EUGENE C. YU, PETITIONER, VS. THE HONORABLE PRESIDING JUDGE, REGIONAL TRIAL COURT OF TAGAYTAY CITY, BRANCH 18, THE HONORABLE SECRETARY OF THE DEPARTMENT OF JUSTICE, ASSISTANT PR...

G.R. NO. 142848. June 30, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In the evening of 14 November 1994, Atty. Eugene Tan, former President of the Integrated Bar of the Philippines (IBP) and his driver Eduardo Constantino were abducted by several persons in Alabang, Muntinlupa, and brought somewhere in Cavite where they were both shot to death. At about 5:00 oï¿½clock in the afternoon of 17 November 1994, the bodies of the two victims were dug up in a shallow grave at Barangay Malinta, Sampaloc 2, Dasmariñas Cavite.[1] Charged to investigate the abduction and killing was the Presidential Anti-Crime Commission (PACC). After having conducted a thorough investigation of the case, the PACC filed charges before the Department of Justice (DOJ) entitled, "Task Force Cabakid v. Pedro Lim, Bonifacio Roxas, Sgt. Edgar Allan Abalon, Mariano Hizon, Eugenio Hizon and John Does." The same was docketed as I-S. No. 94-557 and was assigned to a panel of Senior State Prosecutors of the DOJ. Later events that transpired as narrated by herein petitioner Eugene Yu are not disputed.

> On December 13, 1994, the Department of Justice (DOJ) issued a Resolution (Annex "C", ibid.) in the preliminary investigation of the case, docketed as I.S. No. 94-557 finding probable cause against Messrs. Pedro Lim, Bonifacio Rojas, Capt. Alfredo Abad, Toto Mirasol, Venerando Ozores, Mariano Hizon, Eugenio Hizon and private respondents de los Santos and Ochoa for the kidnapping and murder of the late Atty. Eugene Tan and his driver, Eduardo Constantino. Petitioner and his wife, Patricia Lim-Yu, were also named respondents in I.S. No. 94-557. The charges against them however were dropped for lack of evidence to establish probable cause. Thereafter, an information was filed against several accused, namely private respondents Rodolfo Ochoa and Reynaldo de los Santos among others, before the Regional Trial Court, Branch 18, of Tagaytay City presided by respondent judge. On December 16 and 17, 1994 after the information was filed and while under custody of the Presidential Anti-Crime Commission (PACC), private respondents Ochoa and de los Santos executed separate sworn statements (Annexes "D" and "E,", ibid.) implicating petitioner in the abduction and killing of Atty. Eugene Tan and Eduardo Constantino. The PACC re-filed the complaint docketed as I.S. No. 94-614 for murder and kidnapping against petitioner. During the preliminary investigation, petitioner filed a motion to dismiss the charges, citing that the sworn statements of private respondents were not only inadmissible in evidence but also failed to establish probable cause against him. On January 30, 1995, the DOJ investigating panel composed of Senior State Prosecutors Henrick Guingoyon and Ferdinand Abesamis denied petitioner's motion to dismiss (Annex "F", ibid.). Thereafter, three (3) separate informations were filed against petitioner before the Regional Trial Court, Branch 18, of Tagaytay City. Simultaneously, petitioner filed with the aforesaid court an omnibus motion to determine probable cause, to deny issuance of warrant of arrest and to quash information (Annex "G", ibid.).

> On December 8, 1995, respondent judge issued a resolution (Annex "H," ibid.), the dispositive portion reads:
> x x x x
>
> "WHEREFORE, in the light of the foregoing, this Court finds that probable cause exists against accused Eugene Yu as an accomplice in the instant cases, and the prosecution is accordingly directed to amend the informations filed in these cases for the inclusion of the same accused as an accomplice within ten (10) days upon receipt of a copy hereof. As a consequence, let a warrant for the arrest of Eugene Yu be issued in these cases and bail for his provisional liberty is hereby fixed at P60,000.00 each in theses cases.
>
> "x x x x
>
> "SO ORDERED." (Rollo, pp. 6; 118-119)

Both the prosecution and the petitioner filed their respective motions for reconsideration of the aforequoted resolution. The prosecution sought to maintain the original informations charging petitioner as principal, while the latter sought the dismissal of the cases against him for lack of probable cause. Both motions were denied in an order of the court a quo dated February 6, 1996 (Annex "I", ibid.).

In a petition for certiorari, docketed before the Supreme Court as G.R. No. 124380 entitled "People of the Philippines v. Hon. Eleuterio F. Guerrero, et al.," the prosecution impugned the Resolution dated December 8, 1995 and the Order dated February 6, 1996. The petition was dismissed by the Supreme Court in its Resolution dated May 14, 1996. The prosecution refiled the same titled petition before the Court of Appeals, docketed as CA-G.R. SP No. 42208, "where it is currently pending, entitled: People of the Philippines vs. Hon. Eleuterio F. Guerrero, et al."

In the meantime, the prosecution filed a "Petition to Discharge as State Witnesses and Exclude from the Information accused Ochoa and de los Santos" on April 17, 1996 (Annex "J"). Petitioner opposed the motion. On March 6, 1997, respondent judge issued the impugned order, thus:

> "WHEREFORE, in the light of the foregoing premises and considerations, this Court hereby resolves to GRANT the Petition (to Discharge as State Witnesses & Exclude from the Information Accused Ochoa & de los Santos) filed by the prosecution for being impressed with merit, and, accordingly, the same accused are hereby ordered discharged and excluded from the information filed in these cases as State Witnesses.
>
> "SO ORDERED." (Annex "A", p. 31)

Petitioner, who is one of the accused in the aforementioned criminal cases, claims that the orders were issued by public respondent judge with grave abuse of discretion amounting to lack or in excess of jurisdiction, claiming that there is no legal basis or justification to discharge as state witnesses accused Rodolfo Ochoa and Reynaldo de los Santos (hereinafter referred to as private respondents).[2]

From the Order of the Regional Trial Court (RTC) of Tagaytay City, Branch 18 dated 6 March 1997, petitioner filed a Petition for Certiorari and prohibition before the Court of Appeals.[3] In a decision[4] dated 30 September 1999, the Court of Appeals dismissed the petition for lack of merit. The Motion for Reconsideration filed by petitioner was denied in a resolution dated 4 April 2000.[5]

Essentially, the Court of Appeals concluded that there was no necessity for a hearing to determine a person's qualification as a state witness after the DOJ had attested to his qualification. Republic Act No. 6981,[6] Witness Protection and Security Benefit Program (WPSBP), conferred upon the DOJ the sole authority to determine whether or not an accused is qualified for admission into the program. The appellate court held that under Section 12 of Republic Act No. 6981, upon the filing by the prosecution of a petition to discharge an accused from the information, it is mandatory for the court to order the discharge and exclusion of the accused.[7]

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From this adverse decision and resolution of the Court of Appeals, petitioner filed the instant petition.

The following issues are raised for resolution[8]:

> - WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT THE DISCHARGE OF AN ACCUSED IS NOT A JUDICIAL FUNCTION.
>
> - WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT DID NOT CONSIDER THAT THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION WHEN IT DISCHARGED THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO PRESENT EVIDENCE TO SHOW THAT THE PRIVATE RESPONDENTS ARE ENTITLED TO BE DISCHARGED AS STATE WITNESS.

Petitioner maintains that since the private respondents were already charged along with the other accused including him (petitioner) before they were admitted to the WPSBP, their admission is a judicial prerogative which requires prior determination by the trial court of their qualification as state witnesses, in accordance with Section 17, Rule 119 of the Revised Rules on Criminal Procedure.

Petitioner further asserts that the case of Webb v. De Leon,[9] which the RTC relied on in granting the discharge of the private respondents and their admission to the WPSBP, does not apply. In that case, Jessica Alfaro was not charged as a respondent before her application and admission to the WPSBP. Thus, the issue of whether or not she can be discharged from the information upon the filing of the petition for discharge never arose. On the other hand, petitioner contends in this case that the private respondents were already charged along with the other accused, including him, before they were admitted to the WPSBP and discharged as an accused to be utilized as a state witness. Petitioner argues that if this were to be allowed, the same is tantamount to permitting the prosecution to supplant with its own the court's exercise of discretion on how a case over which it has acquired jurisdiction, will proceed.

The argument of petitioner fails to persuade.

Pertinent provision of Republic Act No. 6981 employed by the prosecution in the discharge of the private respondents reads:

> SEC. 3. Admission into the Program. – Any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted into the Program:
>
> Provided, That:
>
> a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code, or its equivalent under special laws;
>
> b) his testimony can be substantially corroborated in its material points;
>
> c) he or any member of his family within the second civil degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is a likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying, or to testify falsely, or evasively, because or on account of his testimony; and
>
> d) he is not a law enforcement officer, even if he would be testifying against other law enforcement officers. In such a case, only the immediate members of his family may avail themselves of the protection provided for under this Act.
>
> If the Department, after examination of said applicant and other relevant facts, is convinced that the

> requirements of this Act and its implementing rules and regulations have been complied with, it shall admit said applicant to the Program, require said witness to execute a sworn statement detailing his knowledge or information on the commission of the crime, and thereafter issue the proper certification. For purposes of this Act, any such person admitted to the Program shall be known as the Witness.
>
> x x x x
>
> SEC. 10. State Witness. – Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the Program whenever the following circumstances are present:
>
> a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;
>
> b) there is absolute necessity for his testimony;
>
> c) there is no other direct evidence available for the proper prosecution of the offense committed;
>
> d) his testimony can be substantially corroborated on its material points;
>
> e) he does not appear to be most guilty; and
>
> f) he has not at any time been convicted of any crime involving moral turpitude.
>
> An accused discharged from an information or criminal complaint by the court in order that he may be a State Witness pursuant to Sections 9 and 10 of Rule 119 of the Revised Rules of Court may upon his petition be admitted to the Program if he complies with the other requirements of this Act. Nothing in this Act shall prevent the discharge of an accused, so that he can be used as a State Witness under Rule 119 of the Revised Rules of Court.

On the other hand, Rule 119, Section 17, of the Revised Rules on Criminal Procedure, upon which petitioner relies reads:

> Section 17. 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; and
>
> (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.

The discharge of an accused under Republic Act No. 6981 as availed of by the prosecution in favor of the private respondents, is distinct and separate from the discharge of an accused under Section 17, Rule 119 of the Revised Rules on Criminal Procedure.

The discharge of an accused to be a state witness under Republic Act No. 6981 is only one of the modes for a participant in the commission of a crime to be a state witness. Rule 119, Section 17, of the Revised Rules on Criminal Procedure, is another mode of discharge. The immunity provided under Republic Act No. 6981 is granted by the DOJ while the other is granted by the court.

Rule 119, Section 17, of the Revised Rules on Criminal Procedure, contemplates a situation where the information has been filed and the accused had been arraigned and the case is undergoing trial. The discharge of an accused under this rule may be ordered upon motion of the prosecution before resting its case, that is, at any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence.[10]

On the other hand, in the discharge of an accused under Republic Act No. 6981, only compliance with the requirement of Section 14, Rule 110 of the Revised Rules of Criminal Procedure[11] is required but not the requirement of Rule 119, Section 17.

More to the point is the recent case of Soberano v. People[12] where this Court held:

> An amendment of the information made before plea which excludes some or one of the accused must be made only upon motion by the prosecutor, with notice to the offended party and with leave of court in compliance with Section 14, Rule 110. Section 14, Rule 110 does not qualify the grounds for the exclusion of the accused. Thus, said provision applies in equal force when the exclusion is sought on the usual ground of lack of probable cause, or when it is for utilization of the accused as state witness, as in this case, or on some other ground.
>
> At this level, the procedural requirements of Section 17, Rule 119 on the need for the prosecution to present evidence and the sworn statement of each state witness at a hearing in support of the discharge do not yet come into play. This is because, as correctly pointed out by the Court of Appeals, the determination of who should be criminally charged in court is essentially an executive function, not a judicial one. x x x. (Underscoring supplied.)

In this connection, Section 12 of Republic Act No. 6981[13] provides that the issuance of a certification of admission into the program shall be given full faith by the provincial or city prosecutor who is required not to include the witness in the criminal complaint or information, and if included, to petition for his discharge in order that he can be utilized as a state witness. This provision justifies the regularity of the procedure adopted by the prosecution for the discharge of the private respondents.

The case of Webb v. De Leon,[14] reiterated in the subsequent case of People v. Peralta,[15] is quite elucidating in this regard.

> Petitioner's argument lacks appeal for it lies on the faulty assumption that the decision whom to prosecute is a judicial function, the sole prerogative of courts and beyond executive and legislative interference. In truth, the prosecution of crimes appertains to the executive department of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion – the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors. We thus hold that it is not constitutionally impermissible for Congress to enact R.A. No. 6981 vesting in the Department of Justice the power to determine who can qualify as a witness in the program and who shall be granted immunity from prosecution. Section 9 of Rule 119 does not support the proposition that the power to choose who shall be a state witness is an inherent judicial prerogative. Under this provision, the court is given the power to discharge a state witness only because it has already acquired jurisdiction over the crime and the accused. The discharge of an accused

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> is part of the exercise of jurisdiction but is not a recognition of an inherent judicial function. Moreover, the Rules of Court have never been interpreted to be beyond change by legislation designed to improve the administration of our justice system. R.A. No. 6981 is one of the much sought penal reform laws to help government in its uphill fight against crime, one certain cause of which is the reticence of witnesses to testify. The rationale for the law is well put by the Department of Justice, viz: "Witnesses, for fear of reprisal and economic disclocation, usually refuse to appear and testify in the investigation/prosecution of criminal complaints/cases. Because of such refusal, criminal complaints/cases have been dismissed for insufficiency and/or lack of evidence. For a more effective administration of criminal justice, there was a necessity to pass a law protecting witnesses and granting them certain rights and benefits to ensure their appearance in investigative bodies/courts. Petitioner Webb's challenge to the validity of R.A. No. 6981 cannot therefore succeed.

Anent the second issue, petitioner argues that the petition to discharge is not supported by any proof or evidence. He claims that the prosecution did not establish that the private respondents have complied with the requisites of Republic Act No. 6981 because the certificate of admission from the DOJ showing that the private respondents were qualified, and the memorandum of agreement between the DOJ and private respondents, as required by Section 5[16] of Republic Act No. 6981, were not presented before the trial court.

We reject the argument for being vacuous.

As found by the DOJ, based on the extrajudicial statements executed by the private respondents regarding their participation in the abduction and killing of Atty. Eugene Tan and his driver, it appears that they were included in an alleged military operation and unaware that the persons they abducted were innocent civilians because they were misled by their military superiors into believing that these individuals were unnamed communist rebels. From their account, private respondents claim to have been oblivious that the persons subject of their surveillance were to be abducted and subsequently killed.

The rule prevailing in this jurisdiction is that the discharge of an accused to be utilized as a state witness because he does not appear to be the most guilty, is highly factual in nature. The discretionary judgment of the trial court on this factual issue is seldom interfered with by the appellate courts except in case of grave abuse of discretion,[17] which we find not present in the case at bar.

On the issue of failure of the prosecution to present the sworn statement and memorandum of agreement between the private respondents and the DOJ, there is no requirement under Republic Act No. 6891 that the same be first presented in court before an accused may be admitted to the WPSBP. Moreover, the DOJ which is tasked to implement the provisions of Republic Act No. 6981, has determined that the private respondents have satisfied the requirements for admission under the WPSBP. This interpretation of the provisions of Republic Act No. 6981 by the DOJ deserves the respect of the court under the principle that the determination of a government agency tasked to implement a statute is accorded great respect and ordinarily controls the construction of the courts.[18]

WHEREFORE, in view of the foregoing, the Decision and Resolution of the Court of Appeals dated 30 September 1999 and 4 April 2000, respectively, are AFFIRMED. This case is ordered REMANDED to the Regional Trial Court of Tagaytay City, Branch 18, for continuation of hearing to its conclusion with deliberate dispatch.

Costs against petitioner.
SO ORDERED.

Ynares-Santiago, (Acting Chairman), and Austria-Martinez, JJ., concur.
Panganiban, C.J., (Chairperson), on official leave.

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Callejo, Sr., J., no part.

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[1] Annex H, CA rollo, p. 199.

[2] Rollo, pp. 31-33.

[3] Docketed as CA-G.R. SP No. 45144.

[4] Rollo, pp. 30-40; penned by Associate Justice Mariano M. Umali with Associate Justices Quirino D. Abad Santos, Jr. and Romeo J. Callejo, Sr. (now Supreme Court Associate Justice), concurring.

[5] Annex B, id. at 41.

[6] AN ACT PROVIDING FOR A WITNESS PROTECTION SECURITY AND BENEFIT PROGRAM AND FOR OTHER PURPOSES.

[7] CA Decision p. 7; rollo, p. 36.

[8] Id. at 14.

[9] 317 Phil. 758 (1995).

[10] Pamaran, REVISED RULES ON CRIMINAL PROCEDURE Annotated 2005 Ed., p. 531, citing People v. Ganiban, 91 Phil 844, 847 (1952).

[11] Rule 110, Section 14. Amendment or substitution. – A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

[12] G.R No. 154629, 5 October 2005, 472 SCRA 125, 139.

[13] SEC. 12. Effect of Admission of a State Witness into the Program. – The certification of admission into the Program by the Department shall be given full faith and credit by the provincial or city prosecutor who is required not to include the Witness in the criminal complaint or information and if included therein, to petition the court for his discharge in order that he can be utilized as a State Witness. The court shall order the discharge and exclusion of the said accused from the information.

Admission into the Program shall entitle such State Witness to immunity from criminal prosecution for the offense or offenses in which his testimony will be given or used and all the rights and benefits provided under Section 8 hereof.

[14] Supra note 9 at 800-801.

[15] 435 Phil. 743 (2002).

[16] SEC. 5. Memorandum of Agreement With the Person to be Protected. – Before a person is provided protection under this Act, he shall first execute a memorandum of agreement which shall set forth his responsibilities including:

a) to testify before and provide information to all appropriate law enforcement officials concerning all appropriate proceedings in connection with or arising from the activities involved in the offense charged;

b) to avoid the commission of a crime;

c) to take all necessary precautions to avoid detection by others of the facts concerning the protection provided him under this Act;

d) to comply with legal obligations and civil judgments against him;

e) to cooperate with respect to all reasonable requests of officers and employees of the Government who are providing protection under this Act; and

f) to regularly inform the appropriate program official of his current activities and address.

[17] People v. Sison, 371 Phil. 713, 724 (1999).

[18] Batelec II Electric Cooperative, Inc. v. Energy Industry Administration Bureau, G.R. No. 135925, 22 December 2004, 447 SCRA 482, 500.

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