

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. SPO1 MARIO MARCIAL, SPO1 MONICO BOLOTANO, SPO1 ANASTACIO MAGLINTE, SPO1 ALFREDO NUÑEZ, SPO1 RUDY BUNALOS, AND PO3 TOMAS DUHAYLUNSO...

G.R. NOS. 152864-65. September 27, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review under Rule 45 of the Rules of Court purportedly raising a question of law and assailing the orders dated February 6, 2002[1] and March 7, 2002[2] of the Regional Trial Court, Branch 14, of Oroquieta City (the RTC) in Criminal Case Nos. 798-14-235 and 800-14-237.

The facts appear as follows:

Two informations, one for homicide and one for frustrated homicide, were filed with the RTC against respondents SPO1 Mario Marcial, SPO1 Monico Bolotano, SPO1 Anastacio Maglinte, SPO1 Alfredo Nuñez, SPO1 Rudy Bunalos and PO3 Tomas Duhaylunsod, all members of the Philippine National Police, in connection with a shooting incident that occurred on December 18, 1999. As a result of the incident, one Junnyver Dagle died while one Wendell Sales was seriously injured.

The information for homicide against the respondents reads as follows:

That on 18 December 1999, in Lopez Jaena, Misamis Occidental, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, committing the offense in relation to their office and in grave abuse thereof with intent to kill, did then and there willfully, unlawfully and feloniously shoot JUNNYVER DAGLE with their firearms, thereby inflicting upon the latter a fatal injury to his head, which caused his instantaneous death.

CONTRARY TO LAW.

Oroquieta City, Philippines, May 23, 2001.[3]

On the other hand, the information for frustrated homicide reads as follows:

That on or about the 18th December 1999, in the municipality of Lopez Jaena, province of Misamis Occidental, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping once another, committing the offense in relation to their office and in grave abuse thereof, with intent to kill, did then and there willfully, unlawfully and feloniously shoot WENDELL SALES with their firearms, thereby inflicting upon the latter an injury which ordinarily would cause the death of said WENDELL SALES, thus performing all the acts of execution which would have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the said accused, that is, by the timely and able medical assistance rendered to the said WENDELL SALES which prevented his death.

CONTRARY TO LAW.

Oroquieta City, Philippines, May 23, 2001.[4]

On arraignment, respondents pleaded not guilty to the charges filed against them. Pre-trial was thereafter held and terminated, resulting in the issuance by the RTC of a pre-trial order[5] which, among others, approved the partial stipulation of facts, issues and witnesses[6] dated December 20, 2001 entered into by the parties.

The parties stipulated as to the following facts:[7]

- (1) The identity of all respondents and their affiliation with the PNP-Lopez Jaena Police Station;
- (2) In the evening of December 18, 1999, all respondents were members of the PNP Team that responded to an alleged or reported call for police assistance at, and received by, the Lopez Jaena Police Station, coming from an alleged caller;
- (3) The PNP team composed of all respondents proceeded to the direction of Plaridel, Misamis Occidental;
- (4) After the Solsolon Bridge located in Barangay Sibula, Lopez Jaena, Misamis Occidental, all respondents saw two (2) persons riding astride a motorcycle going towards the direction of Plaridel, Misamis Occidental, who, after the incident, were identified to be the late Junnyver Dagle and Wendell Sales;
- (5) While Junnyver Dagle and Wendell Sales were riding on a motorcycle with the latter driving, there were shots fired, coming from the direction of respondents;
- (6) As a result of the shooting, Junnyver Dagle and Wendell Sales were hit and injured, the nature of their injuries being described in their respective Medico-legal Certificates dated December 27, 1999 issued by Dr. Olyzar H. Recamadas, the attending physician, and attested to by Provincial Health Officer II Jose M. Salomon, Sr. of the Misamis Occidental Provincial Hospital, Oroquieta City as follows:

- Junnyver Dagle:

"DOA"

Gunshoot wound left temporal area

Avulsion left leg

- Wendell Sales:

"Avulsion left leg distal 3rd secondary to alleged gunshot wound"

- (7) The Lopez Jaena Police Station, through Police Inspector Mario R. Rubio, issued a Certification dated December 23, 1999 relative to the entries found on its Police Blotter on December 23, 1999. This certification was admitted as to its existence only by the prosecution;
- (8) The fact of death of Junnyver Dagle is admitted as well as the fact that Wendell Sales sustained bodily injury;
- (9) For the death of Junnyver Dagle, his heirs are entitled to a civil indemnity in the sum of P50,000;
- (10) In relation to the December 18, 1999 incident subject of the present criminal cases, there was a criminal case for robbery filed against Wendell Sales by the Provincial Prosecutor's Office of Misamis Occidental before RTC, Branch 14, of Oroquieta City entitled "People v. Wendell Sales" docketed as Criminal Case No. 729-14-167. A judgment was subsequently rendered in the latter case convicting Wendell Sales of the crime charged but this judgment was appealed to the Court of Appeals where it remains pending to date.

The parties likewise agreed on the following issues:[8]

(1)

Whether there was a hot pursuit conducted by respondents on the motorcycle-riding tandem of Junnyver Dagle and Wendell Sales, with respondents riding on board their police service vehicle in the vicinity of Barangay Sibula, Lopez Jaena, Misamis Occidental;

(2) Whether there were warning shots made by respondents, directed in the air, to cause the motorcycle riders to stop;

(3) Whether Junnyver Dagle or Wendell Sales tried to pull out a short firearm and (whether Dagle or Sales) fired it at respondents, causing some of them to fire back;

(4) Assuming a firearm was pulled out, whether it was Junnyver Dagle who pulled out such gun and aimed and fired it at the direction of respondents;

(5) Whether there was found near the person of the fallen Junnyver Dagle a .45 caliber pistol without a serial number;

(6) Whether the parents of the late Junnyver Dagle incurred burial and transportation expenses by reason of the latter's untimely demise;

(7)

Whether Wendell Sales incurred medical expenses by reason of his hospitalization for the injuries he sustained; and,

(8)

Whether the parents of the late Junnyver Dagle and private complainant Wendell Sales are entitled to moral damages.

During the hearing held on February 6, 2002, petitioner made an oral motion to reverse the order of the trial upon the ground that respondents admitted committing the acts for which they were charged in the two informations but interposed lawful justifying circumstances. The motion was denied by the RTC for lack of merit in the assailed order dated February 6, 2002. Its motion for reconsideration having been similarly denied, petitioner filed the present petition.

The issues are:

(a)

Whether an order denying a party's motion to modify or reverse the order of trial in a criminal case is appealable; and,

(b)

Assuming that the order is appealable, whether it is mandatory for a trial court to modify or reverse the order of trial when an accused admits the offense but interposes a lawful defense.

Petitioner argues as follows:

Firstly, since respondents expressly admitted having committed the acts charged but are interposing an affirmative defense, a modification or reversal of the order of trial is warranted under Section 3 (e),[9] Rule 119 of the Rules of Court which provides as follows:

(e)

When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified.

Secondly, an order reversing or modifying the order of trial would also be consistent with the second paragraph of Section 7 of Republic Act No. 8493 (Speedy Trial Act) and its implementing Circular No. 38-98, specifically the second paragraph of Section 3 of the Circular, thus:

Republic Act No. 8493, Section 7:

x x x

If the accused pleads not guilty to the crime charged, he/she shall state whether he/she interposes a negative or affirmative defense. A negative defense shall require the prosecution to prove the guilt of the accused beyond reasonable doubt while an affirmative defense may modify the order of trial and require the accused to prove such defense by clear and convincing evidence.

Circular No. 38-98, Section 3:

x x x

If the accused has pleaded not guilty to the crime charged, he may state whether he interposes a negative or affirmative defense. A negative defense shall require the prosecution to prove the guilt of the accused beyond reasonable doubt, while an affirmative defense may modify the order of trial and require the accused to prove such defense by clear and convincing evidence.

Thirdly, the reversal or modification of the order of trial in the present case would promote the intent and objectives of the Speedy Trial Act, preserve the rights of the parties, and prevent a confusing and disorderly trial.

The assailed orders of the RTC denied the request of the prosecution for a reverse order of trial basically on the grounds that:

- There is no clear admission of guilt on the part of the accused, herein respondents, under the stipulation of facts entered into;
- A reverse order of trial in these cases would only serve to delay rather than speed up the proceedings; and,
- The course of the trial is better governed by the usual order under Section 11, Rule 119, of the Revised Rules of Court and the sequence set forth in the pre-trial order, agreed upon by the parties, which did not include an agreement to a reverse the order of trial.

After considering the arguments of both parties herein, the Court finds that the RTC did not commit any reversible error in denying the request for a reverse order of trial, a matter which under the rules is addressed to the sound discretion of the trial court. In fact, the rule relied upon by petitioner clearly reflects this discretionary

nature of the procedure, thus:

Rules of Court, Rule 119, Section 3(e):

x x x

(e) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified.[10] (Emphasis supplied.)

Republic Act No. 8493, Section 7, likewise states:

x x x

If the accused pleads not guilty to the crime charged, he/she shall state whether he/she interposes a negative or affirmative defense. A negative defense shall require the prosecution to prove the guilt of the accused beyond reasonable doubt while an affirmative defense may modify the order of trial and require the accused to prove such defense by clear and convincing evidence. (Emphasis supplied.)

So also Circular No. 38-98, Section 3, reads as follows:

x x x

If the accused has pleaded not guilty to the crime charged, he may state whether he interposes a negative or affirmative defense. A negative defense shall require the prosecution to prove the guilt of the accused beyond reasonable doubt, while an affirmative defense may modify the order of trial and require the accused to prove such defense by clear and convincing evidence. (Emphasis supplied.)

Accordingly, the RTC correctly exercised its discretion in denying petitioner's request for a reverse order of trial.

In any event, a denial of a motion to reverse the Order of Trial is interlocutory in nature and, hence, not appealable. As it turned out, petitioner's appeal has in fact caused more, a lot more, delay than would have been caused by proceeding with the trial forthwith as directed by the trial court. No further delay should be countenanced in these cases.

WHEREFORE, the petition is DENIED for lack of merit. No costs.

SO ORDERED.

Puno, (Chairperson), Sandoval -Gutierrez, Corona, and Garcia, JJ., concur.

[1] Records, pp. 91-94.

[2] Id. at 110-112.

[3] Rollo, p. 22. Filed on June 13, 2001.

[4] Id. at 24. Filed on June 13, 2001.

[5] Records, p. 82.

[6] Id. at 78-81.

[7] Id. at 78-80.

[8] Id. at 80-A.

[9] Now Section 11 (e) of Rule 119 under the 2000 Revised Rules of Criminal Procedure.

[10] Supra note 9.

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