

DOMINGO CAN, PETITIONER, VS. THE HONORABLE JUDGE NICOLAS GALING, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH III, COURT OF FIRST INSTANCE OF SORSOGON, 10TH JUDICIAL DISTRICT, R...

G.R. No. 54258. November 27, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

Petition for certiorari and mandamus to reverse and set aside the Orders of the respondent Judge, dated 12 May 1980 and 10 June 1980, discharging Emilio Daria, one of the accused in Criminal Case No. 500 for Robbery, entitled "People of the Philippines v. Domingo Can, Emilio Daria, Sgt. Jesus Abion and Francisco Lizardo" in order to be a witness for the State.

On 16 July 1980, the Court issued a temporary res-training order enjoining respondent Judge from hearing or receiving the testimony of the discharged accused Emilio Daria in said Criminal Case No. 500, until further orders from the Court.

On 6 February 1981, the Court resolved to give due course to the petition and declare the case submitted for decision, after considering the allegations, issues and arguments contained in the Petition for certiorari and mandamus, the Comments thereon and the Reply to said comments.

The antecedent facts are:

On 31 May 1978, an information for Robbery was filed with the Court of First Instance of Sorsogon against the aforementioned accused. The case was assigned to Branch III, presided over by respondent Judge.

Upon arraignment, all the accused pleaded not guilty.

On 29 November 1979, the prosecuting fiscal moved to discharge the accused Emilio Daria from the information, to be used as a state witness, on the following grounds:

- "1 - That there are several defendants in the above-entitled case;
- 2 - That the prosecution has no other direct evidence available for the proper prosecution of the offense committed except the testimony of accused Emilio Daria;
- 3 - That there is absolute necessity for the testimony of the accused Emilio Daria, whose discharge is hereby requested in this motion;
- 4 - That the testimony of said defendant can be substantially corroborated in its material points;
- 5 - That defendant Emilio Daria does not appear to be the most guilty considering that the accused Domingo Can is the master-mind of the robbery and the two other accused Francisco Lizardo and Jesus Abion are non-commissioned officers of the Philippine Constabulary while accused Emilio Daria appears to be the only

unlettered [sic] but was merely asked by the accused Domingo Can and Sgt. Jesus Abion to take part in the commission of the offense and the accused Emilio Daria agreed having no idea that robbery was to be perpetrated by the other accused.

6 - That defendant Emilio Daria has not at any time been convicted of any offense involving moral turpitude;

7 - That said defendant consents to be a witness for the government"[1].

The fiscal's motion was opposed by petitioner and the other accused Francisco Lizardo. On 12 May 1980, as aforesaid, the respondent Judge issued the Order dis-charging Daria from the information so that he may be utilized as a state witness. Motion for reconsideration of the order of discharge was denied in the other Order dated 10 June 1980.

Hence, this petition.

The sole issue for resolution in this case is the propriety of the discharge from the information in Criminal Case No. 500 of the accused, Emilio Daria, in order to be utilized as a state witness.

Section 9, Rule 119 of the Rules of Court in force when this petition was brought to this 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 one or more of them to be discharged with the latter's consent that he or they may be witnesses for the govern-ment 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"[2].

Petitioner alleges that the above criteria have not been followed in the discharge of Daria from the infor-mation.

We agree.

There was no absolute necessity for the testimony of the accused Daria to qualify him as a state witness. The pro-secution itself admitted that one of the government witnes-ses, named Michael Yu, testified that he saw and recognized the accused, Domingo Can, as one of those who committed the robbery[3]. Such testimony is direct evidence of Can's participation and clearly negates the absolute need for Daria's testimony in identifying Can as one of the perpetrators of the offense. If at all, Daria's testimony would be merely corroborative and not essential.

Neither is there a finding of non-availability of direct evidence other than the accused Daria's testimony. On the contrary, it is plainly admitted by the prosecution in its "Rejoinder to Opposition" dated 14 December 1979 that:

"The assertion of the accused that with-out Daria's confession the indictment of the other accused stands on no evidentiary foothold is misleading. The identities of the three other accused were already known to the authori-ties even before they learned that the accused Emilio Daria took part in robbery. As a matter of fact it was the accused Sgt. Jesus Abion who informed the PC that the accused Emilio Daria was with him and the other accused when they committed the robbery. The prosecution witness Michael Yu testified that he recognized the accused Domingo Can and because of such a revelation the PC investigators were able to solve

the case and the accused Jesus Abion and Francisco Lizardo admitted their participation in the crime[4]".

The records of this case also disclose convictions of the accused Daria for various crimes, as follows: attempted murder (Criminal Case No. 3533)[5]; carrying of deadly weapon (Criminal Case No. 2657)[6]; slander by deed (Criminal Case No. 2175)[7]; slight physical injuries (Criminal Case No. 2400)[8] and carrying of deadly weapon (Criminal Case No. 3233)[9]. His untrustworthiness as a witness on the ground of moral turpitude is apparent.

Moral turpitude has been defined as "everything which is done contrary to justice, modesty, or good morals"[10]; "an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man, or conduct contrary to justice, honesty, modesty or good morals"[11].

In *In re Gutierrez*[12], the crime of murder was considered a crime involving moral turpitude. Certainly, attempted murder, for which the accused Daria was found guilty, belongs to the same classification. The premedi-tated attempt to take a human life is decidedly a base, vile and depraved act contrary to moral standards of right and wrong. Coupled with the other crimes for which the accused Daria had been previously convicted, the latter's disqualification to be discharged from the information to become a state witness should have been obvious.

WHEREFORE, the petition is GRANTED. The Orders of respondent Judge, dated 12 May 1980 and 10 June 1980, are hereby REVERSED and SET ASIDE. The discharge of accused Emilio Daria from the information in Criminal Case No. 500 is annulled and his reinstatement as one of the accused in the same information is hereby ordered. Without pronouncement as to costs in this instance.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Motion to Discharge One of the Accused dated November 27, 1979, Annex G, petition; Rollo at 32

[2] Cf., 1985 Rule on Criminal Procedure, Sec. 9, Rule 119

[3] Rollo at 37, 81

[4] Id. at 37

[5] Certification, Court of First Instance of Albay, id. at 23

[6] Certification, City Court of Legazpi, id. at 24

[7] Supra.

[8] Supra.

[9] Supra.

[10] *In re Basa*, 41 Phil. 275, 276 (1920)

[11] *Tak Ng v. Republic*, 106 Phil. 727, 730 (1959)

[12] 5 SCRA 661 (1962)

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