breeds confusion. It could even be suspect. It opens up a charge such as here presented that respondent has demonstrated 'unusual interest' in this case and refused to return it to Branch I in spite of petitioner's move for the purpose."

We there accordingly directed the return of the case from Branch IV to Branch I of the Court of First Instance of Quezon. The principle was reiterated in *Ella, et al. vs. Salanga, etc., et al.*, L-23826, September 28, 1970 (35 SCRA 86, 93).

True it is that the present cases have already been heard in part by respondent Judge; but then the normal procedure would be to first obtain the permission of the Supreme Court before he may continue hearing the cases.

WHEREFORE , the petition is granted. Respondent Judge is hereby directed to turn over the records of Criminal Cases Nos. SCC-128, 129 and 130 to the presiding judge of the San Carlos City Branch of the Court of First Instance of Pangasinan, who is likewise hereby directed to proceed in the premises accordingly.

Concepcion, C.J., Reyes, J. B. L., Makalintal, Zaldivar, Castro, Teehankee, and Makasiar, JJ., concur.

Fernando and Barredo, JJ., in the result.

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