

SALVADOR SEBASTIAN, SR., petitioner, vs. HON. FRANCIS E. GARCHITORENA, HON. JOSE S. BALAJADIA, and HON. NARCISO T. ATIENZA (SANDIGANBAYAN-First Division), respondents.

G.R. No. 114028. October 18, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for certiorari under Rule 65[1] in conjunction with Rule XIX of the Revised Rules of the Sandiganbayan, seeking to annul the Resolution[2] dated August 24, 1993 of the Sandiganbayan, First Division which admitted the sworn statements of petitioner Salvador Sebastian, Sr. and his co-accused in Criminal Case No. 17904 as evidence for the prosecution, and the Resolution dated September 27, 1993 which denied the motion for reconsideration of the said Resolution.

On July 28, 1992, Special Prosecution Officer III Teresita Diaz-Baldoz filed with the Sandiganbayan an Information for the crime of Malversation of Public Funds[3], as defined and penalized under Article 217 of the Revised Penal Code, against Rosita C. Pada, Teresita B. Rodriguez, Rachel V. Torres, Lourdes A. Enriquez and Salvador C. Sebastian. It reads:

That on or about the period comprised between January 1989 and June 21, 1990, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, ROSITA C. PADA, being then the Regional Postage Stamps Custodian, and as such is accountable for the custody of the postage stamps received and issued by her by reason of the duties of her office, TERESITA B. RODRIGUEZ, being then the Senior Clerk in the Postage Stamps Section, RACHEL V. TORRES, being then a Utility Man in the Postage Stamps Section, LOURDES A. ENRIQUEZ, being then a Senior Clerk in the Mail Delivery Section and SALVADOR C. SEBASTIAN, being then a Letter Carrier, all of the Postal Services Office, Region IX, Zamboanga City, while in the performance of their official functions, taking advantage of their position, committing the offense in relation to their office, and conspiring and confederating with one another, did then and there wilfully, unlawfully, feloniously and with grave abuse of confidence, misappropriate, misapply, and embezzle and convert to their personal use and benefit the amount of SIX HUNDRED FORTY NINE THOUSAND TWO HUNDRED NINETY and 05/100 PESOS (P649,290.05), Philippine Currency, out of the postage stamps in the custody of accused Rosita C. Pada, to the damage and prejudice of the Government in the aforesaid sum.

Contrary to law.

Rosita C. Pada, Rachel V. Torres, and Salvador C. Sebastian entered separate pleas of "Not Guilty" on October 13, 1992.[4]

On April 22, 1993, the marking of the documents to be testified on by the lone prosecution witness, Auditor Lilibeth Rugayan of the Commission on Audit, who conducted the audit examination, took place before the Deputy Clerk of Court of the First Division of the Sandiganbayan. The marking of the exhibits was with the conformity of all of the accused and their respective counsel.

Upon the completion of the testimony of Auditor Rugayan, the prosecution rested its case[5]and formally offered its evidence on July 6, 1993.[6] Among those offered as evidence were the sworn statements made by all the accused, including that of petitioner, and previously marked as exhibits "Q", "R", "S", "T", "U", and "U-1" for the prosecution. Said exhibits were offered as part of the testimony of Auditor Rugayan.

On August 19, 1993, all the accused (including petitioner) filed their "Joint Objections to Formal Offer of Evidence" on the principal ground that the sworn statements were "hearsay" evidence.[7]

The Sandiganbayan in its Minute Resolution[8] dated August 24, 1993, admitted said evidence, thus:

Acting upon the "FORMAL OFFER OF EVIDENCE" dated July 5, 1993, of the Prosecution and considering the "JOINT OBJECTIONS TO FORMAL OFFER OF EVIDENCE" dated August 19, 1993, of accused, the Court RESOLVES the same as follows:

Exhibits A, B, and C are admitted, they being certified true copies of official documents; Exhibits D up to U and U-1 inclusive of submarkings are admitted as part of the testimony of Lilibeth Rugayan as examining auditor under the State Auditing Code (P.D. No. 1445).

Dissatisfied, the three accused, on September 13, 1993, jointly filed a Motion for Reconsideration, but the same was denied by the respondent court in its Resolution[9] dated September 27, 1993. It ruled that:

Considering that under the Order of this Court dated April 22, 1993 (p. 85) the exhibits "off-court" was admitted by the accused through counsel, among which were exhibits "A", "B" and "C", the Motion for Reconsideration filed by the accused Pada, Torres and Sebastian with regard to the admission of said exhibits dated September 10, 1993 is denied.

Hence, this petition.

The only issue to be resolved in the present petition is whether or not the sworn statements of petitioner and his co-accused are admissible in evidence "as part of the testimony of the prosecution witness".

Petitioner argues that the said issue should be resolved in the negative on the ground that the subject sworn statements are hearsay evidence. Petitioner contends that he and his co-accused were never presented as witnesses, thus, they were not given the opportunity to identify and authenticate their respective sworn statements and that Auditor Rugayan had no personal knowledge of the contents thereof.

We disagree.

As a general rule, hearsay evidence is inadmissible. Thus, the rule explicitly provides that a witness can testify only on those facts which he knows of his personal knowledge, that is, which are derived from his own perceptions.[10] However, while the testimony of a witness regarding a statement made by another person, if intended to establish the truth of the fact asserted in the statement, is clearly hearsay evidence, it is otherwise if the purpose of placing the statement in the record is merely to establish the fact that the statement was made or the tenor of such statement.[11]

In the present case, the sworn statements executed by the petitioner and co-accused were offered not to prove the truth or falsity of the facts stated therein but only to prove that such written statements were actually made and executed. As stated in the Resolution dated August 24, 1993 of the respondent court, Exhibits "D" up to "U" and "U-1" were admitted only as part of the testimony of Lilibeth Rugayan as Examining Auditor. Title II, Chapter I, Section 55 of P.D. 1445, otherwise known as the Government Auditing Code provides that "the auditor shall obtain through inspections, observation, inquiries, confirmation and other techniques, sufficient competent evidential matter to afford himself a reasonable basis for his opinions, judgments, conclusions and

recommendations".

It is also the contention of petitioner that he never admitted the said sworn statements during the pre-trial conference; that he agreed merely to the "marking" of the said sworn statements as exhibits of the prosecution; and that "marking" is different from "admission".

The main purpose of a pre-trial is to expedite the trial. Thus, the respondent court in its Order dated April 22, 1993 ruled that:

By agreement of the parties, the sub-marking of the documents to be testified to by Auditor Lilibeth Rugayan has been completed and only the other sub-markings will take place during the proceedings. Additionally, the parties have informally agreed that all the documents marked today are deemed authenticated except for the alleged responses of the various postmasters as to the request for confirmation which the accused dispute both as to their authenticity as well as to their accuracy assuming that they are authentic. In view of this, subject to confirmation this afternoon, the direct examination will be waived and the cross-examination by the accused will take place primarily to dispute the statement above-mentioned.

This Order of the Sandiganbayan reciting the actions taken, the facts stipulated, and evidence marked, binds the parties and limits the trial to matters not disposed of and shall control the course of the action during the trial, unless modified by the court to prevent manifest injustice.[12] The record does not show that petitioner and his co-accused objected to the above-mentioned Order. In any event, any evidence presented during the pre-trial conference cannot be considered by the court if not formally offered. It has been held that any evidence which a party desiring to submit for the consideration of the court must be formally offered by him.[13] Such a formal offer is necessary because it is the duty of the judge to rest his findings of facts and his judgment only upon the evidence offered by the parties at the trial.

Petitioner in his supplemental pleading claims to have been deprived of his constitutional rights under Sections 12 and 17, Article III of the 1987 Constitution. Petitioner alleges that nothing in his sworn statement shows compliance with the constitutional provisions on the right to counsel, the right to remain silent and the right to waive these rights in the presence of counsel.

Entrenched is the rule that the rights provided in Section 12, Article III of the Constitution may be invoked only when a person is under "custodial investigation" or is "in custody investigation." Custodial investigation has been defined as any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.[14] The fact-finding investigation relative to the missing postage stamps at the Postage Stock Section of Zamboanga City conducted by a Enrique G. Saavedra, Chief Postal Service Officer, is not a custodial investigation. It is merely an administrative investigation.

While an investigation conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that under existing laws, a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of the respondent's capacity to represent himself, and no duty rests on such a body to furnish the person being investigated with counsel.[15] It has been held in the case of *Lumiqued v. Exevea*[16] that the right to counsel is not imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.

Petitioner, likewise contends that the Ombudsman acted with grave abuse of discretion in filing the Information for malversation against him. He argues that in its first Resolution dated March 18, 1992 of the Office of the Ombudsman, Graft Investigation Officer Rodolfo Rojas, Jr. recommended the filing of an Information for Malversation of Public Funds against Rosita C. Pada only. However, in its subsequent resolution dated July 28,

1992, Special Prosecution Officer Teresita Daiz-Baldos recommended the prosecution of the four other accused, including petitioner, stating that:

Thus, for purposes of prosecution, it would be more expedient to indict all the respondents for Malversation and let them explain in court the actual extent of their individual accountability. x x x x x

WHEREFORE, premises considered, the undersigned respectfully recommends the prosecution of Rosita Pada, Teresita Rodriguez, Rachel Torres, Lourdes Enriquez and Salvador Sebastian, for Malversation of Public Funds, and the exclusion for liability of Florecita Doromal."

Hence, petitioner now questions the disposition of the Ombudsman as merely engaging in a fishing expedition in this case.

This Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory power. Otherwise stated, it is not for this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before his Office. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.[17]

Lastly, the Court noted that the petition, as described therein, is one filed under Rule 45 of the Rules of Court. However, under Rule 45, a petition for review on certiorari is a mode of appeal from judgments or final orders or resolutions and limited to questions of law. Petitioner's choice of remedy therefore is clearly an error. The resolutions of the Sandiganbayan herein sought to be reviewed or set aside are not in any sense judgments or final orders or resolutions; they are interlocutory in nature and from which no appeal lies.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Denominated by petitioner as Rule 45.

[2] Signed by Justices Francis E. Garchitorena, Jose S. Balajadia and Narciso T. Atienza, Rollo, p. 69.

[3] Docketed as Criminal Case No. 17904; Original Records, pp. 1-2.

[4] Original Records, p. 59.

[5] Id., p. 113.

[6] Id., pp. 125-147.

[7] Id., pp. 160-163.

[8] Id., p. 164.

[9] Original Records, p. 194.

[10] Sec. 36, Rule 130, Revised Rules of Court.

[11] People v. Cusi, Jr. 14 SCRA 944,946 [1965], citing People v. Lew Yon, 97 Cal. 224; VI Wigmore 177-8.

[12] Sec. 3, Rule 118.

[13] *De Castro v. The Court of Appeals*, 75 Phil. 834; *Ayala v. Valencia*, 56 Phil. 182.

[14] *Navallo v. Sandiganbayan*, 234 SCRA 175, 183-184[1994]; *People v. Loveria*, 187 SCRA 47, 61 [1990].

[15] *Lumiqued v. Exevea*, 282 SCRA 125, 140 [1997] citing *Bancroft v. Board of Governors of Registered Dentists of Oklahoma*, 210 P. 2d 666 (1949).

[16] *Supra*.

[17] *Alba v. Nitorreda*, 254 SCRA 753, 765-766 [1996]; *Ocampo IV v. Ombudsman*, 225 SCRA 725; *Fernando v. Sandiganbayan*, 212 SCRA 680, 687 [1992].

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