

IRINEO V. BERNARDO, PETITIONER, VS. VICENTE DEL ROSARIO, JUDGE, COURT OF FIRST INSTANCE, GUMACA, QUEZON, AND ANGEL VERAN, RESPONDENTS.*G. R. No. 18237. January 31, 1964*

Ponente: PAREDES, J.

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On April 28, 1960; Fiscal Irineo Bernardo, as special prosecutor, charged Gregorio Orfanel and eleven others including Angel Veran alias Bayabas, alias Heling, in an amended information for kidnapping for ransom, in the CFI of Quezon, (Gumaca Branch), docketed as Grim. Case No. 901-G presided by Judge Vicente del Rosario. The accused after arraignment, pleaded not guilty. On September 19, 1960, the prosecution commenced presenting its evidence and up to the filing of the present petition, had not yet completed or closed the evidence for the State. On February 23, 1961, Fiscal Bernardo filed with the same Court, a petition to discharge accused Angel Veran from the information, under the provisions of section 9 of Rule 115. On March 2, 1961, respondent Court granted the discharge (Annex C, Petition).

In the hearing of March 2, 1961, Veran was presented as witness, but he did not declare on the matters he had promised to testify upon and showed signs of hostility, thus causing the Fiscal to ask the Court for a suspension of the proceeding. Confronted as to his promise to testify, Veran told the petitioning Fiscal that he had decided not to testify for the State and that he could not anymore comply with his previous commitment. On March 4, 1961, the Fiscal filed with the respondent Court a "motion to reinclude Veran in the information" (Annex I, petition), on the grounds stated therein. It appears that previous to this incident, Marcos Ramos alias Marking, one of the accused, was also discharged from the information, but reincluded, for the same reasons stated herein with respect to accused Veran. On March 9, 1961, the respondent Court decided the motion for reinclusion of Veran, in an Order (Annex 5 of the Petition), which is hereunder reproduced :

"The Court having seen that Angel Veran after his discharge consented to become a witness for the prosecution, as proof of which many questions had already been propounded to him by the special prosecutor which he answered and this Court not knowing what the promise of this accused was to the prosecution, the Court is of the belief that this accused has complied at least partially with his promise to testify for the State and his discharge from the information to become State witness operated as an acquittal as provided in the rules. The petition to reinclude him in the information is hereby DENIED and if the prosecution believes that he has violated the terms of the agreement concerning his discharge from the information, a separate information "Would be necessary, charging him with the offense allegedly committed by him and the fact that he failed to live up to his' promise to the State."

A motion for reconsideration dated March 15, 1961, was presented by the petitioner herein (Annex K, petition), giving stress to the substantial facts disclosed to him by Veran which he (petitioner), had written down before going to trial. Petitioner also delved on the hostility of Veran and the alibi made, by him in his testimony in Court. In other words, as explained in the said motion for reconsideration, Veran had told to the Fiscal that he had taken

an active part, together with his co-accused in the kidnapping of the victim on the night it was perpetrated; and made also similar statements in his confessions (Exhibit C and Q-I), but during the hearing, he made a volte face, by stating that he was sick then and was not present during the kidnapping. On March 17, 1961, respondent Judge, denied the motion for reconsideration in an order, the pertinent portions of which state—

"Angel Veran having partially complied with his promise to testify in the case for tile prosecution and the prosecution having withdrawn him from the witness stand without asking him further questions to show his hostility to the prosecution and biased attitude contrary to his promise to testify for the government the discharge from the information of Angel Veran operated as an. acquittal for him and as stated in the order of this Court of March 9, 1961, the remedy for the prosecution is to file anew the information against him wherein the necessary evidence may be taken by the Court to show that this accused refused or failed to comply with his promise to testify for the State."

A petition for certiorari with a writ of preliminary injunction was filed in this Court. On March 22, 1961, a writ of preliminary injunction was issued, prohibiting and enjoining the respondent Court from proceeding with the trial of Criminal Case No. 901, until further orders from this Court, and the respondent Court was required to answer. The preliminary injunction was served upon the respondent Judge on March 23, 1961. The records fail to show that respondent Judge ever answered. The present case has, nevertheless, been set for hearing on October 9, 1961, on the occasion of which petitioner asked and was permitted to submit the case on memorandum. Realizing-, however, that Angel Veran was a necessary party, he was ordered included as respondent, which was done in an amended petition for certiorari with preliminary injunction, filed on April 15, 1963. Having been duly summoned, Veran filed on June 15, 1963, a motion to dismiss the petition on the ground that: (1) the amended petition is not verified as required by sec. 1, Rule 67, in relation to sec. 6, of Rule 15; and (2) Veran was not a respondent in the original petition; and the incorporation thereto of the annexes in the original petition simply by reference, deprives him to be duly informed of the motives and causes of the petition., The alternative petition, to the effect that in the event of denial of the motion to dismiss, the respondent should be furnished with certified true copy of the original petition, was, however, granted and complied with.

Answering the amended petition, respondent Veran alleged that special prosecutor Bernardo did not conduct any investigation of his own of the case, but simply relied on the records gathered from the P.C. and Provincial Fiscal of Quezon; that Veran did not turn hostile, for all he declared was the truth previously made known to the said special prosecutor, without mental reservation, after informing him that certain portions of Exhibits D and E were not true; that he never relaxed in his willingness to testify, only that as previously intimated to the special prosecutor, he would only tell the truth and nothing but the truth; that the acts of the respondent Judge, were not the product of arbitrariness in the exercise of judicial prerogatives.

There are two questions posited in view of the facts elicited from the record, to wit:—

- In the event that a co-accused discharged from the information under the provisions of section 9, 10, and 11 of Rule 115, failed to live to his promise to the State, should his reinstatement or reinclusion he made in the same information or should the prosecuting attorney file a separate information charging the accused with the offense allegedly committed by him and the fact that, he failed to live up to his promise to the Government? The trial court took the latter alternative.

- Do the facts and circumstances appearing in the record warrant the re-inclusion of accused Veran in the same information? The respondent answers they are not

First: The pertinent provisions. of Rule 115 state:

"Section 11.—Discharge of defendants operates as acquittal.—The order indicate:! in the two preceding sections

shall amount to an acquittal of the defendant discharged and shall be a bar to future prosecution for the same offense, unless the defendant, in the case provided in section 9 fails or refused to testify against his co-defendant." (Italics supplied.)

The pertinent provisions of the Rules on the matter, do not ordain that in the case a discharged accused becomes recalcitrant, he should be prosecuted anew in another information. On the other hand, We gather from the very objectives of the Rules, that he should be prosecuted again by re-inclusion, in the same information. The evidence of the prosecution in the case under consideration, is joint as to all accused, Veran inclusive, there being an allegation of conspiracy. The whole incident of discharge arose from the same case and the same information, and the filing of a separate information would necessitate the commencement of another preliminary investigation of the principal case; it would amount to splitting the case into as many separate cases as there are recalcitrant accused; it would entail reproduction of evidence in every case; and because the discharge operates as an acquittal for him, there might be created a situation where the question of double jeopardy could be raised and, which might frustrate the very purposes of the rule providing for the discharge of an accused, to be utilized as a witness against his¹ co-accused. One can readily see the dangerous effect of such a procedure, for both the co-accused or the accused-recalcitrant witness might get scot free. We, therefore, hold that the trial court erred in finding that the prosecuting attorney a, should file a separate information against the accused-discharged witness Veran.

Second:—It would seem that the trial court was not satisfied with the proofs that accused. Veran did not comply with his promise to the prosecuting attorney. His. Honor's first reaction was that he did not know what was the promise made by the discharged witness to the fiscal and the discharged witness had complied "at least partially with his promise to testify for the State". In resolving the motion for reconsideration, the trial court's second reaction was that the discharged witness "did not refuse to testify as agreed upon between him and the prosecution"; "the remedy for the prosecution is to file anew the information against him wherein the necessary evidence may be taken by the Court to show that this accused refused or failed to comply with his promise to testify for the State".

In the course of the testimony of Veran in Court, after stating that he (Veran) was "inventing an alibi", and "turning hostile", the special prosecutor was permitted by the Court to propound questions on his confessions Exhibits C and Q-1, and his sworn statement Exh. Q, executed before the special prosecutor, wherein he admitted his participation in the commission of the offense and promised to testify according to the facts stated therein. On the witness stand, Veran affirmed his promise to testify on his participation and that of his co-accused in the kidnapping of Mrs. Rosita. P. de Leon and her two minor children. The special prosecutor, after the suspension of the testimony of Veran, had a confrontation (conference) with the latter who stated categorically that he would not testify against his co-accused. The trial court had been informed of these facts, in the formal motion to reinclude Veran in the "information dated March 4, 1961 (Annex 1, Petition), at the hearing of the said motion on March 9, 1961, and in motion for reconsideration of the motion to re-include, dated March 15, 1961 (Annex K, petition), Veran's confessions Exhs. C and Q-1, and the trial brief of the special prosecutor (Annex A, petition), state the facts on which Veran had promised the prosecutor to testify in court. In a nut shell, Veran was to testify on the following:

On November 18, 1955, at 3:00 o'clock p.m. 14 men, among whom were Marcos Ramos and Veran arrived at Barrio Tagbalcan, Catanauan, Quezon. Commander Pepe sent Solomon Catan to fetch Alejandro Libao and Irene Comisa who were ordered by- Comdr. Pepe to tell Mayor Orfanel (one of the accused), that they were waiting for him. On November 19, 1955, Mayor Orfanel and 5 others, arrived at the barrio and the former told Comdr. Pepe that he wanted the De Leon family to be kidnapped as soon as possible, because they were his political rivals and were rich. They agreed to kidnap them the following day, November 20, 1955, at 6:00 o'clock in the afternoon, and each would have a share in the ransom money. Mayor Orfanel delivered to Comdr. Pepe a map of Catanauan,

and accused Marcos Ramos indicated the location of De Leon's house. Comdr. Pepe and thirteen (13) men divided into three groups, with different assignments and places, in and around the house of Dr. De Leon's house. At 6:00 o'clock in the evening of November 20, 1955, they entered the town and kidnapped Mrs. Rosita de Leon and her two children and took them to the mountains, travelling until 12:00 o'clock midnight. This was the first time that Veran saw the victims, who were then taking a rest. On November 21, 1955, the victims were given a hut to stay and Veran was one of these assigned to guard the victims. Veran was present when the ransom money was paid to Comdr. Pepe, on December 19, 1955, by Dr. Arturo de Leon, one of his sons, Manosca and a person not known to Veran. Manosca later asked Comdr. Pepe for his share and that of Mayor Orfanel.

There is no question then as to the promise of Veran to testify against his co-accused. If there was no such promise, the prosecutor would not have discharged him from the information. It is true that there was a partial compliance of the promise because Veran actually began to testify, but which was limited only, to the identification of his co-accused. He failed or refused to testify against them and state their participation in the crime, which was the principal part of the bargain (Sec. 11, Rule 115, *supra*).

The trial court, however, claims that Angel Veran having partially complied with his promise "and the prosecutor having withdrawn him from the witness stand without asking him further questions to show his hostility to the prosecution and biased attitude contrary to his promise", his discharge operated as an acquittal. The evidence of hostility of Veran is shown by the fact that he was already putting up an alibi, by declaring that on November 183 1955, he suffered an alleged injury on the foot and was taken to the Base Hospital (HMB) near the boundary of Catanauan, within another municipality, making it appear that it was impossible for him to have seen what transpired thereafter and identify his other co-accused or relate their respective participation. The special prosecutor had also to remind Veran, in the course of his testimony, of his written promise to testify by showing him his confessions (Exhs. C & Q-1). The special prosecutor, after the confrontation with Veran, made in the presence of Fiscal Villafranca, told the Court that Veran categorically manifested he was not going to testify against his co-accused among whom, was Mayor Orfanel. There is no reason at all to doubt the veracity of the statement of the special prosecutor that Veran told him he did no longer want to testify against his co-accused. If Veran was willing and ready to testify or complete his testimony against the accused, he could have told so to the trial court. In cases of reinclusion of a discharged accused from the information, the calcitrant's failure or refusal to testify is generally furnished by the prosecutor, much in the same manner, as the case of discharge of an accused from the information.

When a defendant is discharged from the information, a contract is entered into between him and the State. The discharge will be secured, if the defendant will honestly and fairly make a full disclosure of the crime. It is incumbent upon him to keep his part of the contract if he hopes to receive the promised immunity; and if his testimony is corrupt or his disclosure is only partial (as found by the trial court, in the case at bar), he gains nothing, but forfeits his rights under the contract (15 Am. Jur. sec. 32 p. 17; U.S. vs. Grant & Kennedy, 18 Phil. 122; V. Francisco's Rules of Court, par. 11, p. 330, Rev. Ed.) Courts should not give a premium to a culprit who worked himself into gaining his acquittal, upon a deception and a contumacious disregard of an agreement validly entered into.

In view of the conclusions reached, the consideration of other issues raised, is not deemed necessary. The writ is therefore granted. The orders of respondent Judge dated March 9, 1961, and March 17, 1961, denying the re-inclusion of accused Angel Veran in the information, are SET ASIDE, and the case remanded to the respondent Court, for further proceedings. No pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

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