

AGUSTIN V. TALINO, PETITIONER VS. THE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. Nos. 75511-14. March 16, 1987*

Ponente: CRUZ, J.

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It is settled that in a separate trial allowed to one of two or more defendants, his testimony therein imputing guilt to any of the co-accused is not admissible against the latter who was not able to cross-examine him.[1] The issue in this case is whether or not such testimony was considered by the respondent court against the petitioner, who claims that it was in fact the sole basis of his conviction.

The petitioner, along with several others, were charged in four separate informations with estafa through falsification of public documents for having allegedly conspired to defraud the government in the total amount of P26,523.00, representing the cost of repairs claimed to have been undertaken, but actually not needed and never made, on four government vehicles, through falsification of the supporting papers to authorize the illegal payments.[2] Docketed as CC Nos. 6681, 6682, 6683 and 6684, these cases were tried jointly for all the accused until after the prosecution had rested, when Gerano Basilio, Alejandro Macadangdang and petitioner Talino asked for separate trials, which were allowed.[3] They then presented their evidence at such trials, while the other accused continued defending themselves, in the original proceedings, at which one of them, Pio Ulat, gave damaging testimony against the petitioner, relating in detail his participation in the questioned transactions.[4] In due time, the Sandiganbayan rendered its decision in all the four cases finding Talino, Basilio, Macadangdang, Ulat and Renato Valdez guilty beyond reasonable doubt of the crimes charged while absolving the other defendants for insufficient evidence. This decision is now challenged by the petitioner on the ground that it violates his right of confrontation as guaranteed by the Constitution.

In its decision, the respondent court makes[*] the following remarks about the separate trial:

"The peculiarity of the trial of these cases is the fact that we allowed, upon their petition, separate trials for the accused Basilio and Talino and Macadangdang. This being the case, we can only consider, in deciding these cases as against them, the evidence for the prosecution as well as their own evidence. Evidence offered by the other accused can not be taken up.

"It would really have been simpler had there been no separate trial because the accused Pio B. Ulat said so many incriminatory things against the other accused when he took the stand in his own defense. But because Talino and Macadangdang were granted separate trials and they did not cross-examine Ulat because, as a matter of fact, they were not even required to be presented when the other accused were presenting their defenses, the latter's testimonies can not now be considered against said three accused.

"We cannot understand why, it had heard the long and sordid story related by Ulat on the stand, the prosecution did not endeavor to call Ulat and put him on the stand as part of its rebuttal evidence. Had this been done, there would have been no impediment to the consideration of Ulat's testimony against all the accused." [5]

The grant of separate trial rests in the sound discretion of the court and is not a matter of right to the accused, especially where, as in this case, it is sought after the presentation of the evidence of the prosecution.[6] While it is true that Rule 119, Section 8, of the Rules of Court does not specify when the motion for such a trial should be done before the prosecution commences presenting its evidence, although, as exception, the motion may be granted later, even after the prosecution shall have rested, where there appears to be an antagonism in the respective defenses of the accused.[7] In such an event, the evidence in chief of the prosecution shall remain on record against all the accused, with right of rebuttal on the part of the fiscal in the separate trial of the other accused.[8]

The rule in every case is that the trial court should exercise the utmost circumspection in granting a motion for separate trial, allowing the same only after a thorough study of the claimed justification therefor, if only to avoid the serious difficulties that may arise, such as the one encountered and regretted by the respondent court, in according the accused the right of confrontation.

The right of confrontation is one of the fundamental rights guaranteed by the Constitution[9] to the person facing criminal prosecution who should know, in fairness, who his accusers are and must be given a chance to cross-examine them on their charges. No accusation is permitted to be made against his back or in his absence nor is any derogatory information accepted if it is made anonymously, as in poison pen letters sent by persons who cannot stand by their libels and must shroud their spite in secrecy. That is also the reason why ex-parte affidavits are not permitted unless the affiant is presented in court[10] and hearsay is barred save only in the cases allowed by the Rules of Court like the dying declaration.[11]

In *United States v. Javier*, [12] this Court emphasized:

"xxx. With reference to the clause of the Bill of Rights, which we have quoted, Justice Day said in a case of Philippine origin (*Dowdell vs. U.S.* [1911], 221 U.S. 325) that it intends to secure the accused in the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial who give the testimony in his presence, and give to the accused an opportunity of cross-examination. It was intended to prevent the conviction of the accused upon disposition or ex parte affidavits, and particularly to preserve the right of the accused to test the recollection of the witness in the exercise of the right of cross-examination.' In other words, confrontation is essential because cross-examination is essential. A second reason for the prohibition is that a tribunal may have before it the deportment and appearance of the witness while testifying. (*U.S. v. Anastacio* [1906], 6 Phil. 413.) The Supreme Court of the Philippine Islands has applied this constitutional provision on behalf of accused persons in a number of cases. (See for example *U.S. vs. Tanjuan* [1902], 1 Phil. 374; *U.S. v. Bello* [1908], 11 Phil. 526; *U.S. v. De la Cruz* [1908], 12 Phil. 87.) xxx."

We have carefully studied the decision under challenged and find that the respondent court did not consider the testimony given by Ulat in convicting the petitioner. The part of the decision finding Talino guilty made no mention of Ulat at but confined itself to the petitioner's own acts in approving the questioned vouchers as proof of his complicity in the plot to swindle the government. Thus:

"If, as claimed, by Macadangdang, he had no knowledge nor participation in the conspiracy to defraud, he would have questioned this obvious irregularity. He would have asked whoever as following up the vouchers why two biddings were conducted, why the awards to 'D'Alfenor' were cancelled, when the latter were cancelled, and when the new bidding was made.

"The very same case is true as regards the accused Agustin Talino. While his duty to initial or sign the vouchers as regards the adequacy of funds may have been ministerial, his failure to observe the obvious irregularity is clear evidence of his complicity in the conspiracy.

"Talino declared that in the morning of May 23, 1980, four vouchers (including three made out in favor of 'D' Alfenor Repair Shop") were brought to him for his certificate as regards the availability of funds. He had signed all the four vouchers. In the afternoon of the same day, three other vouchers were also presented to him for certification as to funds these three were in substitution of Exhibits 'A','B' and 'C' which we had earlier signed but which, according to Talino, were disallowed and cancelled. Talino claims that he had examined the supporting documents of the last three vouchers — the RIV, the birds signed by the repair shops and the abstract of bids. If what Talino says is true, at least the abstract of bids submitted together with vouchers in the afternoon. This would have raised his suspicions with vouchers in the afternoon. This would have raised his suspicions as to why these last three abstracts could be dated as they were (May 18, May 11, respectively) when it was only that morning that the abstracts containing the name of 'D' Alfenor Motor Shop were submitted. The fact that he readily approved the substitute vouchers with the substitute winning bidders is a clear indication that he knew he was facilitating an irregular transaction.

"It is our view that the evidence on record has established beyond doubt the participation of both Agustin Talino and Alejandro Macadangdang in all the four felonies charged in the informations." [13]

The petitioners makes much of the statement in the Comment that the petitioner's guilt could be deduced "from the evidence for the prosecution and from the testimony of Pio Ulat,[14] but that was not the respondent court speaking. That was the Solicitor General's analysis. As far as the Sandiganbayan was concerned, the said testimony was inadmissible against the petitioner because he "did not cross examine Ulat," and was not even required to be presented when the latter was testifying. In fact, the respondent court when the latter was testifying. In fact, the respondent court even expressed the wish the Ulat had been presented as rebuttal witness in the separate trial of the petitioner as there would then have been "no impediment to the use of his testimony against the other accused." As this was not done, the trial court not and did not consider Ulat's testimony in determining the petitioner's part in the offenses.

The factual findings of the respondent court being supported by substantial evidence other than Ulat's testimony, we see no reason to disturb them. It is futile for the petitioner to invoke his constitutional presumption of innocence because his guilt has in the view of the trial court been established beyond reasonable doubt, and we agree.

WHEREFORE, the judgment appealed from is AFFIRMED, with costs against the petitioner.

Teehankee, C.J., Yap, Fernan, Narvasa, Gutierrez, Jr., Paras, Gancayco, Padilla, Bidin, Sarmiento and Cortes, JJ., concur.

Alampay, J., took part, was on leave during deliberation.

Melencio-Herrera and Feliciano, JJ., on official leave.

[1] People vs. Tanso (unrepeated), 105 Phil. 1289; U.S. v. Raymundo, 14 Phil. 416, 442.

[2] Annexes "A" to "D", Petitioner, Rollo, pp. 12-23.

[3] Annex "F", Petition: Ibid., pp. 70-72.

[4] Decision, pp. 12-16; Id., pp. 35-39.

[*] Third Division: Molina, Quimbo and Vera Cruz, JJ.

[5] Ibid., p. 32; Id., p. 55.

[6] People v. Cruz (CA), 46 O.G. 1658; People v. Oplado, 12 SCRA 147; U.S. v. Gallegos, 37 Phil. 289 , 88 Phil.

203; Joseph v. Villaluz, 89 SCRA 324.

[7] U.S. v. Morales, 8 Phil, 300; People v. Bermejo, 46 Phil. 252; People v. Romualdez, 57 Phil. 148; People v. Torres, 62 Phil. 942 Joseph v. Villaliz, supra.

[8] Joseph v. Villaluz, supra.

[9] Sec. 14 (2), Article III, 1987 Constitution.

[10] People v. Ramos, 122 SCRA 312, citing People v. Rodolfo Sabio, 102 SCRA 232, People v. Pacala, 58 SCRA 370 and People v. Tan et al., 89 Phil., 337, 341.

[11] Secs. 30, 31-41, Rule 130, Revised Rules of Court.

[12] 37. Phil, 449.

[13] Decision, pp. 38-39; Rollo, pp. 61-62.

[14] Reply, p. 3, quoting, p. 21, Comment.

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