

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. BAYANI S. RIVERA, JUDGE, BRANCH 129, REGIONAL TRIAL COURT OF KALOOKAN CITY, AND WILFREDO L. SEMBRANO, RESPONDENTS.

G.R. No. 98376. August 16, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

The special civil action of certiorari at bar was instituted in this Court to annul an order rendered by the Regional Trial Court at Kalookan City, Branch 129, in a prosecution for arson docketed in that Court as Criminal Case No. 28820 (87).

Accused in that case of arson is Wilfredo L. Sembrano. It is the prosecution's theory that he wilfully caused the fire in the early morning of May 21, 1987 which totally burned and destroyed the second and third floors of the "I Love You Restaurant and Sauna Bath" owned by Juanito L. Tan, located at No. 2 L. Bustamante St., Kalookan City.[1]

Among the witnesses presented by the Government to demonstrate Sembrano's culpability was Benjamin Lee, a room boy of the restaurant and bath. Lee testified on direct examination at the hearing of December 8, 1987. His testimony was essentially that Sembrano had run out of the VIP room where the fire had started and refused to heed his (Lee's) call to stop. Lee took the witness stand again on April 26, 1987 during which he was cross-examined by defense counsel, gave additional evidence on redirect examination, was again questioned on recross-examination by the same defense counsel, and thereafter allowed to step down.[2]

The prosecution completed presentation of its evidence-in-chief in due course. But before it could rest its case, and two (2) months or so after Benjamin Lee had completed his testimony, the defendant's original counsel, Benjamin Formoso, withdrew his appearance and was substituted by another attorney, Eduardo S. Rodriguez.[3] The latter then filed a motion on June 8, 1988 to recall Benjamin Lee for further examination.[4] The ground relied upon by Atty. Rodriguez was simply that after he had reviewed the record of Benjamin Lee's testimony, he came to the conclusion that "there seems to be many points and questions that should have been asked but were not profounded (sic) by the other defense counsel who conducted ** (the cross-examination)." It was on this averment, and counsel's reference to "the gravity of the offense charge (sic)" and the need "to afford the accused full opportunity to defend himself," that Lee's recall for further cross examination was sought to be justified. Over objections of the prosecution, the Court[5] granted the motion.

Efforts were thereafter exerted to cause witness Benjamin Lee to again appear before the Court for further cross-examination. These efforts met with no success; and the trial had to be postponed several times. It appears that Lee had terminated his employment and moved elsewhere without indicating his new address.

So, on October 1, 1990 the private prosecutor filed a "Manifestation and Motion" drawing attention to the inability to procure the re-appearance of witness Lee for which "the prosecution could not be held liable," and to the fact that "Lee has already been thoroughly examined by the former defense counsel," and praying upon these

premises "that the further examination of Benjamin Lee be dispensed with and ** the prosecution ** allowed to terminate the presentation of its evidence."

By Order dated October 2, 1990,[6] the Trial Court denied the motion to dispense with the recall of Benjamin Lee. In fact, it ordered "the testimony of Benjamin Lee for the prosecution ** stricken off the record for lack of complete cross-examination" because the witness could no longer be found, and "the failure of counsel for the accused to further cross-examine the witness is not the fault of the defense." [7]

In the same order, the Court also set the "reception of further evidence for the prosecution, if any, ** on October 23, 1990 ** as earlier scheduled." Subsequently it denied the private prosecutor's motion for reconsideration of the order.[8] Hence, the action at bar, instituted by the Office of the Solicitor General.

The writ of certiorari prayed for will issue. The Trial Court acted with grave abuse of discretion in authorizing the recall of witness Benjamin Lee over the objections of the prosecution, and in later striking out said witness' testimony for want of further cross-examination.

There is no doubt that a Trial Court has discretion to grant leave for the recall of a witness. This is clear from a reading of Section 9, Rule 132 of the Rules of Court, as amended,[9] viz.:

"SEC. 9. Recalling witness. -- After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may require."

But obviously that discretion may not be exercised in a vacuum, as it were, entirely isolated from a particular set of attendant circumstances. The discretion to recall a witness is not properly invoked or exercisable by an applicant's mere general statement that there is a need to recall a witness "in the interest of justice," or "in order to afford a party full opportunity to present his case," or that, as here, "there seems to be many points and questions that should have been asked" in the earlier interrogation. To regard expressed generalities such as these as sufficient ground for recall of witnesses would make the recall of a witness no longer discretionary but ministerial. Something more than the bare assertion of the need to propound additional questions is essential before the Court's discretion may rightfully be exercised to grant or deny recall. There must be a satisfactory showing of some concrete, substantial ground for the recall. There must be a satisfactory showing on the movant's part, for instance, that particularly identified material points were not covered in the cross-examination, or that particularly described vital documents were not presented to the witness whose recall is prayed for, or that the cross-examination was conducted in so inept a manner as to result in a virtual absence thereof. Absent such particulars, to repeat, there would be no foundation for a trial court to authorize the recall of any witness.

In the case at bar, the respondent Trial Court granted the defendant's motion for recall on nothing more than said movant's general claim that certain questions -- unspecified, it must be stressed -- had to be asked. In doing so it acted without basis, exercised power whimsically or capriciously, and gravely abused its discretion.

So, too, the respondent Court acted whimsically, capriciously, and oppressively, in other words, gravely abused its discretion, in ordering the striking out of the entire testimony of Benjamin Lee after it appeared that he could no longer be found and produced for further examination. In the first place, the Court acted unilaterally, without any motion to this effect by the defense and thus without according the prosecution a prior opportunity to show why the striking out should not be decreed. More importantly, the striking out was directed without any showing whatever by the defense of the indispensability of further cross-examination, what it was that would have been elicited by further cross-examination rendering valueless all that the witness had previously stated. It should be stressed that Lee was subjected both to cross-examination and recross-examination by former counsel of the accused Sembrano. Obviously the latter was satisfied that there had been sufficient cross-examination of the

witness. Absence of cross-examination may not therefore be invoked as ground to strike out Lee's testimony (as being hearsay). And there is no showing whatever in this case that it was the prosecution that placed the witness beyond the reach of the Court, much less of the expected nature or tenor of his additional testimony which, because not presented, would necessarily cause the evidence earlier given by Lee to become hearsay or otherwise incompetent, and therefore amenable to being stricken from the record.

WHEREFORE, the petition is GRANTED and the respondent Court's challenged Order dated October 2, 1990 is NULLIFIED AND SET ASIDE, with costs against private respondent.

IT IS SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 6

[2] Id., pp. 6-7

[3] Id., p. 7

[4] Id., pp. 8-9

[5] Then presided over by Hon. Domingo M. Angeles

[6] By Hon. Bayani S. Rivera, now presiding over Branch 129, RTC, Kalookan City

[7] Rollo, p. 60

[8] Id., p. 61

[9] Amendments of the Rules of Evidence were made effective on July 1, 1989; however, Section 9, Rule 132 contains no revision, and is exactly the same as Sec. 14 of Rule 123 of the Rules of 1964.

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