

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE NAZAR U. CHAVES, JUDGE, RTC-CAGAYAN DE ORO CITY, BR. 18 AND MIGUEL P. PADERANGA, RESPONDENTS.

G.R. No. 131377. February 11, 2003

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-131377/>

YNARES-SANTIAGO, J.:

This is a petition for review of the decision dated November 7, 1997 of the Court of Appeals,[1] which dismissed the petition for certiorari assailing the Orders dated June 3, 1993; July 15, 1993; and September 23, 1993 of the Regional Trial Court of Cagayan de Oro City, Branch 18 in Criminal Case No. 86-39.

Sometime in October 1986, Informations for Multiple Murder for the killing of members of the Bucag family in Gingoog City were filed against Felipe Galarion, Manuel Sabit, Cesar Sabit, Julito Ampo, Eddie Torion, John Doe, Peter Doe and Richard Doe, with the Regional Trial Court of Gingoog City.[2] Venue of the case was moved to Cagayan de Oro City by virtue of Administrative Order No. 87-2-244. Thus, Criminal Case No. 86-39 was transferred to the Regional Trial Court of Cagayan de Oro City, Branch 18, presided by respondent Judge Nazar U. Chaves.

Only Felipe Galarion was tried and convicted. All the other accused were at large.

Two years later, in October 1988, Felizardo Roxas, also known as “Ely Roxas”, “Fely Roxas” and “Lolong Roxas,” was identified as another member of the group who was responsible for the slaying of the Bucag family. An amended information was filed on October 6, 1988 to implead Roxas as a co-accused. He engaged the services of private respondent Miguel Paderanga as his counsel. In order to give Roxas the opportunity to adduce evidence in support of his defense, a preliminary investigation was conducted. In his counter-affidavit, Roxas implicated Atty. Paderanga as the mastermind of the killings. Consequently, the amended information was again amended to include private respondent Paderanga as one of the accused in Criminal Case No. 86-39.

Trial of the case ensued. At the hearing on May 18, 1993, the prosecution called Felizardo Roxas as its first witness. Private respondent objected to the presentation of Roxas’ testimony. The trial court took the matter under advisement. The following day, May 19, 1993, it sustained private respondent’s objection on the ground that the presentation of Roxas’ testimony will violate his right against self-incrimination. The trial court ruled further that before Roxas can be presented as a witness for the prosecution, he must first be discharged as a state witness. Otherwise put, the prosecution cannot present Roxas as a hostile witness.

The prosecution filed a motion for reconsideration or, in the alternative, to discharge Roxas as a state witness. It also manifested its intention to present Julito Ampo as another state witness or ordinary prosecution witness.

On June 3, 1993, the trial court issued an Order denying the prosecution’s motion for reconsideration but setting the motion for the discharge of Roxas as state witness for hearing, to wit:

The Court believes that it has amply heard the matter at bar referring to whether the Order of 19 May 1993 on

the contention, perception and interpretation of what the prosecution refers to as “hostile witness.” After both sides or both panels for that matter extensively argued their respective sides, it is the considered view of the Court, considering all points raised by both sides, that the ruling of the Court should stand and is in fact reiterated with particular reference on the matter on hostile witness. However, with respect to the alternative prayer in the Omnibus Motion for reconsideration, the Court would like to be satisfied as to which contending side is correct on the issue whether the proposed witness-accused Felizardo “Ely” Roxas would satisfy the requirements embodied in Section 9, Rule 119, regarding a proposed state witness.[3]

On June 29, 1993, the trial court issued an Order[4] allowing the presentation of the testimony of Felizardo Roxas for purposes of proving the conditions of Rule 119, Section 9 of the Rules of Court on the discharge of a state witness.[5] Private respondent interposed an objection, which the trial court overruled. The next day, June 30, 1993, he filed a motion for reconsideration, arguing that the presentation of Roxas’ testimony will be tantamount to allowing him to testify as a state witness even before his discharge as such; that the qualification of a proposed state witness must be proved by evidence other than his own testimony; and that at the hearing for the discharge of a proposed state witness, only his sworn statement can be presented and not his oral testimony.

On July 15, 1993, the trial court issued an Omnibus Order granting private respondent’s motion for reconsideration, thus:

xxx xxx xxx, it is the considered view of this Court that, at this stage and insofar as the proposed state witness is concerned, only his sworn statement may be admitted and considered by the Court. The “evidence” contemplated in the above-quoted last portion of the first paragraph of Rule 119, Sec. 9, is any evidence other than his testimony. Precisely, the rule speaks of “and the sworn statement of such proposed state witness,” thus categorizing and removing such statement from the other kind or class of evidence mentioned therein. (underscoring copied)

xxx xxx xxx.

PREMISES CONSIDERED, this Court is left with no other legally plausible alternative but to grant the subject Motion for Reconsideration of accused Miguel Paderanga filed on 30 June 1993. The questioned Order issued on 29 June 1993 is hereby reconsidered and/or set aside, without prejudice to the prosecution’s presenting any other evidence in support of the discharge.

On the other Motion for Reconsideration simultaneously filed by the prosecution, it appearing that the same does not point to or specify any particular Order on record that has to be reconsidered, no ruling or action thereon is necessary. Whatever matters that have been treated therein are deemed resolved hereinabove.

Considering the manifestation of the prosecution to the effect that it is adopting the same move and stand with respect to the proposed discharge of accused Julito Ampo, the ruling herein made likewise applies to accused Ampo.[6]

On August 9, 1993, the prosecution filed a motion for reconsideration. In an Order dated September 23, 1993, the trial court denied the motion for lack of merit.[7]

On November 17, 1993, the prosecution, through the Office of the Solicitor General, filed a petition for certiorari, prohibition and mandamus with the Court of Appeals, docketed as CA-G.R. SP No. 32616, assailing the trial court’s Orders of June 3, 1993; July 15, 1993; and September 23, 1993.

On November 7, 1997, the Court of Appeals dismissed the petition for lack of merit.[8] Hence, this petition for review raising the following issues:

- WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE CHALLENGED ORDER OF THE TRIAL COURT DATED 3 JUNE 1993 (WHICH DENIED

PROSECUTION'S MOTION FOR FELIZARDO "ELY" ROXAS TO BE PRESENTED AS AN ORDINARY WITNESS) HAS ALREADY BECOME FINAL SINCE NO APPEAL HAS BEEN PERFECTED WITHIN THE REGLEMENTARY PERIOD, BY LOOSELY CITING THE CASE OF AMARANTE v. COURT OF APPEALS, 232 SCRA 104.

- WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN LIMITING THE EVIDENCE THAT NEEDS TO BE PRESENTED BY THE PROSECUTION IN ITS MOTION TO DISCHARGE TO THE RESPECTIVE SWORN STATEMENT EXECUTED BY ITS PROPOSED WITNESSES AND IN UPHOLDING THE TRIAL COURT'S DENIAL OF THE PRESENTATION OF OTHER EVIDENCE.[9]

The Court of Appeals, in passing upon the issue of whether or not the prosecution may present the testimony of Felizardo Roxas as a hostile witness, held that the trial court's Order of June 3, 1993 disallowing the said presentation had already become final due to the prosecution's failure to appeal the same. This is error. Clearly, the Order dated June 3, 1993 was interlocutory; it did not finally dispose of the case on its merits. As such, the Order cannot be the proper subject of appeal. It may, however, be assailed in a special civil action for certiorari. Under the Rules of Court then governing, the petition for certiorari may be filed within a reasonable period.[10]

While there is no showing in the record that the prosecution moved for a reconsideration of the June 3, 1993 Order, it nevertheless appears that it filed a Motion for Reconsideration of the Omnibus Order dated July 15, 1993, wherein it raised the matter of presenting Roxas as an ordinary witness, as distinguished from a state witness.[11] This Motion was denied by the trial court on September 23, 1993. Thereafter, on November 17, 1993, the prosecution instituted a petition for certiorari, prohibition and mandamus before the Court of Appeals. The petition, clearly, was filed well within the reasonable period contemplated by the Rules. It was even filed within sixty days, the reglementary period prescribed in the present 1997 Rules of Civil Procedure.

The prosecution, petitioner herein, also argues that Ely Roxas and Julito Ampo have voluntarily expressed their consent to testify as prosecution witnesses. Hence, there is no need to first discharge them as state witnesses before they can be presented on the stand.

The petition has merit. It is true that an accused cannot be made a hostile witness for the prosecution, for to do so would compel him to be a witness against himself. However, he may testify against a co-defendant where he has agreed to do so, with full knowledge of his right and the consequences of his acts.[12] It is not necessary that the court discharges him first as state witness. There is nothing in the rules that says so. There is a difference between testifying as state witness and testifying as a co-accused. In the first, the proposed state witness has to qualify as a witness for the state, after which he is discharged as an accused and exempted from prosecution.[13] In the second, the witness remains an accused and can be made liable should he be found guilty of the criminal offense.

However, we cannot simply rely on petitioner's representation that Roxas and Ampo have volunteered to testify for the prosecution. This is a matter that the trial court must determine with certainty, lest their right against self-incrimination be violated.

Petitioner also maintains that it can validly present the testimony of Ely Roxas and Julito Ampo at the hearing for their discharge as state witnesses. We agree. Rule 119, Section 17 of the Revised Rules of Criminal Procedure (formerly Rule 119, Section 9), provides that the trial court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state "after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge" (underscoring ours). The provision does not make any distinction as to the kind of evidence the prosecution may present. What it simply requires, in addition to the presentation of the sworn statement of the accused concerned, is the presentation of such evidence as are necessary to determine if the conditions exist for the discharge, so as to meet the object of the law, which is to prevent unnecessary or arbitrary exclusion from the complaint of persons

guilty of the crime charged.[14] No exemption from the term evidence is provided by the law as to exclude the testimony of the accused. When the law does not distinguish, we should not distinguish.[15]

There is no other evidence more competent than the testimony of the proposed witness himself to prove the conditions that his testimony is absolutely necessary in the case; that there is no other direct evidence available for the proper prosecution of the offense; that his testimony can be corroborated in its material points; that he does not appear to be the most guilty; and that he has not been convicted of any offense involving moral turpitude. Further, the trial judge will not be able to clarify matters found in the sworn statements of the proposed witnesses if they are not allowed to testify.

Private respondent counters Roxas and Ampo cannot be allowed to testify because their testimony will effectively constitute an admission by a conspirator which, under Rule 130, Section 30 of the Rules of Court,[16] is inadmissible as evidence against a co-conspirator until the conspiracy is established by evidence other than said declaration. In this regard, suffice it to state that private respondent can interpose the proper objection during the direct examination of these witnesses, when the prosecution propounds questions which may touch on the matter of conspiracy. Indeed, it is still premature for private respondent to raise this objection in the instant petition.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The assailed decision of the Court of Appeals dated November 7, 1997 is REVERSED. The Regional Trial Court of Cagayan de Oro City, in Criminal Case No. 86-39, is directed to determine the voluntariness of Felizardo Roxas' and Julito Ampo's decision to testify as prosecution witnesses and, thereafter, to allow the prosecution to present said witnesses. In the alternative, the trial court is directed to allow Felizardo Roxas and Julito Ampo to testify at the hearing on the motion for their discharge as state witnesses.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 46-55.

[2] RTC Records, p. 3.

[3] RTC Records, Vol. IV, p. 1358.

[4] Rollo, p. 104.

[5] Section 9. Discharge of accused to be state witness. – When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty;
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the

motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.

[6] RTC Records, pp. 1422-1424.

[7] Rollo, pp. 93-96.

[8] Ibid., p. 54.

[9] Ibid., p. 30.

[10] Santiago, et al., v. Court of Appeals, et al., G.R. No. 121908, January 26, 1998.

[11] Rollo, pp. 105-110.

[12] People v. Trazo and Escartin, 58 Phils. 258, 260 (1933)

[13] Revised Rules of Criminal Procedure, Rule 119, Section 18: Discharge of accused operates as acquittal. – The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, unless the accused fails or refuses testify against his co-accused in accordance with his sworn statement constituting the basis for his discharge.

[14] Pamaran, The 1985 Rules on Criminal Procedure, pp. 413-414 (1998).

[15] Deloso v. Domingo, 191 SCRA 545, 550 (1990).

[16] Rules of Court, Rule 130, Section 30, provides: Admission by conspirator. – The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.