

CONCEPCION CUENCO VDA. DE MANGUERRA AND THE HON. RAMON C. CODILLA, JR., PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF CEBU CITY, BRANCH 19, PETITIONERS, VS. RAUL RISOS, SUSANA ...

G.R. No. 152643. August 28, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] dated August 15, 2001 and its Resolution[2] dated March 12, 2002. The CA decision set aside the Regional Trial Court (RTC) Orders dated August 25, 2000[3] granting Concepcion Cuenco Vda. de Manguerra's (Concepcion's) motion to take deposition, and dated November 3, 2000[4] denying the motion for reconsideration of respondents Raul G. Risos, Susana Yongco, Leah Abarquez, and Atty. Gamaliel D.B. Bonje.

The facts of the case, as culled from the records, follow:

On November 4, 1999, respondents were charged with Estafa Through Falsification of Public Document before the RTC of Cebu City, Branch 19, through a criminal information dated October 27, 1999, which was subsequently amended on November 18, 1999. The case, docketed as Criminal Case No. CBU-52248,[5] arose from the falsification of a deed of real estate mortgage allegedly committed by respondents where they made it appear that Concepcion, the owner of the mortgaged property known as the Gorordo property, affixed her signature to the document. Hence, the criminal case.[6]

Earlier, on September 10, 1999, Concepcion, who was a resident of Cebu City, while on vacation in Manila, was unexpectedly confined at the Makati Medical Center due to upper gastro-intestinal bleeding; and was advised to stay in Manila for further treatment.[7]

On November 24, 1999, respondents filed a Motion for Suspension of the Proceedings in Criminal Case No. CBU-52248 on the ground of prejudicial question. They argued that Civil Case No. CEB-20359, which was an action for declaration of nullity of the mortgage, should first be resolved.[8] On May 11, 2000, the RTC granted the aforesaid motion. Concepcion's motion for reconsideration was denied on June 5, 2000.[9]

This prompted Concepcion to institute a special civil action for certiorari before the CA seeking the nullification of the May 11 and June 5 RTC orders. The case was docketed as CA-G.R. SP No. 60266 and remains pending before the appellate court to date.[10]

On August 16, 2000, the counsel of Concepcion filed a motion to take the latter's deposition.[11] He explained the need to perpetuate Concepcion's testimony due to her weak physical condition and old age, which limited her freedom of mobility.

On August 25, 2000, the RTC granted the motion and directed that Concepcion's deposition be taken before the

Clerk of Court of Makati City.[12] The respondents' motion for reconsideration was denied by the trial court on November 3, 2000. The court ratiocinated that procedural technicalities should be brushed aside because of the urgency of the situation, since Concepcion was already of advanced age.[13] After several motions for change of venue of the deposition-taking, Concepcion's deposition was finally taken on March 9, 2001 at her residence.[14]

Aggrieved, respondents assailed the August 25 and November 3 RTC orders in a special civil action for certiorari before the CA in CA-G.R. SP No. 62551.[15]

On August 15, 2001, the CA rendered a Decision[16] favorable to the respondents, the dispositive portion of which reads:

WHEREFORE, the petition is GRANTED and the August 25, 2000 and November 3, 2000 orders of the court a quo are hereby SET ASIDE, and any deposition that may have been taken on the authority of such void orders is similarly declared void.

SO ORDERED.[17]

At the outset, the CA observed that there was a defect in the respondents' petition by not impleading the People of the Philippines, an indispensable party. This notwithstanding, the appellate court resolved the matter on its merit, declaring that the examination of prosecution witnesses, as in the present case, is governed by Section 15, Rule 119 of the Revised Rules of Criminal Procedure and not Rule 23 of the Rules of Court. The latter provision, said the appellate court, only applies to civil cases. Pursuant to the specific provision of Section 15, Rule 119, Concepcion's deposition should have been taken before the judge or the court where the case is pending, which is the RTC of Cebu, and not before the Clerk of Court of Makati City; and thus, in issuing the assailed order, the RTC clearly committed grave abuse of discretion. [18]

In its Resolution dated March 12, 2002 denying petitioner's motion for reconsideration, the CA added that the rationale of the Rules in requiring the taking of deposition before the same court is the constitutional right of the accused to meet the witnesses face to face. The appellate court likewise concluded that Rule 23 could not be applied suppletorily because the situation was adequately addressed by a specific provision of the rules of criminal procedure.[19]

Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT RULE 23 OF THE 1997 RULES OF CIVIL PROCEDURE APPLIES TO THE DEPOSITION OF PETITIONER.

II.

WHETHER OR NOT FAILURE TO IMPLEAD THE "PEOPLE OF THE PHILIPPINES" IN A PETITION FOR CERTIORARI ARISING FROM A CRIMINAL CASE A QUO CONSTITUTES A WAIVABLE DEFECT IN THE PETITION FOR CERTIORARI.[20]

It is undisputed that in their petition for certiorari before the CA, respondents failed to implead the People of the Philippines as a party thereto. Because of this, the petition was obviously defective. As provided in Section 5, Rule 110 of the Revised Rules of Criminal Procedure, all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, it behooved the petitioners (respondents herein) to implead the People of the Philippines as respondent in the CA case to enable the Solicitor General to comment on the petition.[21]

However, this Court has repeatedly declared that the failure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable.

Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner's/plaintiff's failure to comply.[22]

In this case, the CA disregarded the procedural flaw by allowing the petition to proceed, in the interest of substantial justice. Also noteworthy is that, notwithstanding the non-joinder of the People of the Philippines as party-respondent, it managed, through the Office of the Solicitor General, to file its Comment on the petition for certiorari. Thus, the People was given the opportunity to refute the respondents' arguments.

Instructive is the Court's pronouncement in *Commissioner Domingo v. Scheer*[23] in this wise:

There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty.[24]

Accordingly, the CA cannot be faulted for deciding the case on the merits despite the procedural defect.

On the more important issue of whether Rule 23 of the Rules of Court applies to the instant case, we rule in the negative.

It is basic that all witnesses shall give their testimonies at the trial of the case in the presence of the judge.[25] This is especially true in criminal cases in order that the accused may be afforded the opportunity to cross-examine the witnesses pursuant to his constitutional right to confront the witnesses face to face.[26] It also gives the parties and their counsel the chance to propound such questions as they deem material and necessary to support their position or to test the credibility of said witnesses.[27] Lastly, this rule enables the judge to observe the witnesses' demeanor.[28]

This rule, however, is not absolute. As exceptions, Rules 23 to 28 of the Rules of Court provide for the different modes of discovery that may be resorted to by a party to an action. These rules are adopted either to perpetuate the testimonies of witnesses or as modes of discovery. In criminal proceedings, Sections 12,[29] 13[30] and 15,[31] Rule 119 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, allow the conditional examination of both the defense and prosecution witnesses.

In the case at bench, in issue is the examination of a prosecution witness, who, according to the petitioners, was too sick to travel and appear before the trial court. Section 15 of Rule 119 thus comes into play, and it provides:

Section 15. Examination of witness for the prosecution. - When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

Petitioners contend that Concepcion's advanced age and health condition exempt her from the application of Section 15, Rule 119 of the Rules of Criminal Procedure, and thus, calls for the application of Rule 23 of the Rules of Civil Procedure.

The contention does not persuade.

The very reason offered by the petitioners to exempt Concepcion from the coverage of Rule 119 is at once the ground which places her squarely within the coverage of the same provision. Rule 119 specifically states that a witness may be conditionally examined: 1) if the witness is too sick or infirm to appear at the trial; or 2) if the witness has to leave the Philippines with no definite date of returning. Thus, when Concepcion moved that her deposition be taken, had she not been too sick at that time, her motion would have been denied. Instead of conditionally examining her outside the trial court, she would have been compelled to appear before the court for examination during the trial proper.

Undoubtedly, the procedure set forth in Rule 119 applies to the case at bar. It is thus required that the conditional examination be made before the court where the case is pending. It is also necessary that the accused be notified, so that he can attend the examination, subject to his right to waive the same after reasonable notice. As to the manner of examination, the Rules mandate that it be conducted in the same manner as an examination during trial, that is, through question and answer.

At this point, a query may thus be posed: in granting Concepcion's motion and in actually taking her deposition, were the above rules complied with? The CA answered in the negative. The appellate court considered the taking of deposition before the Clerk of Court of Makati City erroneous and contrary to the clear mandate of the Rules that the same be made before the court where the case is pending. Accordingly, said the CA, the RTC order was issued with grave abuse of discretion.

We agree with the CA and quote with approval its ratiocination in this wise:

Unlike an examination of a defense witness which, pursuant to Section 5, Rule 119 of the previous Rules, and now Section 13, Rule 119 of the present Revised Rules of Criminal Procedure, may be taken before any "judge, or, if not practicable, a member of the Bar in good standing so designated by the judge in the order, or, if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein," the examination of a witness for the prosecution under Section 15 of the Revised Rules of Criminal Procedure (December 1, 2000) may be done only "before the court where the case is pending." [32]

Rule 119 categorically states that the conditional examination of a prosecution witness shall be made before the court where the case is pending. Contrary to petitioners' contention, there is nothing in the rule which may remotely be interpreted to mean that such requirement applies only to cases where the witness is within the jurisdiction of said court and not when he is kilometers away, as in the present case. Therefore, the court may not introduce exceptions or conditions. Neither may it engraft into the law (or the Rules) qualifications not contemplated. [33] When the words are clear and categorical, there is no room for interpretation. There is only room for application. [34]

Petitioners further insist that Rule 23 applies to the instant case, because the rules on civil procedure apply suppletorily to criminal cases.

It is true that Section 3, Rule 1 of the Rules of Court provides that the rules of civil procedure apply to all actions, civil or criminal, and special proceedings. In effect, it says that the rules of civil procedure have suppletory application to criminal cases. However, it is likewise true that the criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure. Considering that Rule 119 adequately and squarely covers the situation in the instant case, we find no cogent reason to apply Rule 23 suppletorily or otherwise.

To reiterate, the conditional examination of a prosecution witness for the purpose of taking his deposition should be made before the court, or at least before the judge, where the case is pending. Such is the clear mandate of

Section 15, Rule 119 of the Rules. We find no necessity to depart from, or to relax, this rule. As correctly held by the CA, if the deposition is made elsewhere, the accused may not be able to attend, as when he is under detention. More importantly, this requirement ensures that the judge would be able to observe the witness' deportment to enable him to properly assess his credibility. This is especially true when the witness' testimony is crucial to the prosecution's case.

While we recognize the prosecution's right to preserve its witness' testimony to prove its case, we cannot disregard rules which are designed mainly for the protection of the accused's constitutional rights. The giving of testimony during trial is the general rule. The conditional examination of a witness outside of the trial is only an exception, and as such, calls for a strict construction of the rules.

WHEREFORE, the petition is hereby DENIED. The Court of Appeals Decision and Resolution dated August 25, 2000 and March 12, 2002, respectively, in CA-G.R. SP No. 62551, are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Bernardo P. Abesamis and Eliezer R. de los Santos, concurring; rollo, pp. 24-30.

[2] Id. at 32-35.

[3] Penned by Judge Ramon G. Codilla, Jr., rollo, p. 44.

[4] Id. at 46.

[5] Id. at 302.

[6] Id. at 433-435.

[7] Id. at 40.

[8] Id. at 303.

[9] Id.

[10] Id. at 303-304.

[11] Id. at 41-43.

[12] Id. at 44.

[13] Id. at 46.

[14] Id. at 306.

[15] Id. at 54-67.

[16] Supra note 1.

[17] Rollo, p. 29.

[18] Id. at 27-29.

[19] Id. at 34-35.

[20] *Id.* at 307-308.

[21] *Madarang v. Court of Appeals*, G.R. No. 143044, July 14, 2005, 463 SCRA 318, 326.

[22] *Superlines Transportation Company, Inc. v. Philippine National Construction Company*, G.R. No. 169596, March 28, 2007, 519 SCRA 432, 447; *Commissioner Domingo v. Scheer*, 466 Phil. 235, 265 (2004).

[23] 466 Phil. 235 (2004).

[24] *Commissioner Domingo v. Scheer*, 466 Phil. 235, 266-267 (2004), citing *Alonso v. Villamor*, 16 Phil. 315 (1910).

[25] Manuel R. Pamaran, *Revised Rules of Criminal Procedure*, 2007 Edition, p. 510.

[26] Section 14(2), Article III of the Constitution provides:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. x x x.

[27] Manuel R. Pamaran, *Revised Rules of Criminal Procedure*, 2007 Edition, p. 510.

[28] *Id.*

[29] SEC. 12 Application for examination of witness for accused before trial. - When the accused has been held to answer for an offense, he may, upon motion with notice to the other parties, have witnesses conditionally examined in his behalf. The motion shall state: (a) the name and residence of the witness; (b) the substance of his testimony; and (c) that the witness is sick or infirm as to afford reasonable ground for believing that he will not be able to attend the trial, or resides more than one hundred (100) kilometers from the place of trial and has no means to attend the same, or that other similar circumstances exist that would make him unavailable or prevent him from attending the trial. The motion shall be supported by an affidavit of the accused and such other evidence as the court may require.

[30] SEC. 13. Examination of defense witness: how made. - If the court is satisfied that the examination of a witness for the accused is necessary, an order shall be made directing that the witness be examined at a specific date, time and place and that a copy of the order be served on the prosecutor at least three (3) days before the scheduled examination. The examination shall be taken before a judge, or, if not practicable, a member of the Bar in good standing so designated by the judge in the order, or if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein. The examination shall proceed notwithstanding the absence of the prosecutor provided he was duly notified of the hearing. A written record of the testimony shall be taken.

[31] SEC. 15. Examination of witness for the prosecution. - When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

[32] *Rollo*, p. 29.

[33] *Manlangit v. Sandiganbayan*, G.R. No. 158014, August 28, 2007, 531 SCRA 420, 428.

[34] *Alvarez v. PICOP Resources, Inc.*, G.R. Nos. 162243, 164516 and 171875, November 29, 2006, 508 SCRA 498, 543-544.

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