

SPO4 MARINO SOBERANO, SPO3 MAURO TORRES AND SPO3 JOSE ESCALANTE, PETITIONERS VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 154629. October 05, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In November 2000, the prominent public relations practitioner, Salvador "Bubby" Dacer, together with his driver, Emmanuel Corbito, was abducted along Zobel Roxas St. in the City of Manila. Their charred remains, consisting of burnt bones, metal dental plates and a ring, were later found in Barangay Buna Lejos, Indang, Cavite. They were positively identified by their dentists and by forensic pathologists from the University of the Philippines.[1] Both victims were killed by strangulation.[2]

A preliminary investigation was conducted by the Department of Justice (DOJ) through a panel of prosecutors made up of State Prosecutor II Ruben B. Carretas, State Prosecutor Geronimo L. Sy and Prosecution Attorney Juan Pedro C. Navera.

On 11 May 2001, an Information[3] was filed by the panel of prosecutors with the Regional Trial Court (RTC), City of Manila.[4] The following were charged with double murder:

Jimmy L. Lopez
Alex B. Diloy
William L. Lopez
(all detained)

SPO4 Marino Soberano
SPO3 Mauro Torres
SPO3 Jose Escalante
Crisostomo M. Purificacion
Digo De Pedro
Renato Malabanan
Jovencio Malabanan
Margarito Cueno
Rommel Rollan
(all under the custody of PNP-CIDG Camp Crame, Quezon City)

P/Supt. Glen Dumlao
P/C. Insp. Vicente Arnado
P/Insp. Roberto Langcaun
SPO4 Benjamin Taladua
SPO1 Rolando Lacasandile

P/Insp. Danilo Villanueva
SPO1 Mario Sarmiento
SPO1 William Reed
PO2 Thomas J. Sarmiento
SPO1 Ruperto A. Nemenio
John Does and James Does
(all at large)

The Information reads:

That on or about November 24, 2000 in Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, some of whom are public officers, being then members of the Philippine National Police (PNP) Force assigned at Presidential Anti-Organized Crime Task Force, Camp Crame, Quezon City, (SPO4 Soberano, SPO3 Torres, SPO3 Escalante, P/Supt. Dumlao, P/C. Insp. Arnado, P/Insp. Langcauon, SPO4 Taladua, SPO3 Villanueva, SPO1 Sarmiento, SPO1 Reed, PO3 Lacasandile, PO1 Sarmiento and SPO1 Nemenio), with evident premeditation, treachery, abuse of superior strength, nighttime and remoteness of the place and with deliberate intent to kill, conspiring, confabulating and confederating with one another, the accused police officers using their offices in committing the offense, did then and there, willfully, unlawfully and feloniously kill SALVADOR (Bubby) DACER and EMMANUEL CORBITO by strangulation, which was the immediate cause of their death, and thereafter dispose of their body (sic) by incineration, to the damage and prejudice of the latter's respective heirs.

The case was raffled to RTC, Branch 41, Manila, presided by Judge Rodolfo A. Ponferrada.

On 23 May 2001, the prosecution filed a Motion to Admit Amended Information[5] which was granted and the Amended Information was admitted by the trial court.

The Amended Information[6] reads:

That on or about November 24, 2000 in Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, some of whom are public officers, being then members of the Philippine National Police (PNP) Force assigned at Presidential Anti-Organized Crime Task Force, Camp Crame, Quezon City, (SPO4 Soberano, SPO3 Torres, SPO3 Escalante, P/Supt. Dumlao, P/ C. Insp. Arnado, P/Insp. Langcauon, SPO4 Taladua, SPO3 Villanueva, SPO1 Sarmiento, SPO1 Reed, PO3 Lacasandile, PO1 Sarmiento and SPO1 Nemenio), abduct SALVADOR (Bubby) DACER and EMMANUEL CORBITO at the corner of Osmeña Highway (formerly South Super Highway) and Zobel Roxas Street in Manila, and later brought them to Indang, Cavite, and with evident premeditation, treachery, abuse of superior strength, nighttime and remoteness of the place and with deliberate intent to kill, conspiring, confabulating and confederating with one another, the accused police officers using their offices in committing the offense, did then and there, willfully, unlawfully and feloniously kill said SALVADOR (Bubby) DACER and EMMANUEL CORBITO by strangulation, which was the immediate cause of their death, and thereafter dispose of their body by incineration, to the damage and prejudice of the latter's respective heirs.

On 24 May 2001, Soberano, Escalante, Torres, Purificacion, Renato Malabanan, Jovencio Malabanan and Rollan moved to quash the Information.

Accused P/Supt. Glen Dumlao was subsequently arrested. He later executed a sworn statement implicating other police officers to the Dacer-Corbato double murder, specifically P/Supt. Michael Ray B. Aquino, P/Supt. Cesar Mancao, PO3 Larry Ambre and a certain Rigor,[7] all former members of the defunct Presidential Anti-Organized Crime Task Force (PAOCTF).

On 18 June 2001, one of the accused, P/Insp. Danilo Villanueva, filed a Motion for Reinvestigation asserting that

he was mistakenly identified as a participant in the double murder. He stressed that it was not him but a certain "SPO3 Allan Cadenilla Villanueva" who was previously identified by several witnesses as one of the culprits.[8] This was granted by the trial court.

On 26 June 2001, in view of the sworn statement executed by Dumlao, the prosecution filed a Motion for Reinvestigation[9] which was granted by the trial court in its Order[10] dated 04 July 2001. The prosecution was ordered to terminate the reinvestigation and submit its findings within twenty (20) days. The arraignment was set on 30 July 2001.

On 28 June 2001, the trial court denied the joint Motion to Quash the Information earlier filed by Soberano, Escalante, Torres, Purificacion, Renato Malabanan, Jovencio Malabanan and Rollan.

On 02 August 2001, the National Bureau of Investigation filed a new complaint with the DOJ against a new suspect in the same case, by the name of P/Sr. Supt. Teofilo Viña, who was also a member of the PAOCTF.

After the reinvestigation, the prosecution filed a Motion to Discharge dated 13 August 2001, praying that P/Insp. Danilo Villanueva[11] be discharged from the Information, and that he be immediately released from detention. In its Order[12] dated 16 August 2001, the trial court granted the motion.

A Manifestation and Motion to Admit Amended Information[13] dated 17 September 2001 was filed by the prosecution. The Amended Information ---

- (1) discharged accused Jimmy L. Lopez, Alex B. Diloy, William L. Lopez and Glen Dumlao as they are now witnesses for the State;
- (2) substituted SPO3 Allan Villanueva for P/Insp. Danilo Villanueva; and
- (3) charged as additional accused P/Supt. Michael Ray Aquino, P/Supt. Cezar Mancao II and P/Sr. Supt. Teofilo Viña.

Accused Soberano, Torres, Escalante, Purificacion, Renato and Jovencio Malabanan opposed the Manifestation and Motion to Admit Amended Information in an Opposition[14] dated 28 September 2001. They prayed that the Motion to Admit Amended Information and the discharge of accused Dumlao, Diloy and the brothers Lopez be denied.

In its Order dated 01 October 2001, the trial court denied the Motion to Admit Amended Information. The prosecution filed a Motion for Reconsideration which was denied in an Order[15] dated 24 October 2001.

On 16 November 2001, the prosecution moved in open court to inhibit Judge Ponferrada from hearing the case. Acting on this motion, Judge Ponferrada, on 22 November 2001, ordered that the case be re-raffled. The case was re-raffled to Branch 18, RTC, Manila, presided by Judge Perfecto A.S. Laguio.

On 04 January 2002, the prosecution filed a special civil action for certiorari with prayer for issuance of a temporary restraining order before the Supreme Court praying that the Orders of then Judge Ponferrada dated 01 and 24 October 2001 be annulled and set aside and that Judge Perfecto A.S. Laguio of Branch 18 be restrained, in the meantime, from proceeding with the case in accordance with said orders. In a Resolution[16] dated 21 January 2002, this Court referred the case to the Court of Appeals for appropriate action.

On 04 April 2002, the Court of Appeals rendered the assailed Decision,[17] the dispositive portion of which reads:

WHEREFORE, all the foregoing premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for, accordingly GRANTED. The assailed Orders dated October 01, 2001 and October 24,

2001 which were issued by JUDGE RODOLFO A. PONFERRADA in Criminal Case No. 01-191969, entitled "People of the Philippines v. Jimmy Lopez, et al." are hereby ANNULLED and SET ASIDE. Respondent JUDGE PERFECTO A.S. LAGUIO, JR. or any person or persons acting in his stead, is/are hereby ORDERED to ADMIT the Amended Information dated September 17, 2001 substituting SPO3 ALLAN CADENILLA VILLANUEVA for P/Insp. DANILO VILLANUEVA as accused, and charging P/Senior Supt. MICHAEL RAY AQUINO, P/Senior Supt. CEZAR MANCAO II and P/Senior Supt. TEOFILO VIÑA as additional accused, and discharging or excluding only the accused JIMMY L. LOPEZ, WILLIAM L. LOPEZ and ALEX B. DILOY and to CONTINUE with the proceedings therefrom with utmost deliberate dispatch. Needless to state, the original information filed on May 11, 2001 stands insofar as P/Senior Supt. GLEN(N) G. DUMLAO is concerned.[18]

Accused Soberano, Escalante and Torres moved for the reconsideration of the Court of Appeals Decision. In a Resolution[19] dated 12 August 2002, the motion was denied for lack of merit.

Hence, the instant petition for review with Prayer for Temporary Restraining Order[20] dated 28 August 2002 filed by Soberano, Torres and Escalante where they assign as errors the following:

I

THE COURT A QUO ERRED IN HOLDING THAT RESPONDENT JUDGE PONFERRADA GRAVELY ABUSED HIS DISCRETION IN DENYING THE ADMISSION OF THE AMENDED INFORMATION.

II

THE COURT A QUO ERRED IN APPLYING SECTION 14 OF RULE 110 OF THE REVISED RULES ON CRIMINAL PROCEDURE (RRCP) IN ALLOWING THE DISCHARGE OF ACCUSED DILOY AND THE LOPEZ BROTHERS.

III

THE COURT A QUO ERRED IN HOLDING THAT A MOTION FOR REINVESTIGATION WAS TANTAMOUNT TO A PRIOR LEAVE OF COURT AS CONTEMPLATED UNDER SECTION 14 OF RULE 110 OF THE RRCP.

IV

THE COURT A QUO ERRED IN NOT APPLYING SECTION 17 OF RULE 119 OF THE RRCP IN THE DISCHARGE OF THE ACCUSED.

V

THE COURT A QUO ERRED IN RESTRICTING THE APPLICATION OF SECTION 17 OF RULE 119 OF THE RRCP TO A SITUATION WHERE THE ACCUSED HAS ALREADY BEEN ARAIGNED AND UNDERGOING TRIAL.

Gathered from the above assignment of errors, the fundamental issue that must be resolved concerns the duty of a trial court judge when confronted with a motion to admit amended information excluding some of the accused named in the original information for utilization as witnesses for the State. The key lies in the correct interpretation of two pertinent provisions of the Revised Rules of Criminal Procedure, i.e., Section 14 of Rule 110 on amendment of information and Section 17 of Rule 119 on the discharge of an accused as state witness.

Section 14, Rule 110 states:

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.

On the other hand, Section 17, Rule 119 provides:

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 trial court, in denying the prosecution's motion to admit amended information discharging some accused, ratiocinated that to admit said amended information would be violative of Section 17, Rule 119, thus:

After study, it appearing that the Amended Information not only includes new accused, namely, SPO3 Allen Villanueva, P/Supt. Michael Ray Aquino, P/Supt. Cezar Mancao and P/Supt. Teofilo Viña but excludes or discharges certain accused, namely, Jimmy L. Lopez, Alex B. Diloy, William L. Diloy and Glenn Dumlao from the original Information to be used as state witnesses, the Court is not inclined to grant the motion as it believes and so holds that in the discharge of the accused to be state witnesses the provisions of Section 17, Rule 119 of the Revised Rules of Criminal Procedure should be observed and/or complied with. Stated otherwise, to grant the motion and admit the Amended Information outright would violate said section which is quoted as follows. . . .[21]

The Court of Appeals held the contrary view. It reasoned that Section 14, Rule 110 is applicable in the instant case and not Section 17, Rule 119 of the Revised Rules of Criminal Procedure, thus:

To begin with, it is undeniable, and it is necessary to point out, that Criminal Case No. 01-191969 has already been filed with the Regional Trial Court of Manila on May 11, 2001. The Motion to Admit was filed later or on September 18, 2001.

While it is true that once the information is filed in court, the court acquires complete jurisdiction over it, We are not unmindful of the well-settled ruling of the Supreme Court that the determination of who should be criminally charged in court is essentially an executive function, not a judicial one.

Section 14, Rule 110 (Prosecution of Offenses) of the Revised Rules of Criminal Procedure, as amended, reads -

"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.

"If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial."

Applying the import of the afore-quoted Section 14, Rule 110, it appears that the Amended Information sought to be admitted by the petitioner finds sufficient support therein, considering, firstly, that there has been no arraignment yet. Secondly, when respondent JUDGE RODOLFO A. PONFERRADA granted the motion for reinvestigation in the Order dated July 04, 2001, there was in effect a prior leave of court given to the State Prosecutors of the Department of Justice to conduct the same, substantially complying with such requirement under the second paragraph of Section 14, Rule 110. After all, a leave of court is defined a "permission obtained from a court to take some action which, without such permission, would not be allowable: as, to sue a receiver, to file an amended pleading, to plead several pleas."

In the case of *People v. Montesa, Jr.*, the Supreme Court's pertinent ruling, which We now reiterate, finds application in the case at bench, i.e., where a judge grants a motion for reinvestigation [as in this case], he is deemed to have deferred to the authority of the prosecution arm of the Government to consider the so-called new relevant and material evidence and to determine whether the information it has filed should stand, and that the final disposition on the reinvestigation should be the sole and only valid basis for the judge's final action with respect to the reinvestigation.

Thus, in accord with the aforesaid Montesa, Jr. ruling, respondent JUDGE RODOLFO A. PONFERRADA's "sole and only basis" for the inclusion (or exclusion, for that matter) of the additional accused should be the final disposition on the reinvestigation conducted by the State Prosecutors of the Department of Justices.

Consistent with the foregoing disquisition, We hold the opinion that Section 17, Rule 119 (Trial), . . . is not applicable under the circumstances obtaining in the case at bench, although in the case of *Guingona, Jr. v. Court of Appeals*, We are mindful of the Supreme Court's clarification that only when an information, charging two (2) or more persons with a certain offense, has already been filed in court will Section 9, Rule 119 (Trial) of the Rules of Court [now 100% restated under Section 17, Rule 119 (Trial) of the Revised Rules of Criminal Procedure] "come into play."

Section 17, Rule 119 (Trial), contemplates a situation wherein the Information is already filed, the accused is already arraigned, undergoing trial and the prosecution has not rested its case.

Here, although the original Information has already been filed, the four (4) accused sought to be discharged or excluded from the Amended Information have not been arraigned and no trial has been commenced. Thus, the discharge or exclusion being sought by the petitioner may come under the purview of Republic Act No. 6981, a special law which the Department of Justice is called upon to enforce and implement. Considering that the State Prosecutor's disposition on the investigation in Criminal Case No. 01-191969 should be the sole and only valid

basis of respondent JUDGE RODOLFO A. PONFERRADA in considering whether the Amended Information sought to be admitted should stand or not, it follows that the discharge/exclusion of the four (4) accused under Republic Act No. 6981 must be directed by the Department of Justice, not by the court a quo. Needless to say, Section 9, Rule 119 [of the Rules of Court] does not support the proposition that the power to choose who shall be state witness is an inherent judicial prerogative. It is not constitutionally impermissible for Congress to enact Republic Act 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.[22] (Emphasis in original)

The petitioners submit that the Court of Appeals erred in applying Section 14 of Rule 110 of the Revised Rules of Criminal Procedure on amendment of complaints. Instead, what should have been applied was Section 17 of Rule 119 on the discharge of an accused as witness for the state. The petitioners further aver that even if it is only a simple discharge under Section 14 of Rule 110, it is still necessary to seek prior leave of court. The prosecution simply filed an Amended Information excluding Jimmy and William Lopez, Alex Diloy and Glen Dumlao, without prior leave of court, and moved for its admission.[23]

The petitioners also argue that while the determination of who should be criminally charged is essentially an executive function, the discharge of an accused when an Information had already been filed lies with the court.[24] Further, the petitioners assert that the Motion For Reinvestigation which was approved by the trial court is not tantamount to a Motion For Leave to File an Amended Information as required under Section 14 of Rule 110 of the Revised Rules of Criminal Procedure.[25]

In answer to all these, the prosecution contends that the admission of the Amended Information was not violative of Section 17, Rule 119 of the Revised Rules of Criminal Procedure, contrary to the opinion of the trial court.[26]

The prosecution insists that Judge Ponferrada should have just required it to present evidence in support of the discharge for had this procedure been followed, the fact of admission of the accused sought to be discharged into the Witness Protection Program (WPP) would have come to light.[27]

The prosecution likewise professes that Section 14, Rule 110 should be applied, and not Section 17, Rule 119 for the following reasons: first, while the case was already filed in court, the accused therein have not yet been arraigned; second, the trial court ordered the reinvestigation of the case; and third, new evidence dictate the necessity to amend the Information to include new accused and to exclude other accused who will be utilized as state witnesses.[28]

There can be no quarrel as to the fact that what is involved here is primary an amendment of an information to exclude some accused and that the same is made before plea. Thus, at the very least, Section 14, Rule 110 is applicable which means that the amendment should be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. What seems to complicate the situation is that the exclusion of the accused is specifically sought for the purpose of discharging them as witnesses for the State. The consequential question is, should the requirements for discharge of an accused as state witness as set forth in Section 17, Rule 119 be made as additional requirements (i.e., Section 14, Rule 110 and Section 17, Rule 119) or should only one provision apply as ruled by the trial court and the Court of Appeals (i.e., Section 14, Rule 110 or Section 17, Rule 119)?

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.[29] 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.[30] By virtue of the trial court having granted the prosecution's motion for reinvestigation, the former is deemed to have deferred to the authority of the prosecutorial arm of the Government.[31] Having brought the case back to the drawing board, the prosecution is thus equipped with discretion -- wide and far reaching - regarding the disposition thereof.

The foregoing discussion is qualified by our decision in the seminal case of *Crespo v. Mogul*,[32] wherein we declared that:

. . . Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court. The only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.

Thus, as in almost all things, the prosecution's discretion is not boundless or infinite. The prosecution must satisfy for itself that an accused excluded from the information for purposes of utilizing him as state witness is qualified therefor.

The situation is different in cases when an accused is retained in the information but his discharge as state witness is sought thereafter by the prosecution before it rests its case, in which event, the procedural (in addition to the substantive) requirements of Section 17, Rule 119 apply. Otherwise stated, when no amendment to the information is involved as a by-product of reinvestigation and trial proceeds thereafter, the discharge of the accused falls squarely and solely within the ambit of Section 17, Rule 119. It is fitting then to re-state the rule in *Guingona, Jr. v. Court of Appeals*[33] that :

. . . [T]he decision on whether to prosecute and whom to indict is executive in character. Only when an information, charging two or more persons with a certain offense, has already been filed in court will Rule 119, Section 9[34] of the Rules of Court, come into play. . . .

Prescinding from the foregoing, it is in a situation where the accused to be discharged is included in the information that the prosecution must present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge in order to convince the judge, upon whom discretion rests, as to the propriety of discharging the accused as state witness.

Having thus ruled, it now behooves upon this Court to determine whether the Court of Appeals was correct in admitting the amended information insofar as the discharge of JIMMY L. LOPEZ, WILLIAM LOPEZ and ALEX B. DILOY is concerned.

It is undisputed that the motion to admit amended information seeking the exclusion of the above-named accused (together with P/Sr. Supt. GLEN G. DUMLAO) was with notice to the offended party and was set for hearing.

The Court of Appeals held that the trial court's grant of the prosecution's motion for reinvestigation operates as leave of court to amend the information, if the situation so warrants.

Under the circumstances obtaining herein, we agree with the Court of Appeals considering that we do not perceive here any impairment of the substantial rights of all the accused or the right of the people to due process.

As we have discussed earlier in this decision, the trial court is with discretion to grant or deny the amendment of the information. In general, its discretion is hemmed in by the proscription against impairment of the substantial rights of the accused or the right of the People to due process of law. In this case, in denying the motion to admit amended information, the trial court simply said that the same was violative of Section 17, Rule 119 without stating the reasons therefor. And for this lapse, the trial court has indeed erred.

One final point. In the Decision of the Court of Appeals, it held that the discharge or exclusion of P/Sr. Supt. Glen Dumlao from the Amended Information finds no legal basis under Republic Act No. 6981[35] for he is a law enforcement officer. The original information, according to the Court of Appeals, should stand insofar as Dumlao is concerned.

Section 3, Rep. Act No. 6981 provides:

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.

It must be stressed that Section 3 of Rep. Act No. 6981 enumerates the requirements before a person may be admitted to the WPP. It does not state that if an accused cannot be admitted to the WPP, he cannot be discharged as a witness for the state. Admission to the WPP and being discharged as an accused are two different things. Dumlao's being a law enforcement officer and, thus, disqualified to be under the WPP, do not in any way prohibit him to be discharged from the information.

WHEREFORE, in view of all the foregoing, the Decision and Resolution of the Court of Appeals dated 04 April 2002 and 12 August 2002, respectively, are hereby **AFFIRMED** with the **MODIFICATION** to include P/Sr. Supt.

GLEN G. DUMLAO as one of the accused excluded from the Amended Information dated 17 September 2001.
No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 148-149.

[2] CA Rollo, p. 74.

[3] Rollo, pp. 51-56.

[4] Docketed as Criminal Case No. 01-191969.

[5] Rollo, pp. 57-59.

[6] Rollo, p. 63.

[7] Rollo, p. 66.

[8] Rollo, p. 153.

[9] Rollo, pp. 66-69.

[10] Rollo, p. 70.

[11] Rollo, pp. 72-75.

[12] Rollo, p. 76.

[13] Rollo, pp. 79-81.

[14] Rollo, pp. 89-92.

[15] Rollo, pp. 101-107.

[16] CA Rollo, p. 127.

[17] Rollo, pp. 25-34; Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Conchita Carpio-Morales (now a member of this Court) and Sergio L. Pestaño, concurring.

[18] Rollo, p. 33.

[19] Rollo, p. 49.

[20] Rollo, pp. 3-23.

[21] Rollo, p. 93.

[22] Rollo, pp. 29-32.

[23] Rollo, pp. 13-14.

[24] Rollo, p. 16.

[25] Rollo, p. 19.

[26] Rollo, p. 162.

[27] Rollo, p. 166.

[28] Rollo, pp. 166-174.

[29] *People v. Esparas*, G.R. No. 120034, 10 July 1998, 292 SCRA 332, citing *Webb v. De Leon*, G.R. Nos. 121234, 121245 and 121297, 23 August 1995, 247 SCRA 652; *Castillo v. Villaluz*, G.R. No. 34285, 08 March 1989, 171 SCRA 39; *People v. Navarro*, G.R. No. 96229, 25 March 1997, 270 SCRA 393; *Roberts, Jr. v. Court of Appeals*, G.R. No. 113930, 254 SCRA 307.

[30] *People v. Peralta*, G.R. No. 133267, 08 August 2002, 387 SCRA 45, citing *Webb v. De Leon*, *Ibid*.

[31] *Cf. People v. Montesa, Jr.*, G.R. No. 114302, 29 September 1995, 248 SCRA 641, 650-651.

[32] G.R. No. L-53373, 30 June 1987, 151 SCRA 462, 470 (citations omitted).

[33] G.R. No. 125532, 10 July 1998, 292 SCRA 402, 418.

[34] Now Section 7.

[35] An Act Providing For A Witness Protection, Security And Benefit Program And For Other Purposes.

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