

**RODOLFO R. AQUINO AND SEVERINO B. BUGARIN, IN THEIR
CAPACITY AS PROVINCIAL PROSECUTOR AND ASSISTANT
PROVINCIAL PRO-SECUTOR, RESPECTIVELY OF PANGASINAN,
PETITIONERS, VS. HON. DEO...**

G.R. No. 86025. November 28, 1989

Ponente: PARAS, J.

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PARAS, J.:

On February 29, 1988, an information was filed before the Regional Trial Court, Branch 40, Dagupan City charging private respondent Rodolfo Mejia, alias "Ruding" with the crime of Illegal Possession of Firearm. In said information, nine (9) persons appear as witnesses for the prosecution.

Upon being arraigned, private respondent entered a plea of "not guilty", after which the prosecution began the presentation of its evidence. Complainant Virgilio Quinto was the prosecution's first witness. In the course of Quinto's cross-examination, he admitted that he and private respondent were subjected to paraffin tests.

After the cross-examination of Virgilio Quinto, the defense verbally moved for the dismissal of the case on the ground of insufficiency of evidence. Acting on said motion, and despite the vigorous objection of the prosecution, the respondent Judge, in open court, issued the following Order dated October 14, 1988, to wit:

"Acting on the motion of the defense for reason of insufficiency of evidence to prove the guilt of the accused beyond reasonable doubt, and finding the same well taken;

"As prayed for, this case is hereby DISMISSED with costs de officio.

"The property bond posted for the provisional liberty of the accused is hereby cancelled and released.

"SO ORDERED." [1]

On October 24, 1988, petitioners filed their Motion for Reconsideration, which was denied by respondent Judge in his Order dated November 21, 1988, thus:

"Submitted for resolution is the Motion for Reconsideration of the Order dated October 14, 1988, dismissing the case.

"Upon a consideration of the testimony of prosecution's principal witness, Virgilio Quinto together with the Chemistry Report Nos. C-88-37 & C-88-38 (Exhs. 1 & 2) of Felisa Vigulla-Borcelis, NBI Forensic Chemist, finding Virgilio Quinto, positive of nitrates and the accused Rodolfo Mejia, negative; the only logical conclusion is that Virgilio Quinto and not the accused was in possession of the gun, subject of this case.

"The Court firmly believes that there is no cause or reason to hold the accused for further trial; and to allow the prosecution to present further evidence will be an exercise in futility. Furthermore, the accused might be placed in double jeopardy.

"WHEREFORE, the 'Motion for Reconsideration' is hereby DENIED for lack of merit.

"SO ORDERED."[2]

Hence, this petition for certiorari seeking to nullify respondent Judge's Orders dated October 14, 1988 and November 21, 1988 even as it prays for the issuance of a writ of mandamus to compel respondent Judge to reinstate criminal case No. D-8439, entitled "People of the Philippines v. Rodolfo Mejia."[3]

In a resolution dated July 12, 1989, this Court gave due course to the petition and considered the case submitted for decision.

Petitioners prosecutors raise the following grounds for the allowance of the writs prayed for:

I

THE RESPONDENT JUDGE DENIED THE RIGHT OF THE PROSECUTION TO DUE PROCESS OF LAW;

II

CHEMISTRY REPORT NOS. C-88-37 AND C-88--38 (Exhs. 1 and 2) ARE PIECES OF HEARSAY EVIDENCE;

III

THE REINSTATEMENT OF CRIMINAL CASE NO. D-8439 WILL NOT PLACE THE PRIVATE RESPONDENT IN DOUBLE JEOPARDY;

IV

THERE IS NO REGLEMENTARY PERIOD FOR THE FILING OF A SPECIAL CIVIL ACTION OF CERTIORARI; and

V

RESPONDENT JUDGE COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING CRIMINAL CASE NO. D-8439. (Memorandum of petitioner, p. 5)

Petitioners question respondent Judge's dismissal of Criminal Case No. D-8439. They claim that the prosecution had been deprived of due process considering that only one witness so far had been presented by it and that it has neither terminated the presentation of its evidence nor rested its case. Petitioners likewise point out that the Chemistry Report (Exhs. 1 and 2) which states that private respondent "was found negative of nitrates" cannot be the basis for the dismissal of the case as the same is hearsay for not having been identified and testified on by NBI Forensic Chemist Felisa Vigulla?Borcelis.

Petitioners' contention is meritorious.

Under Section 15, Rule 119 of the 1985 Rules on Criminal Procedure, it is only after the prosecution has rested its case that the accused may file a motion to dismiss the case on the ground of insufficiency of evidence. It is therefore clear that private respondent's motion to dismiss on the ground of insufficiency of evidence suffers from prematurity, having been interposed at the time when the prosecution was still presenting its evidence.

The orders issued by the respondent judge dismissing the case was capricious and tainted with grave abuse of discretion amounting to excess of jurisdiction. Double jeopardy would therefore not attach in such a case.

The chemistry report relied upon by respondent judge should not have been considered as evidence since said report has not been properly identified and testified on by NBI Forensic Chemist Felisa Vigulla-Borcelis. Any evidence which a party desires to submit for the consideration of the court must formally be offered by him (*De Castro v. Court of Appeals, et al.* 75 Phil. 834). The offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial (*U.S. v. Solano*, 33 Phil. 582, *Dayrit v. Gonzales*, 7 Phil. 182).

Respondent Judge's questioned act constitutes gross and grave abuse of discretion, which exhibits either a blatant disregard of well-established, basic procedural laws or pathetic ignorance of the law.

PREMISES CONSIDERED, the petition is GRANTED. The questioned orders dated October 14, 1988 and November 21, 1988 are hereby declared NULL and VOID. To avoid suspicion of partiality, this case is hereby ordered to be re-raffled to another sala.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.
Melencio-Herrera, J., (Chairman), on leave.

[1] Petition, p. 4, p. 20, Rollo

[2] Petition, p. 5, pp. 4-5, Comment; pp. 50-51, Rollo

[3] Comment of the Solicitor General, p. 1

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