

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND LUCIANO TAN, RESPONDENTS.*G.R. No. 62881. August 30, 1983*

Ponente: MELENCIO-HERRERA, J.

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In an Amended Information dated 10 February 1977, Ngo Sin, Luciano Tan, and three others were charged with the crime of Theft of 300 pieces of second-hand rail valued at P243,750.00, belonging to the Philippine National Railways, before the then Court of First Instance of Laguna and San Pablo City, Branch III (Criminal Case No. 719-SP).

On 10 July 1981, after the prosecution had already presented one witness, upon notion of the prosecution, and after the parties were duly heard, the Trial Court ordered discharge from the information of Ngo Sin to be utilized as a State witness after satisfying itself that his testimony could be substantially corroborated in its material points and that the other conditions for discharge as set forth in Rule 119, Sec. 9 of the Rules of Court were present.

A Motion for Reconsideration filed by Luciano Tan was denied by the Trial Court in its Order of 11 February, 1982, reasoning *inter alia*:

"x x x it is pointed out that the prosecuting Fiscal has failed to show the absolute necessity for the testimony of defendant Ngo Sin. As pointed out by the prosecuting Fiscal, Ngo Sin is the only person who can directly identify Luciano Tan as the person who instructed him to get the rails in San Pablo City, who gave him a certain amount of money to be used in the hiring of trailers and to be given to certain persons in San Pablo City, as the person who gave to him the necessary papers he presented in San Pablo City to effect the taking of the rails in question, this as previously stated in the Motion to Discharge filed by the City Fiscal dated February 20, 1981 particularly pars. 2 and 3 of said motion, and also Annex 'A' of said motion. As contended by the City Fiscal without the testimony of defendant Ngo Sin the prosecution cannot prove the participation of the accused Luciano Tan who appears to be the mastermind in the unlaw-ful taking of the rails from the PNR Compound at San Pablo City.

Next, it is contended that lacking is the requirement that there is no other direct evidence available for the proper prosecution of the offense committed except the testimony of defendant Ngo Sin. As correctly pointed out by the City Fiscal, except for the testimony of defendant Ngo Sin there is no other direct evidence available for the prosecution to show the positive and direct participation of Luciano Tan as narrated in Ngo Sin's affidavit attached to the Motion to Discharge. Next, it is contended by defendant-movant that the next condition, to wit, that the testimony of defendant Ngo Sin can be substantially corroborated in its material point has not been met in the discharge of the accused Ngo Sin. As pointed out by the City Fiscal, this is not true. The testimony of Ngo Sin will be corroborated by Leonides Manalo whose affidavit is submitted as Exh. 'A'-motion (at p. 382, rec.) who saw Luciano Tan deliver to Ngo Sin a certain sum of money and cer-tain papers. The testimony of Ngo Sin is also corroborated by the waybills or delivery receipts mark-ed Exhs. 'M' and 'N' made out to the name of Luciano Tan. As also stated in the City Fiscal's Opposition to the motion for reconsidera-tion, he has earlier pointed out in the Petition for Discharge, particularly par. 8 thereof, that

defendant Ngo Sin appears to be merely an instrument in carrying out the asportation, with the bulk of responsibility resting on the accused Luciano Tan. The City Fiscal in his Opposition to the motion for reconsideration has discussed this at page 3 of the opposition.

Defendant-movant next argument is that the body of the crime was taken from the possession of Ngo Sin (p. 4, Motion for Reconsideration). As contended by the City Fiscal, while it is true that the physical possession of the subject rails was taken from the accused Ngo Sin the latter explained that he was in possession of the rails upon instruction by defendant Luciano Tan; that the papers were given to him. It is not true as alleged in the motion for reconsideration that the accused Ngo Sin did not point to defendant Luciano Tan until he was interrogated by the San Pablo City Police (p. 4, Motion for Reconsideration). Lt. Octavio Mabilangan of the PNR Security Force testified (Sess. Sept. 4, 1979) that upon apprehension of Ngo Sin, the latter protested that he was merely 'utusan lamang ako' ni Luciano Tan and was simply told to go to San Pablo City; that Ngo Sin told him that the delivery receipts and other papers were given to him by Luciano Tan.

The defendant-movant has reproduced in whole the testimony of Ngo Sin before the Fiscal's Office (p. 4-12, Motion). As pointed out by the City Fiscal, a reading of his entire testimony would readily show that defendant-movant Luciano Tan was his principal who directed the accused Ngo Sin to go to San Pablo City to get the rails.

Next, defendant-movant points out that the information alleges conspiracy and cites Sec. 27 of Rule 130 of the Revised Rules of Court. As pointed out by the City Fiscal, the aforecited provision of the Rules of Court is not applicable to the testimony of the discharged witness in the person of defendant Ngo Sin to be given in open Court.

It is next argued that since the rails in question have already been sold to one Jose Chan, the accused Luciano Tan has nothing more to do with the papers found in the possession of the accused Ngo Sin (p. 14, Motion for Reconsideration). As pointed out by the City Fiscal, this matter is immaterial for the purpose of present motion; it is a matter of defense."

On Certiorari, Luciano Tan challenged the validity of the aforesaid Orders before respondent Appellate Court. In a Decision promulgated on 25 June 1982, said Court held that "there was no despotic exercise of discretion by His Honor in issuing the challenged orders" finding as justified his rationalizations above-quoted.

Upon a Motion for Reconsideration filed by Luciano Tan, respondent Court reversed its prior Decision and nullified the Trial Court Orders discharging Ngo Sin to be a State witness, rationalizing:

"It appears that accused Ngo Sin can be the most guilty among the five accused for it was in his possession that the missing rails in question were found. The contention that this was per instruction of Luciano Tan is a matter of defense which could be better ventilated at the trial proper, especially so when in addition to the rails, papers were likewise found in his possession, in relation to those rails. The money paid for the hiring of trailers to effect the transfer of the rails to certain persons in San Pablo City was given by Ngo Sin, who puts up the defense again that the money came from Luciano Tan. This again being a matter of defense to be better determined during the trial.

The weakness of the challenged Orders is that it jumps at the conclusion that Luciano Tan 'appears to be the mastermind in the unlawful taking of the rails from the PNR compound at San Pablo City', which conclusion is quite premature, prejudices the merit of the case and makes the pending trial even moot and academic.

Aggravating the situation of the five (5) accused in the case pending before the respondent court and calling for extreme caution in excluding any accused is the allegation of the fiscal in the information (Annex A) that in the commission of the offense accused were equally charged of 'conspiring, cooperating and mutually helping one another', without in any manner qualifying the degree of conspiracy of any one among the five (5) accused. This means that the exclusion of one accused now at this stage can result in an act beneficial to his own

exclusive interest but prejudicial to the liberty of his four (4) other co-accused and worse of all even to the interest of the State.

We are not convinced that there is an absolute necessity for the State to exclude the particular accused in this case to prosecute successfully the case. The best interest of justice would require the reconsideration of our Decision and revoke and nullify the questioned Orders."

Reconsideration prayed for by petitioner having been denied, they have elevated the case to us.

In this Petition for Review on Certiorari, petitioner People of the Philippines alleges that respondent Court acted arbitrarily and/or committed grave abuse of discretion in reversing itself, submitting that:

"x x x For no apparently justifiable nor cogent reason, respondent court abruptly executed an about-face, and against the facts of record, did, in effect, rule, that the trial court, for all of its observance of the requirements of law (including due notice, hearing and full consideration of the evidence), had committed grave abuse of discretion in granting the fiscal's motion to discharge Ngo Sin to become State witness. This sudden reversal of a well-reasoned decision is obviously despotic, capricious, and arbitrary, and totally unjustifiable."

We resolved to give due course.

It is believed that the record justifies the discharge of Ngo Sin to be utilized as a State witness considering the absolute necessity of his testimony for the successful prosecution of the criminal charge if it has to be established that the accused Luciano Tan had planned and financed the theft. All conditions for discharge prescribed by Sec. 9, Rule 119 of the Rules of Court have been met. The Rules do not require absolute certainty in determining those conditions. Perforce, the Judge has to rely in a large part upon the suggestions and the considerations presented by the prosecuting officer.

"x x x A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible, there would be little need for the formality of a trial. In coming to his conclusions as to the 'necessity for the testimony of the accused whose discharge is requested,' as to the 'availability or non-availability of other direct or corroborative evidence;' as to which of the accused is the 'most guilty' one; and the like, the judge must rely in a large part upon the suggestions and the information furnished by the prosecuting officer. x x x." [1]

It is also settled that the discharge of a co-defendant is a matter that lies within the sound discretion of the Trial Court.[2] The Court's is the exclusive responsibility to see that the conditions prescribed by the Rules exist.[3]

We see no compelling reason for respondent Appellate Court to have substituted its own findings for those of the prosecution and the Trial Judge. We find no contrary evidence to justify a reversal of the Trial Judge's conclusions, who was in a position to evaluate the evidence already available, a like opportunity to assess the same not having been afforded respondent Appellate Court.

ACCORDINGLY, respondent Court's Resolution, dated 4 November 1982 reversing its own prior Decision of 25 June 1982, as well as its Resolution of 17 December 1982 denying petitioner's Motion for Reconsideration are hereby SET ASIDE, and the Orders of the then Court of First Instance of Laguna and San Pablo City, Branch III, dated 10 July 1981 and 11 February 1982, in Criminal Case No. 719-SP, are hereby REINSTATED. The Regional Trial Court corresponding to the former Court of First Instance is now directed to proceed with the trial on the merits accordingly.

SO ORDERED.

Teehankee, (Chairman), Plana, and Gutierrez, JJ., concur.

Vasquez, J., no part.

Relova, J., in the result.

[1] People vs. Canete, 43 SCRA 14 (1972), citing 4 Moran, Comments on the Rules of Court, 1970 Ed., p. 324, citing: U.S. vs. de Guzman, 30 Phil. 416; and People vs. Velasco, 42 Phil. 75.

[2] People vs. Bautista, et al., 106 Phil. 39 (1959), citing U.S. vs. Abanzado, 37 Phil. 658; People vs. Bautista, 49 Phil., 389; People vs. Ibanez, 92 Phil. 933).

[3] People vs. Ibanez, 92 Phil. 933 (1953).

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