

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. PERFECTO R. PALACIO, JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, BRANCH I. JOSE BADIABLE, ET AL., RESPONDENTS.

G.R. No. L-13933. May 25, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

Petition for certiorari and mandamus.

In an information dated 23 October 1956, subscribed by the Provincial Fiscal and filed in the Court of First Instance of Camarines Sur on 8 November 1956, Jose Badiable alias Cabayo, Epifanio Cornelio, Ernesto Ponciano Lee, Perfecta Ponciano Lee (Silvestre) and Jimmy Ponciano Lee were charged with murder for the death of Jaime Salinel, the first two as principals and the last three as accessories (Criminal Case No. 4814; Annex A, petition). At the trial of the case on 27 August 1957, counsel for the defense asked the Court to order the prosecution to furnish the defendants with a list of all the names of the witnesses for the prosecution (p. 2, t.s.n., Annex 1, answer). The private prosecutor answered that he had no objection to the motion and asked that he be granted fifteen days within which to submit the names of the witnesses (p. 2, t.s.n., Annex 1, answer). The Assistant Provincial Fiscal also did not object to the motion (pp. 3-4, t.s.n., Annex 1, answer). On the same day, 27 August 1957, the Court entered an order directing the prosecution to furnish the defense with a list of all the names of its witnesses within ten days therefrom (pp. 7-8, t.s.n., Annex 1, answer; Annex 2, answer).

On 11 September 1957 the defendants filed a motion inviting the attention of the Court to the fact that the prosecution had not complied with its order to furnish them with a list of all the names of the witnesses for the prosecution and prayed that the prosecution be limited to the presentation of witnesses whose names appear in the information (Annex B, petition). After hearing, on 11 September 1957 the Court entered an order granting the defendants' motion (p. 2, t.s.n., Annex 3, answer; Annex C, petition). The Court continued the trial of the case. At the trial on 17 April 1958 the prosecution called Estelita Niebres, Soledad Abano, Jose Segueria (or Ceguera) and Jose Ibarando (or Juan Ibarando), whose names do not appear as witnesses in the information, to take the witness stand and testify. Counsel for the defense objected to their taking the witness stand to testify, citing the order of the Court of 14 September 1957. The Court disallowed them from taking the witness stand and giving their testimony (pp. 16, 17, 27, 28, 29, t.s.n., 17 April 1958, Annex 1, answer). The Court continued the trial of the case on 17 June 1958 (p. 37, t.s.n., 17 April 1958, Annex 1, answer).

On 16 June 1958 the prosecution filed this petition for certiorari and mandamus in this Court praying for the annulment and setting aside of the orders of the respondent Court dated 27 August 1957 (pp. 7-8, t.s.n., Annex 1, answer; Annex 2, answer); 14 September 1957 (p. 2, t.s.n., Annex 3, answer; Annex C, petition); and 17 April 1958 (pp. 27, 28, 29, t.s.n., 17 April 1958, Annex 1, answer).

At the hearing held on 17 June 1958 the respondent Court continued the trial of the case on 5 August 1958 (p. 9, t.s.n., Annex 3, answer; Annex A, petition for injunction).

On 24 July 1958 the petitioner filed in this Court a petition to restrain the respondent Court from holding the resumption of the trial of the case set for 5 August 1958, until this proceeding is finally decided by this Court. On 29 July 1958 this Court granted the writ of injunction prayed for and on 30 July 1958 issued the writ.

The petitioner did not seek from the respondent Court a reconsideration of the orders complained of. Following the established rule that before an aggrieved party could file a petition for a writ of certiorari in any appellate tribunal against an inferior court, he should first call the court's attention to its error and ask for the correction thereof, the instant petition should be dismissed.[1] It appearing, however, that at the hearing of the case on 17 April 1958 the private prosecutor informed the respondent Court that a special civil action would be brought to this Court to question and test the legality of the orders complained of (pp. 34, 36, 37, t.s.n., Annex 1, answer); that the respondent Court suggested to the prosecution to bring a case for mandamus to establish a precedent (p. 34, t.s.n., Annex 1, answer); that at the hearing on 17 June 1958 the fiscal informed the respondent Court that the petition for certiorari and mandamus already had been filed in this Court (p. 3, t.s.n., Annex 3, answer); and that the Judge presiding over the respondent Court made the following remark : "I want that the Supreme Court pass upon my order, but I don't want to sacrifice the interest of the parties in the question of expediency" (p. 8, t.s.n., Annex 3, answer), which indicated and meant that the respondent Court would deny any motion for reconsideration of his order, the filing of a motion for reconsideration would have been useless.

Section 1, Rule 112, provides:

The defendant must be arraigned before the court in which the complaint or information has been filed unless the cause shall have been transferred elsewhere for trial. The arraignment must be made by the court or clerk, and shall consist in reading the complaint or information to the defendant and delivering to him a copy thereof, including a list of witnesses, and asking him whether he pleads guilty or not guilty as charged. The prosecution may, however, call at the trial witnesses other than those named in the complaint or information. (*Italics supplied.*)

Arraignment consists of reading the complaint or information by the Court or clerk to the defendant and delivering to him a copy thereof, including a list of witnesses, and asking him whether he pleads guilty or not guilty to the charge. The defendant is entitled as a matter of right to be furnished by the prosecution with a list of the witnesses to be presented against him during the trial. But the prosecution may call at the trial witnesses other than those named in the complaint or information.[2] Therefore, the prosecution need not furnish the defendant with a list of all its witnesses. That is the meaning of the last sentence of the above quoted provision of the Rule. While the accused in a criminal prosecution is entitled to know the nature and cause of the accusation against him,[3] yet it does not mean that he is entitled to know in advance the names of all the witnesses for the prosecution. The success of the prosecution might be endangered if such right be granted to an accused, for the known witnesses might be subjected to pressure or coerced not to testify. The time for the accused to know all the witnesses against him is when they take the witness stand.

The fact that some of the witnesses for the prosecution who are not listed in the information were present in the courtroom and heard the testimony of the other witnesses does not disqualify them from being witnesses.[4] Counsel for the defense should have asked for the exclusion of all witnesses who have not testified under and pursuant to section 14, Rule 115.

The writ prayed for is granted; the orders complained of are set aside; and the respondent Court is directed to allow the witness or witnesses called by the prosecution, whose names do not appear in the information as witnesses, to testify in criminal case No. 4814 of the respondent Court, without pronouncement as to costs.

Bengzon, Montemayor, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.

Paras, C.J., and Concepcion, J., reserve their votes.

[1] Herrera vs. Barretto & Joaquin, 25 Phil., 245; Uy Chu vs. Imperial & Uy Du, 44 Phil., 27; Amante vs. Sison, 60 Phil., 949, 951-953; Dongon Vda. de Manzaneres vs. Court of First Instance of Batangas, 61 Phil., 850; Manila Post Publishing Co. vs. Judge Sanchez, 81 Phil., 614; 46 Off. Gaz. [Suppl. 1] 412; Alvarez vs. Ibañez, 83 Phil., 104; Nicolas vs. Castillo, 97 Phil., 336; Coll. of Internal Revenue vs. Reyes, 100 Phil., 822; Ricafort vs. Judge Fernan, 101 Phil., 575; 54 Off. Gaz. 2534.

[2] Section 1, Rule 112; People vs. Santos, G. R. No. L-7315, 27 July 1955; People vs. Manabat, 100 Phil., 603, 53 Off. Gaz., 6090; People vs. Namoc, G. R. No. L-11877, 23 November 1959.

[3] Section 1(17), article III of the Constitution; section 1(b), Rule 111.

[4] Cf. People vs. Sandal, 54 Phil., 883.

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