

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
BERNARDO BORJA, ET AL., DEFENDANT AND APPELLEES.***G.R. No. 14327. January 30, 1960*

Ponente: BARRERA, J.

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Bernardo Borja, Floro Tandang, Joaquin Odog, Pedro Bag-ao, Pedring Tagunon, alias Emper, and Teofilo Bag-ao, were charged in the Court of First Instance of Surigao (in Crim. Case No. 2226), with the crime of murder, for having allegedly killed Manuel Ibañez on January 13, 1943, in the municipality of Mainit, province of Surigao, with evident premeditation and treachery, and with abuse of superior strength and weapons.

On April 8, 1957, the accused, claiming that the execution of the deceased for which they are charged, was done in furtherance of the guerrilla movement, filed a petition for guerrilla amnesty, pursuant to Guerrilla Amnesty Proclamation No. 8 of the President.

On May 2, 1957, while said petition was pending, the Provincial Fiscal moved to exclude from the information the accused Floro Tandang and Joaquin Odog to be utilized as state witnesses.

The other accused opposed the motion of the Provincial Fiscal, and on June 29, 1957, the court issued an order of the following tenor:

"ORDER

"The Fiscal in his motion dated May 3, 1957 (should be May 2, 1957), which was considered submitted that in view of the fact that there was no date set for the same, asked for the discharge of the two accused, namely: Floro Tandang and Joaquin Odog, alleging¹ the fact that there is absolute necessity for the testimony of the defendants whose discharge is requested; that there is no other direct evidence available for the proper prosecution of the offense committed except the testimony of said defendants; that the testimony of said defendants can be substantially corroborated in its material points; that said accused do not appear to be the most guilty; and that said accused have not at any time been convicted of any offense involving moral turpitude. The rest of the accused opposed this motion alleging that there is no absolute necessity for the release of the said defendants and that it is not true that there is no other direct evidence of the prosecution except the testimonies of the said defendants because in the written statements of two prosecution witnesses in the record, namely; Leonardo Ybañez and Eduardo Baloran, show that they were eyewitnesses to the killing and that said witnesses stated that they heard one of the accused, Bernardo Borja, order his co-accused to kill the deceased, and conspiracy can be inferred from the acts of the accused prior, during and after the offense was committed and that fact can be substantially corroborated by the fact that could be inferred from the testimonies of the other witnesses. The Fiscal and Private Prosecutor insisted that they have no direct proof to establish the motive of the commission of the act and such proof is essential in the consideration of this case before the Amnesty Commission.

"The Court after consideration of the matter believes and concludes that the two essential elements for the discharge of these accused, namely: that there is absolute necessity and that there are no other direct evidence

available to prove the offense, do not exist and, besides, in this Court proofs to establish motive is not necessary if the act committed is clear. Under these circumstances, there exists no justification to grant the motion to exclude the two accused and that point concerning the proof of motive which is claimed is essential in favor of the accused can be brought again when this case shall be submitted to said Amnesty Commission for consideration

"Wherefore, the motion to exclude the accused, Ploro Tandang and Joaquin Odog, is hereby denied. Having now resolved this point which the Amnesty Commission believed should be disposed of by this Court before said Commission could take jurisdiction over the case, the record of the case may now be transmitted and forwarded to the Commission for its hearing on the merits and final determination of the case.

"SO ORDERED."

The Provincial Fiscal filed a motion for reconsideration, which was denied by the court as follows:

"ORDER

"The motion for reconsideration is hereby denied, it appearing that the Rules of Court does not state as one of the grounds for excluding one accused to prove personal motive. That matter which is claimed to be necessary when the case comes before the Amnesty Commission for decision, and before that time comes, this Court cannot take into account the exclusion of a co-accused to establish motive, because this Court believes that said Amnesty Commission is clothed with all the powers to dispose (of) the principal question, as well as the subsidiary question of motive involved in the case.

"Wherefore, the said motion is hereby denied.

"SO ORDERED."

From the foregoing orders, the prosecution appealed to the Court of Appeals, but said court, in its resolution of July 14, 1958, certified the case to us, as it involves only questions of law.

The prosecution in this instance, claims that the lower court erred in denying its motion to exclude from the information the accused Floro Tandang and Joaquin Odog, to be utilized as witnesses for the Government.

We do not agree with the prosecution. Section 9, Rule 115 of the Rules of Court provides:

"SEC. 9. Discharge of one of several defendants to be witness for the prosecution.—When two or more persons are charged with the commission of a certain offense, the competent court, at any time before they have entered upon their defense, may direct any of them to be discharged with the latter's consent that he may be a witness for the government when in the judgment of the court:

"(a) There is absolute necessity for the testimony of the defendant 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 defendant;

"(c) The testimony of said defendant can be substantially corroborated in its material points;

"(d) Said defendant does not appear to be the most guilty;

"(e) Said defendant has not at any time been convicted of any offense involving moral turpitude." (Italics supplied.)

Under the above-quoted provision of the Rules of Court, it is well-settled that the discharge or exclusion of a co-accused from the information, in order that he may be utilized as a prosecution witness, is a matter of sound

discretion with the trial court (U.S. vs. Abanzado, 37 Phil., 658; People vs. Ibañez,[1] 92 Phil., 933) to be exercised by it upon the conditions therein set forth. The expedient should be availed of, only when there is absolute necessity for the testimony of the accused whose discharge is requested, as when he alone has knowledge of the crime, and not when his testimony would simply corroborate or otherwise strengthen the evidence in the hands of the prosecution. (2 Moran, Comments on the Rules of Court [1957 Ed.] 827.)

In the case of People vs. Ibañez, supra, it was held that—

"The court's is the exclusive responsibility to see that the conditions prescribed by the rule exist. The rule is completely silent as to any authority of the prosecution in the premises, although authority may be inherent in the office of the prosecuting attorney to propose. Section 2 of Act No. 2709 from which the preceding rule was taken, was enacted avowedly to curtail miscarriage of justice, before too common, through the abuse of the power to ask for the discharge of one or more defendants. 'Absolute necessity of the testimony of the defendant whose discharge is requested,' among other things, must now be shown if the discharge is to be allowed, and, as above stated, it is the court upon which the power to determine the necessity is lodged."

The trial court, in the instant case, properly denied the prosecution's motion to exclude from the information the accused Tandang and Odog, after being convinced that there was no absolute necessity for their testimony, it appearing that the killing of the deceased Manuel Ibañez could be established by other available direct evidence, namely, the testimony of prosecution witnesses Leonardo Ybañez and Eduardo Baloran, who were eyewitnesses to the said killing, as shown by their written statements on record.

As to the prosecution's claim that the exclusion of the accused Tandang and Odog from the information is necessary to prove the personal motive or reason of their co-accused in the killing of said deceased, it may be stated that proof of motive is not absolutely indispensable or necessary to establish the commission of a crime. (3 Moran, Comments on the Rules of Court [1952 Ed.] 630-631; U.S. vs. Ricafort, 1 Phil., 173; U.S. vs. Balmori, et al., 18 Phil., 578; U.S. vs. Valdez, et al., 30 Phil., 293.) It is true that motive is essential in cases falling under the Amnesty Proclamation, but as stated by the trial court, the exclusion of said accused for the purpose of establishing personal motive of their co-accused is a matter which may be properly taken up when the case is submitted to the Amnesty Commission for consideration, pursuant to the provisions of Proclamation No. 8,[2] dated September 7, 1946 (Guerrilla Amnesty Proclamation) and Administrative Order No. 11,[3] of October 2, 1946 which authorize the Guerrilla Amnesty Commission to "examine the facts and circumstances surrounding each case and, if necessary or requested by either or both of the interested parties, conduct summary hearings of witnesses both for the complainants and the accused."

Wherefore, finding no reversible error in the order appealed from, the same is hereby affirmed, without pronouncement as to costs. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

[1] See also U. S. vs. De Guzman, 30 Phil., 416; U. S. vs. Bonete, 40 Phil., 958; People vs. Bautista, 49 Phil., 389; and People vs. Palcoto, et al., G. R. No. L-8458, prom, January 30, 1956.

[2] 42 Off. Gaz., 2072.

[3] 42 Off. Gaz., 2360; see also Adm. Order No. 17 dated Nov. 15, 1946, (42 Off. Gaz., 2725), and Adm. Order No. 41, dated July 6, 1954 (50 Off. Gaz., 2928).

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