Supreme Court E-Library

EN BANC

[G.R. No. 60613-20. April 20, 1985]

ROLANDO MANGUBAT, ANTONIO CENIZA, ULDARICO ENCENZO, RUFINO NUÑEZ, ANGELINA ESCAÑO, MANUAL DE VEYRA; BASILISA GALVAN, MATILDE JABALDE, JOSEFINA LUNA, JOSE SAYSON, LEONILA DEL ROSARIO, ENGRACIA ESCOBAR, ABELARDO CARDONA, and LEONARDO TORDECILLA, *petitioners, vs.* THE SANDIGANBAYAN (First Division), THE PEOPLE OF THE PHILIPPINES, and DELIA PREAGIDO, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; DISCHARGE OF CO-ACCUSED TO BE MADE A STATE WITNESS; LACK OF SOME OF THE QUALIFICATIONS, INSUFFICIENT REASON TO DISCARD TESTIMONY OF DISCHARGE WITNESS.—** Anent the contention that Delia Preagido should not have been discharged as state witness because of ' a previous final convictions' of crimes involving moral turpitude, suffice it to say that "this Court has time and again declared that even if the discharged witness should lack some of the qualifications enumerated by Section 9, Rule 119 of the Rules of Court, his testimony will not, for that reason alone, be discarded or disregarded. In the discharge of a co-defendant, the court may reasonably be expected to err; but such error in discharging an accused has been held not to be a reversible one. This is upon the principle that such error of the court does not affect the competency and the quality of the testimony of the discharged defendant (People *vs.* Jamero, 24 SCRA 206, 247).

2. **ID.; ID.; ID.; A MATTER OF SOUND DISCRETION OF TRIAL COURT; CASE AT BAR.—** More so, in the case at bar when "(t)he joint trial of these criminal cases had already long commenced and *eleven (11) witnesses had already testified. In fact, respondent Delia Preagido already testified on direct*

Supreme Court E-Library

examination as a state witness, but the petitioners, through counsel, deferred the cross-examination, and instead filed the instant petition with this Honorable Supreme Court (see page 17, Petition). And there are also the documents presented in the course of the testimonies of said witnesses. Consequently, sufficient proof is extant in the records of these cases which support the findings and conclusions of the respondent Sandiganbayan (First Division) in ordering the discharge of respondent Delia Preagido to be used as state witness." (Italics supplied, People's Memorandum, pp. 85-86, *Rollo* of G.R. No. 60613-20). Thus, under the circumstances, the Sandiganbayan, after hearing the eleven (11) witnesses of the prosecution, was in a position to determine whether or not the motion to discharge should be granted. It is safe to assume that the discharge was allowed by respondent court because there was absolute necessity for the testimony of Delia Preagido whose discharge is requested. At any rate, the discharge of a co-defendant under Section 9, Rule 119 of the Rules of Court is a matter that lies within the sound discretion of the trial court (People *vs.* Bautista, 106 Phil. 39)."

APPEARANCES OF COUNSEL

Rodolfo Jimenez for De Veyra.
Amadeo Seno for Mangubat and Ceniza.
Pedro Yap for Escaño
The Solicitor General for respondent

DECISION

RELOVA, *J.:*

In this petition for certiorari and prohibition with preliminary injunction, the issue raised is whether or not respondent Sandiganbayan gravely abused its discretion in issuing the resolution, dated March 5, 1982, which discharged private respondent Delia Preagido as an accused to be utilized as a state witness against the other accused, among them herein petitioners, in the criminal cases for estafa thru falsification of public or commercial documents, and the resolution, dated April 2, 1982,

Supreme Court E-Library

which denied the motion for reconsideration. The antecedents of the case as disclosed in the petition and comment are as follows:

Petitioners are charged with estafa thru falsification of public/official/commercial documents in eight (8) different informations. Respondent Delia Preagido is one of the accused in six (6) cases. After the prosecution had utilized several witnesses and the other witnesses intended to be presented appeared to be unavailable, a motion to discharge accused Delia Preagido, Alice Gadiane, and Hilmer Suson to be utilized as state witnesses was presented. Petitioners opposed the discharge of respondent Delia Preagido, arguing that she could not qualify under any of the conditions for discharge provided by the Rules, particularly the fact that she has been previously convicted of the crime of estafa thru falsification of public document which necessarily involves moral turpitude.

On June 8, 1982, this Court issued a "TEMPORARY RESTRAINING ORDER" enjoining the respondents from presenting and receiving the testimony of respondent Delia Preagido as state witness in Criminal Case No. 889 (People *vs.* Paterno Diez, Jr., et al.), Criminal Case No. 927 (People *vs.* Paterno Diez, Jr., et al.), Criminal Case No. 1052 (People *vs.* Paterno Diez, Jr., et al.), Criminal Case No. 1116 (People *vs.* Paterno Diez, Jr., et al.), Criminal Case No. 1540 (People *vs.* Paterno Diez, Jr., et al.), Criminal Case. No. 1582 (People *vs.* Paterno Diez, Jr., et al.), Criminal Case No. 1945 (People *vs.* Angelina Escaño) and Criminal Case No. 3253 (People *vs.* Manuel de Veyra, et al.), effective as of this date and continuing until otherwise ordered by this Court." (p. 60, *Rollo* of G.R. No. 60613-20)

Respondent People, in its comment, stated that the aforementioned criminal cases are presently being jointly tried by the Sandiganbayan and after the prosecution has presented several witnesses a motion to discharge accused Delia Preagido, Alice Gadiane and Hilmer Suson was filed, alleging that all the three defendants meet all the qualifications

Supreme Court E-Library

required by Section 9, Rule 119 of the Rules of Court. The motion was granted by the Sandiganbayan, saying that "with respect to the fact that Delia Preagido has been previously convicted by this Court in cases involving the Danao City and Tagbilaran City 1978 projects, suffice it to state that these cases are still on appeal with the Supreme Court. Preagido has still in her favor the constitutional presumption of innocence. Until a promulgation of final conviction is made, this constitutional mandate prevails. Anent the postulation of Escaño in her opposition, We grant the benefit of more wisdom to the judgment of the prosecution to discharge Preagido to be utilized as a state witness, rather than on her mere promise to do so. The Court feels that as ever the prosecution has always discharged its duties with the highest fidelity to their oaths of office. In fine, the motion of the prosecution is meritorious." (pp. 43-44, *Rollo*)

Records show that on December 6, 1979, respondent Delia Preagido, together with others, was convicted by the Sandiganbayan of estafa thru falsification of public/commercial documents in 126 counts and sentenced to an indeterminate penalty ranging from 8 years, 8 months and 1 day of *prision mayor*, as minimum, to 10 years, 8 months and 1 day of *prision mayor*, as maximum, for each count. Respondent Delia Preagido and four (4) others filed G.R. Nos. 52528-52654, a petition for review (appeal by certiorari) with prayer that the decision of the Sandiganbayan be reversed and/or declared null and void for the reason, among others, that it is unsupported by evidence to warrant conviction.

On August 27, 1980, this Court issued a resolution, as follows:

"G.R. Nos. 52528-52654 (Delia Preagido, et al. *vs.* The Sandiganbayan, et al.). - Considering the allegations, issues and arguments adduced in the petition for review on certiorari as well as the Solicitor General's comment thereon and the manifestation of petitioners in lieu of a reply, the Court Resolved to DENY the petition, the questions raised being factual and for insufficient showing that findings of fact by the Sandiganbayan are unsupported by substantial evidence, and for lack of merit." (p. 336, Rollo of G.R. 52528-52654)

Supreme Court E-Library

Delia Preagido and her co-accused moved to reconsider the above resolution but the court, on October 6, 1980, "Resolved to DENY the motion for lack of merit and this denial is FINAL."

The requisites for the discharge of an accused in order that he may be made a witness for the prosecution are the following:

(1) Two or more persons are charged with the commission of a certain offense;

(2) The petition for discharge is filed before the defense has offered its evidence;

(3) There is absolute necessity for the testimony of the defendant whose discharge is requested;

(4) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;

(5) The testimony of said defendant can be substantially corroborated in its material points;

(6) Said defendant does not appear to be the most guilty; and

(7) Said defendant has not at any time been convicted of any offense involving moral turpitude.

Anent the contention that Delia Preagido should not have been discharged as state witness because of 'a previous final convictions' of crimes involving moral turpitude, suffice it to say that "this Court has time and again declared that even if the discharged witness should lack some of the qualifications enumerated by Section 9, Rule 119 of the Rules of Court, his testimony will not, for that reason alone, be discarded or disregarded. In the discharge of a co-defendant, the court may reasonably be expected to err; but such error in discharging an accused has been held not to be a reversible one. This is upon the principle that such error of the court does not affect the competency and the quality of the testimony of the discharged defendant (People *vs.* Jamero, 24 SCRA 206, 247). More so, in the case at bar when "[t]he joint trial of these criminal cases had already long commenced and *eleven (11) witnesses had*

Supreme Court E-Library

already testified. In fact, respondent Delia Preagido already testified on direct examination as a state witness, but the petitioners, through counsel, deferred the cross-examination, and instead filed the instant petition with this Honorable Supreme Court (see page 17, Petition). And there are also the documents presented in the course of the testimonies of said witnesses. Consequently, sufficient proof is extant in the records of these cases which support the findings and conclusions of the respondent Sandiganbayan (First Division) in ordering the discharge of respondent Delia Preagido to be used as state witness." (Italics supplied, People's Memorandum, pp. 85-86, *Rollo* of G.R. Nos. 60613-20). Thus, under the circumstances, the Sandiganbayan, after hearing the eleven (11) witnesses of the prosecution, was in a position to determine whether or not the motion to discharge should be granted. It is safe to assume that the discharge was allowed by respondent court because there was absolute necessity for the testimony of Delia Preagido whose discharge is requested. At any rate, the discharge of a co-defendant under Section 9, Rule 119 of the Rules of Court is a matter that lies within the sound discretion of the trial court (People *vs.* Bautista, 106 Phil. 39)."

WHEREFORE, the petition is DISMISSED and the temporary restraining order issued on June 8, 1982, is hereby LIFTED. With costs.

SO ORDERED.

Fernando, C.J., Abad Santos, Gutierrez, Jr., and *de la Fuente, JJ.,* concur.

Teehankee, Aquino, Escolin, and *Cuevas, JJ.,* took no part.

Melencio-Herrera, Plana, and *Alampay, JJ.,* are on the result.

Concepcion, J., is on official leave.

Makasiar, J., dissents. Preagido's conviction by final judgment of a crime involving moral turpitude — the same serious crime of estafa thru falsification — with which she is charged in the case at bar, militates against her discharge.