

EDUARDO ROSALES, HON. RODOLFO G. PALATTAO AND PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. COURT OF APPEALS, NELSON EXCONDE AND RONILO AÑONUEVO, RESPONDENTS.

G.R. Nos. 80418-19. October 23, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

In what seems to be a deviation from customary practice, an accused was discharged to become a state witness after he had already testified as an ordinary witness for the prosecution. The Court of Appeals found this procedure rather unusual; hence, its nullification.

Petitioners believe otherwise.

On 22 August 1985, separate Informations were filed before the Regional Trial Court of Lucena City charging petitioner Eduardo Rosales, together with Crisanto Bautista and private respondents Nelson Exconde and Ronilo Añonuevo for the murder of Marcial Punzalan, an ex-Mayor of San Antonio and Tiaong towns in Quezon Province, and his leader, Demetrio Ramos. These Informations, docketed as Crim. Cases Nos. 85-499 and 85-607, were consolidated and raffled to Branch 53 presided by petitioner Judge Rodolfo G. Palattao.

In the trial of the case, the prosecution presented Eduardo Rosales and then Crisanto Bautista as witnesses before moving for their discharge. Admittedly, their testimonies led to the identification of the alleged masterminds of the slayings, which included prominent local political leaders like ex-Mayor Ananiano Wagan of San Antonio and ex-Mayor Francisco Escueta of Tiaong as well as two (2) barangay captains, and to the filing of an information against the four (4), docketed as Crim. Case No. 86-330.

The trial court granted the discharge of Rosales but deferred action on the motion to discharge Bautista pending resolution of this case.[1]

Private respondents Nelson Exconde and Ronilo Añonuevo pleaded for the reconsideration of Rosales' discharge but the same was denied.

Upon petition for certiorari with the Court of Appeals, however, the order of discharge was recalled as the appellate court found no plausible reason for the discharge of Rosales after he admitted his guilt in the course of his testimony.[2] It also noted that there was an eyewitness to the slaying incident, thus, the testimonies of the accused turned-state-witnesses would "merely constitute independent evidence against a few of the accused".[3] Hence, this petition for review on certiorari of the Decision of the Court of Appeals of 14 January 1987 and its Resolution denying reconsideration.

Quite interestingly, this petition for review was filed despite the fact that Rosales was subsequently gunned down in front of his house on 3 August 1987 while this case was pending before the lower court.[4] Counsel for petitioner Rosales as well as the Solicitor General opined that the resolution of the present case would "guide the court a quo and the parties in their future action",[5] especially since a motion for the discharge of Rosales'

co-accused, Crisanto Bautista, to be utilized as state witness still remained unresolved by the trial court. They prayed that the questions of law raised in the present controversy be clarified.

We find merit in the instant petition.

The nullification of the order of discharge by the appellate court was premised on its interpretation that Sec. 9, Rule 119, of the New Rules on Criminal Procedure contemplates only of a situation where the prosecution moves for the discharge of one or more accused “so that they may be witnesses for the State.” It reads -

“Sec. 9. Discharge of accused to be state witness. - When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of its proposed state witness at a hearing in support of the discharge, the court is satisfied that: (a) There is absolute necessity for the testimony of the accused whose discharge is requested; (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) The testimony of said accused can be substantially corroborated at its material points; (d) Said accused does not appear to be the most guilty; (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

“Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence” (italics supplied).

Indeed, as the Court of Appeals noted, the phrase “so that they may be witnesses for the state” presupposes a future undertaking of the accused. Considering that Rosales had already testified against his co-accused, the appellate court deemed it unnecessary to order the discharge of Rosales. Yet, the Court of Appeals failed to consider one important detail: Rosales was still to take the witness stand against the alleged architects of the Punzalan killing in Crim. Case No. 86-330. While the accused therein may not have been Rosales’ co-conspirators in the consolidated criminal cases where he was discharged, all of them were charged for their respective roles in the same felony, albeit the Information charging the masterminds was filed only much later.

Had the prosecution known earlier of the participation of the local political leaders in the murder of Punzalan and Ramos, perhaps they would have been readily included in the Informations filed against Rosales and company. But this knowledge only came about as a result of the subsequent revelations of accused-witnesses Rosales and Bautista in open court. Thus, they were not included in the two (2) Informations filed against Rosales and his co-accused.

At the time of Rosales’ discharge, the corresponding Information against the alleged masterminds had not yet been filed. His testimony, if ever, was then to be a future undertaking on his part, and the successful prosecution of those responsible for the dastardly acts would hinge solely on his testimony as a state witness. As such, his discharge satisfied the intent of Sec. 9 of Rule 119 that one or more discharged accused “may be witnesses for the State” and was therefore in accord with law.

Likewise, the finding of the Court of Appeals that Rosales’ testimony was no longer necessary is not well-taken. We agree with the observation of the Solicitor General that before Rosales testified on the circumstances surrounding the killing of Punzalan there was no direct evidence to establish the identity of the plotters and their underlying motive to silence him and thus prevent him from testifying against them before the Sandiganbayan. It was Rosales who supplied the necessary evidence to link them to the murder of Punzalan and Ramos. Moreover, the alleged eyewitness who earlier narrated his account of the murder never testified in court for fear of his life. There was nothing then to implicate the various accused to the liquidation of Punzalan and Ramos except the

testimonies of Rosales and Bautista who, it must be emphasized, do not appear to be the most guilty. Rosales merely served as a look-out while Bautista drove the getaway vehicle

The peculiar nature of this case also justifies the action taken by the prosecution in presenting Rosales and Bautista first as ordinary witnesses. This, to ensure that they would testify according to their undertaking, as there were powerful political kingpins involved and the lives of Rosales and Bautista were in grave peril if measures were not taken to protect them. One such step was to withhold from public knowledge the intention of Rosales and Bautista to turn state witnesses; otherwise, they might not be able to take the witness stand to pinpoint the masterminds. As succinctly put by the Solicitor General -

“The foregoing narration of facts speaks for itself. The prosecution could not have afforded to file a Motion to Discharge before Rosales took the witness stand. There was risks. Threat of death was present. And death came.”[6]

The rule is that the discharge of an accused is left to the sound discretion of the lower court, which has the exclusive responsibility to see to it that the conditions prescribed by the Rules are met.[7] While it is the usual practice of the prosecution to present the accused who turns state witness only after his discharge, the trial court may nevertheless sanction his discharge after his testimony if circumstances so warrant. In the case before Us, the imminent risk to his life justified the deviation from the normal course of procedure as a measure to protect him while at the same time ensuring his undaunted cooperation with the prosecution. Indeed, as is explicit from the Rule, as long as the motion for discharge of an accused to be utilized as a state witness is filed before the prosecution rests, the trial court should, if warranted, grant it.

In the case before Us, there being compliance with the requirements of Sec. 9 of Rule 119, the trial court cannot be faulted for ordering, upon motion of the prosecution, the discharge of Rosales. Once that discharge is effected, any subsequent showing that not all the five (5) requirements outlined in Sec. 9 of Rule 119 were actually fulfilled cannot adversely affect the legal consequences of such discharge which, under Sec. 10 of the same Rule, operates as an acquittal of the accused thus discharged and shall forever be a bar to his prosecution for the same offense. Thus -

“Sec. 10. Discharge of an accused operates as an acquittal. - The order indicated in the preceding section shall operate as an acquittal of the accused discharged and shall be a bar to future prosecution for the same offense, unless the accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for the discharge” (italics supplied).

In *Bogo-Medellin Milling Co., Inc. v. Son*,[8] We ruled that once an accused is discharged to be a state witness, the legal consequence of acquittal follows and persists unless the accused so discharged fails or refuses to testify against his co-defendant.

Consequently, the Court of Appeals committed a reversible error when it annulled and set aside the order for the discharge of accused Eduardo Rosales there being no showing that he actually failed or refused to testify against his co-conspirators.

WHEREFORE, the assailed Decision of the Court of Appeals of 14 January 1987 in CA-G.R. SP Nos. 10164-65 is SET ASIDE and the Order of the Regional Trial Court, Branch 53, Lucena City, in Crim. Cases Nos. 85-499 and 85-607 is REINSTATED, hereby declaring as VALID the discharge of Eduardo Rosales as state witness.

SO ORDERED.

Padilla, Griño-Aquino, and Medialdea, JJ., concur.

Cruz, (Chairman), on leave

[1] Rollo, p. 118.

[2] Id., pp. 24-25.

[3] Id., p. 25.

[4] Id., p. 65.

[5] Id., p. 119.

[6] Comment, pp. 13-14.

[7] People v. Lo Ho Wing, G.R. No. 88017, 21 January 1991; 193 SCRA 122.

[8] G.R. No. 80268, 27 May 1992.

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