LENIDO LUMANOG, AUGUSTO SANTOS, SPO2 CESAR FORTUNA AND RAMESES DE JESUS, PETITIONERS, VS. HON. JAIME N. SALAZAR, JR., AS JUDGE OF RTC OF QUEZON CITY BRANCH 103, AND PEOPLE OF TH...

G.R. No. 142065. September 07, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the Orders[1] dated January 25, 26 and 28, 2000 of the Regional Trial Court of Quezon City, Branch 103, presided by respondent Judge Jaime N. Salazar, Jr., in Criminal Case No. Q-96-66684 for murder.

It appears that on June 13, 1996 at around 8:00 o'clock in the morning, retired Colonel Rolando N. Abadilla was killed in an ambush along Katipunan Avenue, Project 4, Quezon City. Police investigation of the slaying incident resulted in the arrest of herein petitioners Lenido L. Lumanog, SPO2 Cesar A. Fortuna, Rameses C. De Jesus, Augusto G. Santos and their co-accused Joel V. De Jesus, Lorenzo C. Delos Santos and Arturo C. Napolitano. Subsequently, an information for the crime of murder[2] was filed against all the accused. An information for the crime of theft[3] was also filed against them, except Augusto G. Santos, including separate informations for the crime of illegal possession of firearm[4] against Lorenzo C. Delos Santos, SPO2 Cesar A. Fortuna and Rameses C. De Jesus.

Upon arraignment, all the accused entered the plea of "Not guilty" to each of the informations respectively filed against them.

After joint trial on the merits, respondent trial judge issued on August 11, 1999 a Joint Decision[5] dated July 30, 1999 convicting Lenido Lumanog, SPO2 Cesar Fortuna, Rameses De Jesus, Joel De Jesus and Augusto Santos of the crime of murder for killing retired Col. Rolando N. Abadilla and sentencing them to suffer the supreme penalty of death, while acquitting Arturo Napolitano and Lorenzo Delos Santos on the ground of reasonable doubt. The separate informations for theft and illegal possession of firearms were dismissed for lack of evidence.

On August 25, 1999 accused Lenido Lumanog, through his counsel, Atty. Asterio Rea, timely filed a Motion for Reconsideration[6] of the Joint Decision, which motion was opposed by the prosecution. This was followed by separate Motions for New Trial respectively filed by accused Joel De Jesus and Lenido Lumanog, through counsel, on September 2, 1999 and September 24, 1999 which were both opposed by the prosecution.

On November 25, 1999 accused Lumanog, through his new counsel, Atty. Soliman Santos, filed a Supplement to the Motion for Reconsideration.[7] On December 16, 1999 the same accused filed an Addendum to Supplement[8] (to the motion for reconsideration) dated December 13, 1999 including a Manifestation and Submission[9] dated December 14, 1999 and a Manifestation and Motion[10] dated December 15, 1999. The prosecution filed an opposition to the Addendum to Supplement on January 12, 2000 to which a Reply/Rejoinder

was filed by accused Lumanog on January 25, 2000.

On January 14, 2000 accused Lumanog, through counsel, filed another set of three (3) pleadings, namely: Memorandum to Clarify Pending Incidents/Motions[11] dated January 11, 2000, Memorandum on Nature of Proposed Additional Evidence[12] dated January 12, 2000 and Manifestation on the Posture and Attitude of the Prosecution[13] dated January 13, 2000.

Meanwhile, on January 19, 2000, Fr. Roberto P. Reyes, parish priest of the Parish of the Holy Sacrifice, University of the Philippines, Diliman, Quezon City, assisted by Atty. Neri Javier Colmenares, filed an Urgent Independent Motion for Leave of Court to Present Vital Evidence.[14]

On January 25, 2000 respondent judge issued an Order[15] the dispositive portion of which reads:

> - to DENY the Motion for Reconsideration by accused Lenido Lumanog;
>
> - to DENY the Motion for New Trial by accused Joel de Jesus;
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> - to consider the Motion for New Trial by accused Lenido Lumanog as abandoned and/or withdrawn;
>
> - to DENY the Supplement to the Motion for Reconsideration by accused Lenido Lumanog as well as his addendum thereto and his Manifestation and Motion dated December 15, 1999 to allow him to introduce additional evidence in support of his Supplement to the Motion for Reconsideration;
>
> - to DENY the Manifestation and Submission dated December 14, 1999 by accused Lenido Lumanog;
>
> - and to ORDER the immediate transmittal of the records of these cases to the Honorable Supreme Court for automatic review pursuant to law, the Rules of Court and the Joint Decision of this court dated July 30, 1999.
>
> SO ORDERED.

After the hearing on January 26, 2000, respondent judge issued another Order[16] denying the Urgent Independent Motion for Leave of Court to Present Vital Evidence filed by Fr. Roberto Reyes on the ground that it was belatedly filed, barred by the rule on hearsay and for lack of legal standing of movant Fr. Reyes to file the said motion before the trial court. Respondent trial judge, however, ordered that the Omega wristwatch allegedly belonging to the late Col. Abadilla, the copy of the motion for leave to present vital evidence and the transcript of the proceedings on January 26, 2000 be attached to the records of the case as part of the offer of proof of the defense.

The Order[17] issued on January 28, 2000 merely elaborated on the grounds relied upon by respondent judge in denying on January 26, 2000 the Urgent Independent Motion for Leave of Court to Present Vital Evidence of Fr. Reyes.

Just before the records of Criminal Case No. Q-96-66684 were transmitted to this Court on February 11, 2000, for automatic review of the said Joint Decision dated July 30, 1999, accused Lumanog through his new counsel belatedly filed on February 9, 2000 two (2) more pleadings, namely, a Final Submission To This Court[18] dated February 8, 2000 together with an attached copy of the letter of Lt. Gen. Jose M. Calimlim of the AFP Intelligence Service regarding an unsuccessful operation of the Alex Boncayao Brigade (ABB, for brevity) to kill Col. Abadilla, and Final Manifestation To This Court[19] dated February 9, 2000.

The instant petition for certiorari[20]assails the three (3) separate Orders of respondent trial judge in Criminal Case No. Q-96-66684 respectively dated January 25, 26 and 28, 2000 insofar as respondent trial judge allegedly gravely abused his discretion in denying petitioners-accused the opportunity to introduce evidence on the alleged role of the ABB in the ambush slay of Col. Abadilla. The ABB angle of the case was raised for the first time on

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November 25, 1999 in petitioner-accused Lumanog's Supplement to the Motion for Reconsideration in support of their defense of alibi and denial. Petitioners argue that since the ABB allegedly killed Col. Abadilla, then they, who are not members thereof, are entitled to be acquitted of the crime of murder. Additionally, petitioners seek the inhibition of respondent judge from this case allegedly for being biased against the petitioners.

In their separate comments[21] the People, represented by the Office of the Solicitor General, and the private prosecutors, led by Atty. Manuel M. Lazaro, contend in essence that respondent trial judge did not commit grave abuse of discretion in denying the Supplement to the Motion for Reconsideration dated November 25, 1999 of petitioner Lumanog, which partakes of a motion for new trial, and his Addendum to Supplement dated December 13, 1999 including the Urgent Independent Motion for Leave of Court to Present Vital Evidence dated January 19, 2000 of Fr. Roberto Reyes for the reason, among others, that the same were belatedly filed. The respondents also contend that the alleged pieces of evidence sought to be presented by the petitioners consisting of raw and unverified newspaper reports and AFP/PNP intelligence materials are not newly discovered evidence, and that the testimony of Fr. Reyes on his conversation with an alleged ABB member who purportedly knows certain facts about the Abadilla killing and who turned over to him the Omega wristwatch allegedly belonging to the victim, would be hearsay.

Besides, the new theory of the petitioners, which was raised for the first time in petitioner Lumanog's Supplement to the Motion for Reconsideration dated November 25, 1999 shifting criminal responsibility for the killing of Col. Abadilla to the ABB, was intended to counter the positive identification of the petitioners-accused by prosecution eyewitness Freddie Alejo whose credibility was upheld by respondent judge in his Joint Decision dated August 11, 1999.

The petition is not impressed with merit.

The instant petition for certiorari under Rule 65 of the Rules of Court filed by the petitioners on March 15, 2000 is improper as the subject orders of respondent trial judge may be questioned only in the main case, that is, in Criminal Case No. Q-96-66684 which is already before the Supreme Court, as of February 11, 2001, on automatic review because of the death penalty imposed by the trial court on the petitioners-accused for the killing of Col. Abadilla.

The alleged responsibility of the ABB in the killing of retired Col. Rolando N. Abadilla was raised in the trial court for the first time on November 25, 1999 in petitioner-accused Lumanog's Supplement to the Motion for Reconsideration. Although denominated as Supplement to the Motion for Reconsideration, the same was actually a motion for new trial as it prayed for the reopening of the case for the introduction of additional evidence.

Under Section 1, Rule 121, of the Revised Rules of Criminal Procedure, a motion for new trial may be filed at any time before a judgment of conviction becomes final, that is, within fifteen (15) days from its promulgation or notice.[22] Petitioner Lumanog filed his Supplement to the Motion for Reconsideration, which as aforesaid was actually a motion for new trial, only on November 25, 1999 or after the Joint Decision was promulgated on August 11, 1999. It was denied in the Order of January 25, 2000.

The requisites for newly discovered evidence under Section 2, Rule 121 of the Revised Rules of Criminal Procedure are: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[23]

A perusal of the pieces of evidence, except the Omega wristwatch, which are sought to be presented by the petitioners in a new trial are not newly discovered evidence because they were either available and could have

been presented by the defense during the trial of the case with the exercise of due diligence, such as the alleged newspaper reports and AFP/PNP intelligence materials on Col. Abadilla. The wristwatch allegedly belonging to the late Col. Abadilla is immaterial to the case of murder while the testimony of Fr. Roberto Reyes on the turn over of the said wristwatch by an alleged member of the ABB who purportedly knows certain facts about the killing of Col. Abadilla would be hearsay without the testimony in court of the said alleged member of the ABB. The document which granted amnesty to Wilfredo Batongbakal is irrelevant to the killing of Col. Abadilla inasmuch as Batongbakal does not appear privy to the actual commission of the crime of murder in the case at bar. If at all, those pieces of additional evidence will at most be merely corroborative to the defense of alibi and denial of herein petitioners. Petitioners' alternative prayer that this Court "itself conduct hearings and receive evidence on the ABB angle" is not well taken for the reason that the Supreme Court is not a trier of facts.

Finally, the petitioners' allegation of bias and partiality on the part of respondent judge can be taken up and discussed by the herein petitioners in their brief to be filed in G.R. Nos. 141660-64[24] pending before this Court relative to the automatic review of the Joint Decision of the trial court in Criminal Case No. Q-96-66684.

In view of the foregoing, it is our view and we hold that the respondent judge did not commit grave abuse of discretion in issuing the subject Orders dated January 25, 26 and 28, 2000 in Criminal Case No. 96-66684.

WHEREFORE, the instant Petition for Certiorari (Rule 65) and for Extraordinary Legal and Equitable Remedies is hereby DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and Sandoval-Gutierrez, JJ., concur.

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[1]Penned by Judge Jaime N. Salazar, Jr.

[2] Docketed as Criminal Case No. Q-96-66684.

[3] Docketed as Criminal Case No. Q-96-66679.

[4] Docketed as Criminal Cases Nos. Q-96-66680; Q-96-66682-83.

[5] Annex D. Rollo, pp. 52-83.

[6] Annex E. Rollo, pp. 84-95.

[7] Annex F. Rollo, pp. 96-109.

[8] Annex H. Rollo, pp. 117-119.

[9] Annex I. Rollo, pp. 123-125.

[10] Annex J. Rollo, pp. 141-143.

[11] Annex N. Rollo, pp. 144-148.

[12] Annex O. Rollo, pp. 149-154.

[13] Annex P. Rollo, pp. 163-165.

[14] Annex Q. Rollo, pp. 166-170.

[15] Annex A. Rollo, pp. 37-44.

[16] Annex B. Rollo, pp. 45-46.

[17] Annex C. Rollo, pp. 48-51.

[18] Annex V. Rollo, pp. 180-181.

[19] Annex W. Rollo, p. 186.

[20] Rollo, pp. 4-32.

[21] Rollo, pp. 304-325. The Comment filed by the Office of the Solicitor General in behalf of the People is attached to the unnumbered latter portion of the rollo.

[22] People v. Excija, 258 SCRA 424, 443 (1996).

[23] Amper v. Sandiganbayan, 279 SCRA 434, 442 (1997); Dapin v. Dionaldo, 209 SCRA 38,44 (1992); People v. Tirona, 300 SCRA 431, 440 (1997).

[24] People v. SPO2 Cesar Fortuna, et al.

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