REYNALDO H. JAYLO, WILLIAM VALENZONA, ANTONIO HABALO AND EDGARDO CASTRO, PETITIONERS, VS. SANDIGANBAYAN (FIRST DIVISION), RESPONDENT.

G.R. Nos. 111502-04. November 22, 2001*

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This petition for certiorari[1] seeks the nullification of two Resolutions of the Sandiganbayan (First Division) promulgated on March 9, 1993 and August 10, 1993, in Criminal Cases Nos. 17984 - 17986, denying petitioners' "Motion To Take Oral Deposition Outside The Philippines."

Petitioners Reynaldo Jaylo, William Valenzona, Antonio Habalo and Edgardo Castro were former members of the defunct Philippine Constabulary-Integrated National Police (PC-INP), assigned at the Western Police District (WPD), Manila, but detailed with the National Bureau of Investigation (NBI).

On July 10, 1990, petitioners figured in a shoot-out incident at the Magallanes Commercial Complex, Makati City, which resulted in the death of Colonel Rolando de Guzman, Major Franco Calanog (both members of the Philippine Army) and Avelino Manguerra (reportedly a civilian agent of the Criminal Investigation Services [CIS]).

The NBI and CIS were then tasked to investigate the incident. Both agencies submitted conflicting findings.

The NBI reported that the shooting incident was a consequence of the NBI-WPD Joint Heroin Drug Buy-Bust Operation headed by petitioner Reynaldo Jaylo, in close coordination with the agents of the Drug Enforcement Agency (DEA) of the United States of America (USA). The DEA agents were identified as Phil Needham, Andrew Fendrich and Jack Fernandez, all American citizens and residents of the USA. The NBI further reported that in the course of effecting the arrest of the suspects, the latter fired upon petitioners who retaliated in self-defense.

Upon the other hand, the CIS concluded that petitioners shot the victims at close range, without any chance to defend themselves.

Due to the conflicting versions of the two agencies, then President Corazon C. Aquino created a Presidential Fact-Finding Committee headed by Magdangal Elma (the "Elma Committee") to investigate the incident.

After hearing the testimonies of 44 witnesses, the Elma Committee recommended the prosecution of four (4) participants in the drug buy-bust operation.

Consequently, on September 12, 1992, the Office of the Special Prosecutor filed with the Sandiganbayan three (3) Amended Informations for murder against the petitioners. The Informations contain the following similarly worded allegations:

> "That on or about July 10, 1990, and for sometime prior thereto, in Makati, Metro Manila, Philippines, and

> within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then members of the Western Police District (WPD) on special detail with the National Bureau of Investigation (NBI), conspiring, confederating and mutually helping one another, on the occasion of a police operation, thus committing the offense in relation to their duties, together with several John Does, did then and there willfully, unlawfully and with intent to kill, evident premeditation and abuse of superior strength and treachery, suddenly and simultaneously and with the use of their firearms attack and shoot (i.e., Calanog, etc.) causing mortal wounds on his body which directly and immediately caused his (victim) death."[2]

Before the trial of the criminal cases, or on February 16, 1993, petitioners filed a motion[3] praying that they be allowed to take oral depositions of the three (3) DEA agents before a consular official of the Philippine Embassy stationed in the United States of America (USA). The agents' residential addresses[4] are as follows:

> Andrew Fendrich - DEA Headquarters, Boston, Massachusets
>
> Phil Needham - San Francisco, California
>
> Jake Fernandez - DEA Headquarters, Boston, Massachusets

The motion is basically premised on the following grounds:

> (a) Accused is entitled under the Constitution to secure the attendance of witnesses and the production of evidence in his behalf;
>
> (b) Section 4, Rule 119 of the 1988 Revised Rules on Criminal Procedure recognizes the right of the accused, upon motion with notice, to have witnesses conditionally examined in his behalf;
>
> (c) Due to the limitations of Rule 119, the Sandiganbayan, in the interest of substantive justice, should liberally allow the utilization of the pertinent provisions of Rule 24 on Depositions and Discovery of the Revised Rules of Court to secure the testimony of said probable witnesses who are willing to testify outside the Philippines; and
>
> (d) The taking of depositions before the Philippine consulate abroad does not raise any extraterritorial problems, particularly on the jurisdiction of the Sandiganbayan.

The pertinent allegations in support of the motion state:

> "In the instant case, there are three probable witnesses whose testimonies are of utmost materiality in maintaining the innocence of the accused of the crime charged. As such, their attendance and production of other evidence in their possession are indispensable to the speedy, just and impartial trial of the accused.
>
> "These witnesses, Messrs. Phil Needham, Andrew Fendrich and Jake Fernandez, are Drug Enforcement Administration (DEA) agents who planned and coordinated with the National Bureau of Investigation (NBI) regarding the drug-buy bust operations involving the accused and the deceased.
>
> "Specifically, Mr. Fendrich was the head of the DEA in the Philippines who approached and informed then NBI Director Alfredo Lim of ten kilos of heroin being offered for sale [t.s.n., 26 July 1990, Tuazon & Regodon (Elma Committee). p. 11]. Likewise, he was the one who coordinated and planned with one of the accused, Reynaldo Jaylo, to entrap the sellers of said prohibited drugs, from 2 July 1990 until the fateful shooting incident of 10 July 1990. As part of strategy, Fendrich invited another American agent of the DEA, Phil Needham, to act as a poseur-buyer in order to establish contact with, and eventually apprehend, the suspects [t.s.n., 26 July 1990, Tuazon and Regodon (Elma Committee), p. 33. He was also primarily responsible for the videotaping of the negotiations between the poseur-buyer, the go-between, and the sellers inside one of the rooms of Philippine Plaza Hotel.
>
> "Mr. Phil Needham, on the other hand, is a major player in the said drug buy-bust operation. He acted as the

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poseur-buyer and negotiated with the agent of the deceased, Ms. Estrella Arrastia, and met Rico and Rolly, who turned out to be Major Calanog and Colonel de Guzman respectively (Elma Committee Report, pp. 97-98). Above all these considerations, he was personally present at the scene of the alleged crime. Certainly, he could shed light in ferreting out the truth in order to maintain the innocence of the accused.

"Lastly, Mr. Jake Fernandez was the unidentified driver of a Toyota car with diplomatic plate who picked up Needham at the scene of the drug buy-bust, as alluded to in the Elma Committee Report (p. 100). He was actually at the Magallanes Commercial Center to serve us a back-up security for Needham in case any untoward incident occurs. During the drug buy-bust operations, Mr. Fernandez was in his car parked near the Volkswagen and Saab cars of the deceased. He was in a vantage point where he saw the events that precipitated the shootings. His testimony, therefore, is of utmost importance in strengthening the defense of the accused against the crime charged.

"Aside from these indispensable testimonial evidence, the DEA has in its possession videotapes and memoranda which chronicled the events prior to and during the alleged shooting incident.

"The need to present the testimonies of Fendrich, Needham and Fernandez, including the documents and videotapes in their possession, becomes more imperative considering that the Elma Committee had discredited the testimonies of Apollo Jacinto and Ramon Zuñiga, Jr., the only witnesses presented who claimed to have seen the actual incident.

"It is unfortunate, however, that the aforementioned evidence are beyond the jurisdiction of this Honorable Court. Messrs. Fendrich, Needham and Fernandez are residents and citizens of the United States of America who have previously expressed to accused Jaylo their refusal to testify in the Philippines for security reasons. Documents, including the videotapes chronicling the events prior to and during the alleged shootings, are in their possession and need to be identified by them in order to be presented as evidence.

"Yet, the importance of said evidence to the defense of the accused is so encompassing that the failure to present the same would be tantamount to a serious violation of the constitutional rights of the accused and may result to a serious miscarriage of justice. Indeed, the noble ends of this Court to search for truth and dispense justice might not be achieved in the absence of said evidence.

"But this dilemma can still be solved because of the willingness of said witnesses to testify and produce the necessary documents and videotapes outside the country. The present case, therefore, presents less a question of availment by the accused of compulsory processes, as it raises the issue of alternative, suppletory remedies if such witnesses are beyond such compulsory processes. x x x."[5]

Ruling that there are other witnesses available in the Philippines to testify on the same facts sought to be proved by the proposed deponents, the Sandiganbayan (First Division) denied the motion in a Resolution[6] dated March 3, 1993 promulgated on March 9, 1993. The pertinent portions of the Resolution read:

"The `Motion to Take Oral Deposition Outside the Philippines' dated February 15, 1993, of all the accused is denied, there being no showing that the proposed deponents are the only witnesses upon the facts sought to be proved. On the contrary, it would appear from the record that in addition to the accused, other witnesses are available on the same facts. There is also no showing that the alleged videotapes and memoranda in the possession of the United States Drug Enforcement Administration (DEA) chronicling the events prior to and during the shooting incident cannot be made available except through the proposed deponents (Fajardo vs. Garcia, 98 SCRA 514 [1980] and Manila Railroad Co. vs. Mitchel, 49 Phil. 801 [1926]).

"Hence, no necessity appears for the conditional examination of defense witnesses under Sections 4 and 5, Rule 119, 1985 Rules on Criminal Procedure, assuming that as argued extensively by the accused, the conditional examination provided in those sections, supplemented by pertinent provisions of Rule 24, Revised Rules of Court, may be validly held outside the Philippines."[7] (Emphasis ours)

In his concurring opinion,[8] Presiding Justice Garchitorena stated additional grounds for the denial of the motion, to wit:

> "a) The unwillingness of the intended witnesses of the defense to come to the Philippines to testify since they allegedly are afraid for their lives, is not a valid ground to authorize the deposition of their testimony where they want it to be taken;
>
> b) The power of the court in criminal cases is restricted by its territorial jurisdiction;
>
> c) Venue in criminal cases, unlike in civil cases, is not consensual; and
>
> d) The taking of the testimony of the DEA agents in the US would unduly burden the adverse party, the Philippine Government, with extra-ordinary inconvenience and extra-ordinary cost. "

Dissatisfied, petitioners filed a motion for reconsideration[9] and a supplement[10] thereto, contending that:

> "a) There are clear and imminent threats to the lives and safety of the DEA agents if they come to the Philippines. The proposed deposition of their testimonies, although corroborative in nature, are absolutely necessary in the absence of credible and competent persons, besides the accused, who were actually present at the time of the alleged shooting incident;
>
> b) The Motion does not pray for the issuance of the necessary compulsory process in a foreign court but merely asks to validate certain acts and/or deeds taken abroad in order to be admissible as competent evidence in a court of law;
>
> c) Venue should not be an issue since the parties have not agreed to change and/or alter the same;
>
> d) The government need not incur expenses as the Honorable Court may deputize and direct the concerned consulate to be the prosecution's representative in accordance with the pertinent provisions of the Rules of Court;
>
> e) Oral depositions in civil procedure under Rule 24 of the Revised Rules of Court must be allowed in criminal cases due to the civil liabilities that are impliedly instituted therewith;
>
> f) Memorandum Circular No. 13 of the Supreme Court, promulgated on 1 July 1987, encourages the availment of discovery procedures by the parties without any distinction as to the kind of cases, be they civil or criminal case; and
>
> g) The denial of the motion to take oral deposition would be tantamount to excluding such testimony as evidence notwithstanding the fact that its admissibility is guaranteed by the Revised Rules on Evidence.

Petitioners' motion for reconsideration and the supplement thereto were opposed by the prosecution.

In a Resolution[11] promulgated on August 10, 1993, the Sandiganbayan denied the motion for reconsideration.

Hence, this petition, assailing the two (2) Resolutions of the Sandiganbayan as having been issued "with grave abuse of discretion amounting to excess of jurisdiction."[12]

Petitioners contend inter alia that their "Motion To Take Oral Deposition Outside the Philippines" "finds support in Sections 4 and 5, Rule 119 of the 1988 Revised Rules of Criminal Procedure."[13] Both Sections 4 and 5 are now incorporated in Sections 12 and 13, Rule 119 of the Revised Rules of Criminal Procedure, as amended, effective December 1, 2000, which provide:

> "SEC. 12. Application for examination of witness for accused before trial. - When the accused has been held to answer for an offense, he may, upon motion with notice to the other parties, have witnesses conditionally examined in his behalf. The motion shall state: (a) the name and residence of the witnesses; (b) the substance

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> of his testimony; and (c) that the witness is sick or infirm as to afford reasonable ground for believing that he will not be able to attend the trial, or resides more than one hundred (100) kilometers from the place of trial and has no means to attend to the same, or that other similar circumstances exist that would make him unavailable or prevent him from attending the trial. The motion shall be supported by an affidavit of the accused and such other evidence as the court may require. (4a)" (Emphasis ours)
>
> "SEC. 13. Examination of defense witness; how made. - If the court is satisfied that the examination of a witness for the accused is necessary, an order shall be made directing that the witness be examined at a specific date, time and place and that a copy of the order be served on the prosecutor at least three (3) days before the scheduled examination. The examination shall be taken before a judge, or, if not practicable, a member of the Bar in good standing so designated by the judge in the order, or if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein. The examination shall proceed notwithstanding the absence of the prosecutor provided he was duly notified of the hearing. A written record of the testimony shall be taken. (5a)" (Emphasis ours)

Under Section 13, the application for oral deposition in a criminal case shall be granted only "(i)f the court is satisfied that the examination of a witness for the accused is necessary". Thus, the determination of whether or not an oral deposition of a defense witness is necessary is addressed to the sound discretion of the court where the application was made. Petitioners assert that such discretion was gravely abused by the Sandiganbayan.

We do not agree.

The Sandiganbayan correctly denied petitioners' motion. It properly ruled that no necessity existed for the conditional examination of the three (3) proposed witnesses for the defense because (a) other witnesses appearing on record are available to testify on the same facts on which the proposed deponents would testify; and that (b) petitioners failed to show that the video tapes recording the events prior to and during the shooting incident could not be produced except through the same deponents.

We have carefully observed the finding of the Sandiganbayan specified in its assailed Resolution of August 10, 1993 that the reasons for denying the motion were "not disputed by the accused (now petitioners); on the contrary, they expressly confirmed it when they `conceded that for the most part, deponents' testimony are corroborative in nature'."[14]

We also noted that, in their motion for reconsideration of the first assailed Resolution promulgated March 9, 1993, petitioners' sole reason why they filed the motion for oral deposition is that:

> "The shooting incident itself in Magallanes needs the collaborative testimony of these foreign deponents; otherwise it might boil down to a `my-word-against-yours' situation.
>
> "That while it is conceded that for the most part, deponents' testimonies are corroborative in nature, even then, however, that does not deter, or lessen any, its probative value."[15] (Emphasis ours)

It is clear that, although the proposed deponents' testimonies are admittedly corroborative in nature, what prompted petitioners to file the motion for oral deposition was their seeming apprehension that the Sandiganbayan might not consider their very own testimonies credible. Petitioners' posture is certainly speculative and cannot be a valid ground for seeking an oral deposition. In fact, such apprehension contravenes the legal presumption that a trial judge can fairly weigh and appraise the evidence submitted by the respective parties.[16]

Moreover, petitioners' bare allegation that the DEA American agents cannot come to the Philippines to testify for security reasons, is not a compelling justification to take their deposition in the US. The taking of deposition in criminal cases may be allowed only in exceptional situation in order to prevent a failure of justice.

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In the case at bar, there is no showing that the DEA agents could not attend the trial. It is quite unusual and preposterous that the said agents who, by the nature of their profession, are used to risking their lives to apprehend and prosecute drug traffickers, suddenly refused to testify in a case wherein they have a vital role.

We thus hold that in issuing the assailed Resolutions, the Sandiganbayan did not act with grave abuse of discretion. It is manifest that the court was not convinced that the examination of those witnesses is necessary. In fact, it was aware that the proposed deponents' testimonies would be merely corroborative in nature.

Petitioners cannot likewise feign denial of due process since they admitted that they have other witnesses to testify on the same facts sought to be testified to by the proposed deponents.

WHEREFORE, the petition is DISMISSED. Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., and Carpio, JJ., concur.
Pardo, J., no part.

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[*] Per A.M. No. 00-9-03-SC dated February 27, 2001, this case which could have been acted upon earlier, was raffled to the undersigned ponente only on February 12, 2001.

[1] Filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Ibid..

[3] Ibid., pp. 54-71.

[4] Ibid., p. 59.

[5] Ibid., pp. 55-58.

[6] Penned by Justice Jose S. Balajadia and concurred in by Presiding Justice Francis E. Garchitorena and Justice Narciso T. Atienza; ibid., pp. 72-73.

[7] Rollo, pp. 72-73.

[8] Ibid., pp. 74-77.

[9] Ibid., pp. 78-96.

[10] Ibid., pp. 97-108.

[11] Ibid., pp. 109-111.

[12] Petition, ibid., p. 5.

[13] Ibid..

[14] Assailed Resolution promulgated August 10, 1993, Rollo, pp. 109-110.

[15] Rollo, p. 82.

[16] Fajardo vs. Garcia, 98 SCRA 514, 520 (1980).

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