

EDILBERTO M. CUENCA, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 109870. December 01, 1995

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

After his petition for review of the Court of Appeals' judgment[1] affirming his conviction for violation of the "Trust Receipts Law" (Presidential Decree No. 115) was denied by this Court in a Resolution dated February 9, 1994,[2] petitioner filed on July 6, 1994 a pleading entitled "SUBSTITUTION OF COUNSEL WITH MOTION FOR LEAVE TO FILE MOTION FOR NEW TRIAL"[3] setting forth, in relation to the motion for new trial:

"6. The Motion for New Trial shall be grounded on newly discovered evidence and excusable (sic) negligence, and shall be supported by affidavits of:

- (i) an officer of private complainant corporation who will exculpate petitioner;
- (ii) an admission against interest by a former officer of the owner of Ultra Corporation (the Corporation that employed petitioner), which actually exercised control over the affairs of Ultra; and
- (iii) the petitioner wherein he will assert innocence for the first time and explain why he was unable to do so earlier."

The Court in its July 27, 1994 Resolution,[4] among other things, granted the substitution but denied the motion for leave to file motion for new trial, "the petition having been already denied on February 9, 1994."

Notwithstanding, petitioner on August 8, 1994 filed a "MOTION TO ADMIT ATTACHED MOTION FOR NEW TRIAL",[5] and a "MANIFESTATION AND SECOND MOTION TO ADMIT" on August 17, 1994.[6] The Court thereafter required the Solicitor General to comment on said motion and manifestation within ten (10) days from notice, in a Resolution dated September 7, 1994.[7]

In the Comment filed after three (3) extensions of time were given by the Court,[8] the Solicitor General himself recommends that petitioner be entitled to a new trial, proceeding from the same impression that a certain Rodolfo Cuenca's (petitioner's brother) sworn statement is an admission against interest which may ultimately exonerate petitioner from criminal liability. The full text of Mr. Rodolfo Cuenca's "Affidavit"[9] reads:

"RODOLFO M. CUENCA, Filipino, of legal age, with the residence at Urdaneta Village, Makati, Metro Manila, after being duly sworn and (sic) state that:

"1. During the years 1967 until February 1983, I was the President and Chief Executive Officer of Construction Development Corporation of the Philippines (CDCP).

"2. During that period, I controlled an effective majority of the voting shares of stock of CDCP.

"3. Sometime in 1974, upon my initiative, CDCP together with its affiliated companies, organized a number of wholly-owned service corporations. One of these was Ultra International Trading Corporation, whose purpose

was to serve and supply the needs of CDCP and its other subsidiaries with lower value goods and using Ultra's financial resources.

"4. The directors in Ultra Corporation were nominees of CDCP, and received the instructions directly from me and or Mr. Pedro Valdez, Chairman of CDCP.

"5. From Ultra's inception, my brother, Mr. Edilberto M. Cuenca was appointed President and Chief Executive Officer. On March, 1979, I instructed Ultra through my brother, Mr. Edilberto Cuenca to purchase for CDCP various steel materials. These materials were received by CDCP and are covered by the trust receipts which are the subject of this case.

"6. In 1980, CDCP suffered cashflow problems, and consciously omitted payment to Ultra for the delivery of the said steel materials. As a nominee of CDCP, Mr. Edilberto M. Cuenca merely acted as agent for CDCP. As such, CDCP provided him with the guarantees needed to persuade China Bank to issue the said trust receipts. On the basis of such guarantees, along with informal assurances issued by CDCP to China Bank that the transactions of Ultra were undertaken for and on behalf of CDCP and CDCP Mining Corporation, Ultra was able to obtain credit facilities, among which included the trust receipts subject of this case.

"7. However, Mr. Edilberto M. Cuenca had no power to cause the payment of said trust receipts because the common Treasurer and controller of both CDCP and Ultra, Ms. Nora Vinluan, acted under my control and I did not allow her to make the appropriate payments.

"8. To my knowledge, CDCP has not paid Ultra the amounts corresponding to the materials covered by the trust receipts subject of this case.

"9. By the time final demand to pay on the trust receipts were (sic) served in 1984, Mr. Edilberto Cuenca was no longer president of Ultra Corporation and could not have possibly cause (sic) Ultra Corporation to pay.

"10. I have executed this affidavit in order to accept personal responsibility for the trust receipts subject of this case and to exculpate Mr. Edilberto Cuenca of the criminal charges which he has asked this Honorable Court to review.

"11. Accordingly, I also undertake to pay the civil obligations arising from the subject trust receipts.

(Sgd.)

RODOLFO M. CUENCA
Affiant"

And the Solicitor General had this to say:

"Ordinarily, it is too late at this stage to ask for a new trial.

"However, the sworn statement of Rodolfo Cuenca is a declaration against his own interests under Section 38, Rule 130, Revised Rules of Court and it casts doubt on the culpability of his brother Edilberto Cuenca, the petitioner. Hence, the alleged confession of guilt should be given a hard look by the Court.

"The People is inclined to allow petitioner to establish the genuineness and due execution of his brother's affidavit in the interest of justice and fair play.

"Under Rule 6.01 of Canon 6 of the Code of Professional Responsibility, prosecutors who represent the People of the Philippines in a criminal case are not duty bound to seek conviction of the accused but to see that justice is done. Said Rule 6.01 of Canon 6 states:

`Canon 6 - These canons shall apply to lawyers in government service in the discharge of their official tasks.

'Rule 6.01 - The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the concealment of witnesses capable of establishing the innocence of the accused is highly reprehensible and is cause for disciplinary action.' (Italics supplied.)

"The above duty is well founded on the instruction of the U.S. Supreme Court in *Berger v. United States*, 295 U.S. 78 (1935) that prosecutors represent a sovereign `whose obligation to govern impartially is compelling as its obligation to govern at all; and whose interest, therefore in a criminal prosecution is not that it shall win a case, but that justice shall be done (Time to Rein in the Prosecution, by Atty. Bruce Fein, published on p. 11, The Lawyers Review, July 31, 1994). (Italics supplied.)"[10]

Although in "*Goduco v. CA*" (14 SCRA 282 [1965]) decided some twenty (20) years ago, this Court ruled that it is not authorized to entertain a motion for reconsideration and/or new trial predicated on allegedly newly discovered evidence the rationale of which being:

"The judgment of the Court of Appeals is conclusive as to the facts, and cannot be reviewed by the Supreme Court. Accordingly, in an appeal by certiorari to the Supreme Court, the latter has no jurisdiction to entertain a motion for new trial on the ground of newly discovered evidence, for only questions of fact are involved therein",

the rule now appears to have been relaxed, if not abandoned, in subsequent cases like "*Helmuth, Jr. v. People*"[11] and "*People v. Amparado*".[12]

In both cases, the Court, opting to brush aside technicalities and despite the opposition of the Solicitor General, granted new trial to the convicted accused concerned on the basis of proposed testimonies or affidavits of persons which the Court considered as newly discovered and probably sufficient evidence to reverse the judgment of conviction. Being similarly circumstanced, there is no nagging reason why herein petitioner should be denied the same benefit. It becomes all the more plausible under the circumstances considering that the "People" does not raise any objection to a new trial, for which reason the Solicitor General ought to be specially commended for displaying once again such statesmanlike gesture of impartiality. The Solicitor General's finest hour, indeed.

WHEREFORE, petitioner's Motion For New Trial is hereby GRANTED. Let the case be RE-OPENED and REMANDED to the court of origin for reception of petitioner's evidence.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

[1] Annex "E" of Petition, Rollo, pp. 49-63.

[2] Rollo, p. 186.

[3] Rollo, pp. 187-190.

[4] Rollo, p. 191.

[5] Rollo, pp. 193-208.

[6] Rollo, pp. 224-227.

[7] Rollo, p. 229.

[8] Per Resolutions dated October 17, November 16 and December 14, 1995. Rollo, pp. 232, 235 and 238, respectively.

[9] Rollo, pp. 220-222.

[10] Comment, pp. 6-7; Rollo, pp. 244-245.

[11] 112 SCRA 573 (1982).

[12] 156 SCRA 712 (1987).

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