

CONCEPCION M. CATUIRA, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 105813. September 12, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Is the testimony of a witness inadmissible in evidence if not formally offered at the time the witness is called to testify, as required in Sec. 35, in relation to Sec. 34, Rule 132, of the Revised Rules on Evidence?[1]

On 8 June 1990, two (2) Informations for estafa were filed against petitioner Concepcion M. Catuira with the Regional Trial Court of Calamba, Laguna, for having issued two (2) checks in payment of her obligation to private complainant Maxima Ocampo when petitioner had no sufficient funds to cover the same, which checks upon presentment for payment were dishonored by the drawee bank.[2]

After the prosecution had presented its evidence, petitioner Concepcion M. Catuira filed a Motion to Dismiss (by way of Demurrer to Evidence) under Sec. 15, Rule 119, of the 1985 Revised Rules on Criminal Procedure.[3] Petitioner contended that the testimony of private respondent Ocampo was inadmissible in evidence since it was not properly introduced when she was called to testify as mandated in Sec. 35, Rule 132, of the Revised Rules on Evidence. Petitioner also argued that even if the testimony of private respondent was considered, the evidence of the prosecution still failed to prove that the checks were issued in payment of an obligation.

On 26 July 1991, the trial court denied the motion to dismiss for lack of merit. On 18 October 1991, it likewise denied the motion to reconsider its denial of the motion to dismiss.

On 4 November 1991 petitioner elevated her case to the Court of Appeals through a petition for certiorari, prohibition and mandamus. In a similar move, the appellate court rejected her petition and sustained the trial court in its denial of the motion to dismiss. Hence, this recourse seeking to annul the decision of the Court of Appeals rendered on 27 February 1992 as well as its resolution of 1 June 1992.[4]

Petitioner claims that the Court of Appeals erred when it accepted the testimony of private respondent despite the undisputed fact that it was not offered at the time she was called to testify; her testimony should have been stricken off the record pursuant to Sec. 34, Rule 132, which prohibits the court from considering evidence which has not been formally offered; and, it was error for respondent appellate court to declare that petitioner's objection was not done at the proper time since under Sec. 36, Rule 132,[5] objection to evidence offered orally must be made immediately after the offer is made. Evidently, petitioner could not have waived her right to object to the admissibility of the testimony of private respondent since the rule requires that it must be done only at the time such testimony is presented and the records plainly show that the opportunity for petitioner to object only came when the prosecution attempted, albeit belatedly, to offer the testimony after it has rested its case.[6]

The petition is devoid of merit. The reason for requiring that evidence be formally introduced is to enable the court to rule intelligently upon the objection to the questions which have been asked.[7] As a general rule, the

proponent must show its relevancy, materiality and competency. Where the proponent offers evidence deemed by counsel of the adverse party to be inadmissible for any reason, the latter has the right to object. But such right is a mere privilege which can be waived. Necessarily, the objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections.[8]

Thus, while it is true that the prosecution failed to offer the questioned testimony when private respondent was called to the witness stand, petitioner waived this procedural error by failing to object at the appropriate time, i.e., when the ground for objection became reasonably apparent the moment private respondent was called to testify without any prior offer having been made by the proponent. Most apt is the observation of the appellate court:

While it is true that the prosecution failed to offer in evidence the testimony of the complaining witness upon calling her to testify and that it was only after her testimony and after the petitioner moved that it be stricken that the offer was made, the respondent Court did not gravely err in not dismissing the case against the petitioner on the ground invoked. For, she should have objected to the testimony of the complaining witness when it was not first offered upon calling her and should not have waited in ambush after she had already finished testifying. By so doing she did not save the time of the Court in hearing the testimony of the witness that after all according to her was inadmissible. And for her failure to make known her objection at the proper time, the procedural error or defect was waived.[9]

Indeed, the rationale behind Sec. 34, Rule 132, is manifest in the minutes of the Revision of Rules Committee.[10] Thus -

The new rule would require the testimony of a witness to offer it at the time the witness is called to testify. This is the best time to offer the testimony so that the court's time will not be wasted. Since it can right away rule on whether the testimony is not necessary because it is irrelevant or immaterial.

If petitioner was genuinely concerned with the ends of justice being served, her actuations should have been otherwise. Instead, she attempted to capitalize on a mere technicality to have the estafa case against her dismissed.[11] But even assuming that petitioner's objection was timely, it was at best pointless and superfluous. For there is no debating the fact that the testimony of complaining witness is relevant and material in the criminal prosecution of petitioner for estafa. It is inconceivable that a situation could exist wherein an offended party's testimony is immaterial in a criminal proceeding. Consequently, even if the offer was belatedly made by the prosecution, there is no reason for the testimony to be expunged from the record. On the contrary, the unoffered oral evidence must be admitted if only to satisfy the court's sense of justice and fairness and to stress that substantial justice may not be denied merely on the ground of technicality.[12]

WHEREFORE, the decision of the Court of Appeals sustaining the order of the Regional Trial Court of Calamba, Laguna, Br. 35, denying petitioner's motion to dismiss (by way of demurrer to evidence) is AFFIRMED. Costs against petitioner.

SO ORDERED.

Davide, Jr., Quiason, and Kapunan, JJ., concur.
Cruz, J., (Chairman), on official leave.

[1] Sec. 34. Offer of evidence. - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Sec. 35. When to make offer. - As regards the testimony of a witness, the offer must be made at the time the witness is called to testify x x x x

[2] Annexes "C" and "D," Petition, Rollo, pp. 28-31.

[3] Sec. 15. Demurrer to evidence. - After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

[4] Justice Pedro A. Ramirez, ponente, concurred in by Justices Cezar D. Francisco and Angelina S. Gutierrez.

[5] Sec. 36. Objection. - Objection to evidence offered orally must be made immediately after the offer is made. Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

In any case, the grounds for the objections must be specified.

[6] Rollo, pp. 14-15, 126.

[7] Martin, Rules of Court in the Philippines, Vol. 5, Fifth Edition, p. 603, citing 53 Am. Jur. 88.

[8] Id., p. 610.

[9] Rollo, p. 25.

[10] Minutes of the Revision of Rules Committee, 8 October 1986, p. 5, cited in Comment on the Petition, Rollo, p. 97.

[11] Rollo, pp. 97-98.

[12] Co v. Court of Appeals, G.R. No. 52200, 21 August 1980, 99 SCRA 321, 325, citing People v. Jose, No. L-28397, 17 June 1976, 71 SCRA 273, 281.

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