

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE FRANKLIN J. DEMONTEVERDE, PRESIDING JUDGE, BRANCH 44, REGIONAL TRIAL COURT, BACOLOD CITY, AND ROMEO SORIBA Y MURILLO, RE...

Ponente: DIY, J.

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DIY, J.:

Ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Branch 44, Regional Trial Court of Bacolod City in denying the request for subpoena and instead requiring the submission of judicial affidavits of hostile witnesses during the hearing for bail, petitioner, by way of the present petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, seeks the nullification of the following: (1) public respondent's Order dated September 8, 2013;^[1] and (2) its Order dated October 18, 2013^[2] denying petitioner's motion for reconsideration, both issued in Criminal Case No. 08-31906.

The factual antecedents of the case are as follows:

In the evening of September 17, 2008, at about 10:20 o'clock in the evening, Bailey Magallanes y Nograles was shot to death in front of Mega Bar along Nueva St., Brgy. 11, Bacolod City.

In the course of the police investigation, an eyewitness surfaced in the person of Neil C. Alvaran, who alleged in his Sworn Statement^[3] attached to the Complaint^[4] that a certain Romeo Soriba alias "Roming" shot Bailey Magallanes.

Based on the Resolution^[5] of the investigating prosecutor, on November 3, 2008, an Information^[6] was filed with the Regional Trial Court of Bacolod City, docketed as Criminal Case No. 08-31906, the accusatory charge reading as follows:

That on or about the 17th day of September, 2008, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused being armed with a .45 caliber pistol, with intent to kill, and by means of treachery, did, then and there willfully, unlawfully, and feloniously attack, assault and shoot, with said weapon Bailey Magallanes y Nograles @ "Boknoy". That the shooting incident and/or attack is sudden and unexpected without giving a chance to the victim to defend himself; thereby causing upon the person of the latter the following wounds, to wit: xxx.

On November 13, 2008, a Motion for Reconsideration^[7] of the investigating prosecutor's resolution was filed by private respondent Soriba, accused therein. In said Motion for Reconsideration, private respondent Soriba alleged that he was not furnished a copy of the complaint against him. He attached his counter-affidavit as well as affidavits of his witnesses. On account of the pendency of said Motion for Reconsideration before the Office of the City Prosecutor of Bacolod City, a Motion to Suspend Service of Warrant of Arrest^[8] was likewise filed by private respondent before Branch 44, RTC of Bacolod City.

In the affidavit^[9] of private respondent Soriba, he maintained and categorically denied having killed Bailey

Magallanes. By way of Reply, private complainant Pilar Magallanes, mother of Bailey Magallanes, submitted the Panaysayon[10] dated February 6, 2009, accompanied by its English translation,[11] of eyewitness Ma. Agnes Castellanes y Garfin identifying accused Romeo Soriba as the assailant.

On February 25, 2009, private respondent submitted the affidavits of recantation of Neil Alvaran and Ma. Agnes Martir y Garfin (a.k.a. Ma. Agnes Castellanes y Garfin)[12] before the Office of the City Prosecutor of Bacolod City. Nonetheless, on May 14, 2009, the investigating prosecutor issued a Resolution[13] denying private respondent's Motion for Reconsideration.

Private respondent filed a Motion to Reconsider Order dated May 14, 2009 with the City Prosecution Office of Bacolod City. Said motion was denied by said office in its Resolution[14] dated March 11, 2010.

Meanwhile on February 2, 2010, while the Motion to Reconsider Order dated May 14, 2009 was still pending, Hon. Gorgonio J. Ybañez, Acting Presiding Judge of Branch 44, RCT of Bacolod City, issued an Order[15] warning that he would order the release and implementation of the Warrant of Arrest already issued a year ago by the Executive Judge unless prevented or stopped by an appropriate resolution/action by the Prosecutor's Office within ten (10) days from receipt of the aforementioned Order.

After his Motion to Reconsider Order dated May 14, 2009 was denied, private respondent on March 29 2010 filed an Omnibus Motion to Determine Judicial Probable Cause and to Suspend Issuance of Warrant of Arrest and to Subpoena Witnesses[16] before the court a quo. The Omnibus Motion was granted by the court a quo in an Order[17] dated September 30, 2010.

Witnesses Neil Alvaran and Ma. Agnes Martir y Garfin a.k.a. Ma. Agnes Castellanes y Garfin were called by the court a quo for clarificatory questioning for the purpose of the determination of probable cause by respondent Judge, but without the right to examine or cross-examine on the part of the parties' counsel in accordance with the Rules. The court a quo eventually made a finding of probable cause against private respondent Soriba via its Order[18] dated September 4, 2012. Subsequently, a Warrant of Arrest was issued on September 6, 2012.

On September 7, 2012, private respondent filed an Urgent Motion to Grant and Fix Bail.[19]

On September 24, 2012, private respondent was arraigned. He pleaded "not guilty" to the offense charged. Pre-trial conference was, however, suspended to give way to the bail hearing.

The prosecution presented SPO1 Vicente Canuday, Jr. and SPO1 Celito Dullan for purposes of the bail hearing .

On February 22, 2013, private respondent filed a Manifestation with Urgent Motion to Require Prosecution to Submit Judicial Affidavit of Witnesses[20] invoking Section 9, par. 2 of the Judicial Affidavit Rule. The court a quo granted the same in its Order[21] dated May 6, 2013 and directed the prosecution to submit the judicial affidavits of the remaining witnesses at least five (5) days prior to their scheduled hearing.

On August 6, 2013, private prosecutor Atty. Roem J. Arbolado, with the consent of the public prosecutor, filed a Manifestation with Reiteration of Earlier Request for Subpoena[22] requesting Neil Alvaran and Agnes Castellanes for them to appear in court and to testify as hostile witnesses considering that both of them purportedly executed affidavits of retraction favoring the accused.

Private respondent vehemently opposed said Manifestation with Reiteration of Earlier Request for Subpoena through his Comment[23] arguing that this request for subpoena is not sanctioned by Section 5 of the Judicial Affidavit Rule citing A.M. No. 12-8-8-SC (Judicial Affidavit Rule), which expressly provides that subpoena can only be issued against "a witness who is neither the witness of the adverse party nor a hostile witness."

On September 8, 2013, the court a quo issued the first assailed Order denying the Manifestation with Reiteration

of Earlier Request for Subpoena filed by private prosecutor Atty. Roem Arbolado.

The public prosecutor moved for the reconsideration of the September 8, 2013 Order. However, it was denied by the court a quo via its Order dated October 18, 2013 (the second assailed order) which likewise considered that the presentation of hostile witnesses as waived for alleged failure of petitioner to submit the required judicial affidavits. Thus, petitioner is now before Us via the instant petition raising the following issues:

I.

THE HONORABLE RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MANIFESTATION WITH EARLIER REQUEST FOR SUBPOENA ON THE GROUND THAT NEIL ALVARAN AND AGNES CASTELLANES, BEING HOSTILE WITNESSES, CANNOT BE SUBPOENAED UNDER SECTION 5 OF THE JUDICIAL AFFIDAVIT RULE.

II.

THE HONORABLE RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND ORDERING THE PRESENTATION OF HOSTILE WITNESSES AS WAIVED FOR ALLEGED FAILURE OF THE PETITIONER TO SUBMIT THE REQUIRED JUDICIAL AFFIDAVITS.

The basic issue may, therefore, be restated in the following manner: in this case, where witnesses are already considered as hostile, can said witnesses be compelled by the prosecution to testify under the coercive process of a subpoena to secure their presence without violating Section 5 of the Judicial Affidavit Rule?[24]

It is argued by petitioner that respondent Judge gravely abused his discretion when he denied the issuance of subpoena to Neil Alvaran and Agnes Castellanes and instead required the submission of their judicial affidavits. Petitioner maintains that private respondent Soriba's reliance on Section 5 of the Judicial Affidavit Rule is misplaced since it is only natural for a hostile witness to be excluded under Section 5 of the Judicial Affidavit Rule. It will be absurd to require said hostile witness to have his judicial affidavit taken prior to taking the witness stand in view of his unwillingness to testify for the party presenting him. It is posited that the exclusion of the hostile witness under Section 5 of the Judicial Affidavit Rule only means that he needs to be subpoenaed for the purpose of taking his judicial affidavit as he or she is allowed, as a hostile witness, to testify without his judicial affidavit.

On the other hand, private respondent maintains that respondent Judge did not commit any grave of discretion in denying the prosecution's request for issuance of subpoena. It is clear from the language of Section 5 of the Judicial Affidavit Rule that it expressly excludes from the issuance of a subpoena witnesses who are either the witness of the adverse party or a hostile witness.

The petition is devoid of merit.

In a special action for certiorari, the burden is on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent. By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[25]

Here, We find that the court a quo in issuing the assailed Orders committed no grave abuse of discretion amounting to lack or excess of jurisdiction. There is factual basis and legal justification for the issuance of the assailed Orders.

Sections 5 of the Judicial Affidavit Rule explicitly provides:

Section 5. Subpoena. - If the government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness, unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court, the requesting party may avail himself of the issuance of a subpoena ad testificandum or duces tecum under Rule 21 of the Rules of Court. The rules governing the issuance of a subpoena to the witness in this case shall be the same as when taking his deposition except that the taking of a judicial affidavit shall be understood to be ex parte.

It is set forth in a clear and unequivocal manner in the above-mentioned Rule that an adverse or hostile witness could not be subpoenaed. In the case at bench, the court a quo already ruled that witnesses Neil Alvaran and Agnes Castellanes are considered hostile witnesses in view of the execution of their affidavits of recantation; hence, they cannot be subpoenaed under the aforesaid section.

Petitioner is partly correct in ratiocinating that it is but natural to exclude a hostile witness or a witness for the adverse party from the remedy made available under Section 5 of the Judicial Affidavit Rule. A hostile witness or a witness for the adverse party will obviously have a justifiable reason to decline the prior execution of a judicial affidavit. The reason essentially borders on the right against self-incrimination under Section 17, Article III of the Constitution. By jurisprudence, such witness will have the right to invoke this protection when an incriminating question is propounded upon him.[26] Hence, this defeats the very purpose of executing a judicial affidavit, particularly when such kind of witness would merely decline to provide answers to incriminating questions. Further, as observed by respondent Judge in his October 12, 2013 Order, the consequent difficulty in effecting the execution of a judicial affidavit by a hostile witness might even drag or prolong the case indefinitely.

It is axiomatic that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.[27]

Nevertheless, even if We bend the pertinent rule of procedure by allowing the presentation of the witnesses through a coercive power of a subpoena, still the instant petition will not prosper because We do not find any grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of the respondent Judge when he issued the assailed Orders.

It bears stressing that under Rule 65 of the 1997 Rules of Civil Procedure, the abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. No such abuse of discretion happened here. The assailed Orders of the court a quo were certainly not capricious nor arbitrary, or a whimsical exercise of judgment amounting to a lack of jurisdiction. It cannot be concluded that respondent Judge had no basis in issuing the assailed Orders. In his first assailed Order dated September 8, 2013, he applied precepts of Statutory Construction in interpreting Section 5 of the Judicial Affidavit Rule. In his second assailed Order dated October 18, 2013, he focused on the objective of the Judicial Affidavit Rule relative to the prevention of delay during trial and the decongestion of court dockets.

Be that as it may, the parties hereto are reminded of the resolution issued by the Supreme Court extending the

modified implementation of the Judicial Affidavit Rule in criminal cases until December 2014. Hence, the public prosecutor is not left without a remedy, especially considering that the criminal case has not even reached the pre-trial stage yet. If necessary, he may use the sworn statements submitted by the witnesses during the initiation of the criminal action before prosecutor's office or the public prosecutor could just subject witnesses to cross-examination when the opportune time comes.[28]

Therefore, We find the ascription of grave abuse of discretion wanting in the case at bench.

WHEREFORE, premises foregoing, the September 8, 2013 and October 18, 2013 Orders of Branch 44 of the Regional Trial Court of Bacolod City in Criminal Case No. 08-31906 are hereby AFFIRMED. Consequently, the TRO issued by the Court on January 16, 2014 is DISSOLVED and the Application for Writ of Preliminary Injunction is hereby DENIED.

SO ORDERED.

Maxino, and Diy, JJ., concur.

[1] Rollo, pp. 28 - 30.

[2] Ibid., pp. 31 – 33.

[3] Rollo, pp. 36 – 37.

[4] Ibid., p. 34.

[5] Ibid., pp. 50 – 54.

[6] Ibid., p. 55 – 57.

[7] Ibid., pp. 58 – 68.

[8] Ibid., pp. 69 – 71.

[9] Ibid., pp. 67 – 68.

[10] Ibid., pp. 72 – 75.

[11] Ibid., pp. 76 – 79.

[12] The reason of the change of name from Castellanes to Martir is that she did not want to use the surname of her husband at first.

[13] Rollo, pp. 94 – 98.

[14] Ibid., p. 101.

[15] Ibid., pp. 99 – 100.

[16] Ibid, pp. 102 - 109

[17] Ibid., pp. 110 – 119.

[18] Ibid., pp. 120 – 122.

[19] Ibid., pp. 123 – 126.

[20] Ibid., pp. 127 – 129.

[21] Ibid., pp. 130 – 133.

[22] Ibid., pp. 134 – 135.

[23] Ibid., pp. 137 – 142.

[24] A.M. No. 12-8-8-SC, February 21, 2012.

[25] Suliguin vs. COMELEC, G.R. No. 166046, March 23, 2006.

[26] Rosete vs. Lim, G.R. No. 136051, June 8, 2006.

[27] CMTIC International Marketing Corporation vs. Bhagist International Trading Corporation, G.R. No. 170488, December 10, 2012.

[28] OCA CIRCULAR NO. 05-2013 dated January 8, 2013;(PTV NEWS, January 2, 2014).

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