

**LEO M. FLORES, MODESTO L. LICAROS AND MARIO LOPEZ VITO,
PETITIONERS, VS. THE SANDIGANBAYAN (FIRST DIVISION), THE
PEOPLE OF THE PHILIPPINES AND ABELARDO B. LICAROS,
RESPONDENTS.**

G.R. No. 63677. August 12, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Petition for certiorari and prohibition seeking (1) to nullify the order, dated February 11, 1983, of respondent Sandiganbayan (First Division) in Criminal Case No. 6672, entitled "People vs. Modesto Licaros y Lacson, et al.," ordering the discharge upon motion of the Tanodbayan, of private respondent Abelardo B. Licaros from the information for robbery to be utilized as a government witness and the order, dated March 21, 1983, denying the motion for reconsideration; and (2) to enjoin respondents from presenting him as state witness.

On June 5, 1982, the Legaspi City Branch of the Central Bank of the Philippines was robbed and divested of cash amounting to P19,731,320.00.

On June 9, 1982, a sizable portion of the money was recovered at the Home Savings Bank & Trust Company Building in Intramuros, Manila after a raid by the police authorities.

On July 6, 1982, the Tanodbayan filed an information with the Sandiganbayan charging Modesto Licaros, Leo Flores, Ramon Dolor, Glicerio Balansin, Rolando Quejada, Pio Edgardo Flores, Mario Lopez Vito and Rogelio dela Cruz, as principals, and herein private respondent Abelardo B. Licaros, as accessory, with the crime of robbery committed on or about June 5 and 6, 1982 at the Legaspi City Branch of the Central Bank of the Philippines in which P19,731,320.00 was taken therefrom. The National Bureau of Investigation which investigated the case recommended that Abelardo B. Licaros be charged as principal but the Tanodbayan included him only as an accessory after the fact.

On November 26, 1982, the Tanodbayan filed an amended information in naming the same persons as principals, except Rogelio dela Cruz who is now charged as an accessory, together with private respondent Abelardo B. Licaros.

On November 29, 1982, the accused were arraigned, including private respondent Abelardo B. Licaros, who interposed the plea of not guilty.

On January 7, 1983, the Tanodbayan filed with the Sandiganbayan a "Motion for Discharge" of accused Abelardo B. Licaros to be utilized as state witness, alleging that all the requisites prescribed in Section 9, Rule 119 of the Rules of Court have been fully complied with.

The motion for discharge was opposed by herein petitioner Leo Flores, on the ground that the bare assertions of the prosecution (1) that there is absolute necessity for the testimony of Abelardo B. Licaros; (2) that there is no

other direct evidence available for the proper prosecution of the offense charged except his testimony; and (3) that his testimony can be substantially corroborated in its material points, are all self-serving allegations which are not substantiated. Further, petitioner Flores claims that from the records of the preliminary investigation of the robbery case conducted by the Tanodbayan, Abelardo B. Licaros appears to be the most guilty and is, in fact, the mastermind in the commission of the offense charged.

On February 11, 1983, the Sandiganbayan issued a resolution granting the motion and ordering the discharge from the information of private respondent Abelardo B. Licaros. Petitioner Flores filed a motion for reconsideration but the same was denied in the court's resolution dated March 21, 1983.

Hence, this petition.

Section 9, Rule 119 of the Revised Rules of 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 government 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."

It is apparent from this rule that the discharge of an accused from the information so that he may be utilized as a state witness is the exclusive responsibility of the trial court provided that it sees to it that the requisites prescribed by the rules exist, particularly the requisite that there is absolute necessity for the testimony of the defendant whose discharge is requested. Under this requisite, the fiscal must show that there is absolute necessity for the testimony of the defendant whose discharge he seeks, in order to be a witness for to prosecution. This requirement is aimed to curtail miscarriage of justice, before too common, through the abuse of the power to ask for the discharge of one more defendants. Absolute necessity of the testimony of the defendant, whose discharge is requested must now be show if the discharge is to be allowed, and the power to determine the necessity is lodged upon the court. (*People vs. Ibañez*, 92 Phil. 933). The expedient should be availed of, only when there is absolute necessity for the testimony of the accused whose discharge is requested, as when he alone has knowledge of the crime, and not when his testimony would simply corroborate or otherwise strengthen the evidence in the hands of the prosecution (*People vs. Borja* 106 Phil. 1111).

Petitioners claim that the contents of the affidavit dated June 14, 1982, of private respondent Abelardo B. Licaros, which in all probability would be the nature of his testimony as a state witness, is not absolutely necessary if the purpose is to pinpoint the role of petitioner Modesto Licaros considering the other evidence submitted by the National Bureau of Investigation to the Tanodbayan, like the affidavits executed by the three (3) Security Guards of the Home Savings Bank, namely: Romeo Pomada, Edgardo Aranillo and Elias Gellecanao mentioning petitioner Modesto Licaros. Thus, petitioners contend that there can be no basis for the prosecution "to honestly assert that there is absolute necessity for the testimony of Abelardo B. Licaros for the purpose of establishing the participation of Modesto Licaros in delivering the money to the Home Savings Bank. At most, the intended

testimony of Abelardo B. Licaros is only corroborative of the statements of the other witnesses submitted by the NBI to the Tanodbayan." (p. 17, Memorandum for Petitioners)

At any rate, the discharge of an accused may be ordered "at any time before they (defendants) have entered upon their defense," that is, at any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence. In the case at bar, considering the opposition of herein petitioners to the motion for the discharge of Abelardo B. Licaros, particularly the contention that he (herein private respondent) is the most guilty and that his testimony is not absolutely necessary, the trial court should have held in abeyance or deferred its resolution on the motion until after the prosecution has presented all its other evidence. Thereafter, it can fully determine whether the requisites prescribed in Section 9, Rule 119 of the New Rules of Court, are fully complied with. Besides, there lies the danger where one or more of the defendants are discharged before the commencement of the hearing, he/they may disappear in which case the purpose of his/their exclusion will come to naught. It is necessary that certain safeguards be taken, otherwise an injustice may be committed.

WHEREFORE, the resolution of respondent Sandiganbayan, dated February 11, 1983, ordering the discharge from the information of accused Abelardo B. Licaros in Criminal Case No. 6672, as well as its resolution, dated March 21, 1983, denying petitioners' motion for reconsideration, are hereby SET ASIDE.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Concepcion, Jr., Guerrero, Abad Santos, Escolin and Gutierrez, Jr., JJ., concur.
Fernando, C.J., on official leave.

Aquino and Melencio-Herrera, JJ., in the result.

De Castro and Vasquez, JJ., on leave.

Plana, J., no part.

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