826 Phil. 368

THIRD DIVISION

[G.R. No. 229420, February 19, 2018]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. ROGER DOMINGUEZ Y SANTOS, RAYMOND DOMINGUEZ Y SANTOS, JAYSON MIRANDA Y NACPIL, ROLANDO TALBAN Y MENDOZA, AND JOEL JACINTO Y CELESTINO, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

Nature of the Case

For consideration is the Petition for Review under Rule 45 of the Rules of Court, filed by the Office of the Solicitor General (OSG), seeking to nullify the May 27, 2016 Decision[1] and January 18, 2017 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 139255. The challenged rulings affirmed the January 10, 2014 Order[2] of the Regional Trial Court (RTC), Branch 215 in Quezon City directing that the testimony of the deceased state witness Alfred Mendiola (Mendiola) be stricken off the records of Criminal Case No. Q-11-168431.

The Facts

On January 13, 2011, Venson Evangelista, a car salesman, was abducted in Cubao, Quezon City by a group of men later pinpointed as the respondents herein. Evangelista's charred remains were discovered the following day in Cabanatuan City, Nueva Ecija.

In connection with the incident, Mendiola and Ferdinand Parulan (Parulan) voluntarily surrendered to the Philippine National Police (PNP) and executed extrajudicial confessions identifying respondents Roger and Raymond Dominguez (Dominguez Brothers) as the masterminds behind the killing. This led to the filing before the Quezon City RTC of an Information against Mendiola and the respondents for Carnapping with Homicide under Section 14 of Republic Act No. 6539,[3] otherwise known as the Anti-Carnapping Act, docketed as Criminal Case No. Q-11-168431. The accusatory portion of the Information reads:

> That on or about the 13th day of January 2011, in Quezon City, Philippines, the above-named accused, and other persons who are at large and whose identities and whereabouts are still to be determined, conspiring and confederating together and helping each other, with intent to gain and to kill and by means of violence against and intimidation of person, did then and there wilfully, unlawfully, and feloniously take and carry away one (1) charcoal gray Toyota Land Cruiser model 2009 with Plate No. NAI-316, Engine No. 1VD-0049539 and Chassis No. JTMHV05J804031334, worth Php3,400,000.00, Philippine Currency, then

> driven by VENSON EVANGELISTA Y VELARO and registered in the name of Future Trade International, Inc. but already sold to Arsenio Evangelista per Deed of Sale dated December 13, 2010, to the damage and prejudice of the owner.
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> That during the commission of the said offense, or by reason thereof, the said accused, in conspiracy with one another and with intent to kill, carefully planned the execution of their acts and with the attendant circumstances of evident premeditation, treachery, and abuse of superior strength, cruelty, and by means of fire, attack (sic) and assaulted VENSON EVANGELISTA Y VALERO (sic) by shooting him on the head, mutilated his body, and set the same on fire thereby inflicting upon him fatal injuries which were the proximate cause of his untimely death, to the damage and prejudice of the heirs of the late VENSON EVANGELISTA Y VELARO.
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> Accused and their other unidentified cohorts committed the above attendant circumstances in the killing of their victim because they deliberately planned the commission of the offense consciously adopting the means and methods of attack done suddenly and unexpectedly, taking advantage of their numbers and strength to ensure its commission without risk to themselves arising from the defense which the victim might make, accompanied by fraud, deceit, disguise, cruelty and by abuse of superior strength by deliberately and inhumanly augmenting the suffering of the victim or outraging or scoffing at his person or corpse.
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> CONTRARY TO LAW.[4]

Of the respondents, Rolando Taiban (Taiban) and Joel Jacinto (Jacinto) remained at large. Only the Dominguez brothers and Miranda were apprehended. And during arraignment on April 11, 2011, the three arrested respondents pleaded not guilty to the offense.

On June 27, 2011, a hearing was conducted on the prosecution's motion[5] that Mendiola be discharged as an accused to become a state witness. On the said date, Mendiola gave his testimony and was cross examined by the counsel for the defense. Nevertheless, the defense manifested that the cross-examination was limited only to the incident of discharge, and that their party reserved the right to a more lengthy cross examination during the prosecution's presentation of the evidence in chief.

On September 29, 2011, the RTC Branch 215, before which Criminal Case No. Q-11-168431 is pending, issued an Order granting the motion to discharge Mendiola as an accused to become a state witness. The Order further states:

> WHEREFORE, premises considered, the Court resolves to GRANT the motion to discharge accused ALFRED MENDIOLA y RAMOS from the Information to become a state witness.
>
> Accordingly, his testimonies given on June 27, July 8 and July 11, 2011 and all the evidence adduced in support of the discharge hereby form part of the trial of this case.

x x x x

SO ORDERED.[6]

Thereafter, by a surprise turn of events, Mendiola was found dead on May 6, 2012. The RTC then required the parties to submit their respective position papers on whether or not Mendiola's testimony during the discharge proceeding should be admitted as part of the prosecution's evidence in chief despite his failure to testify during the trial proper prior to his death.[7]

Ruling of the Regional Trial Court

On January 10, 2014, the RTC issued the assailed Order directing that the testimony of Mendiola be stricken off the records of Criminal Case No.Q-11-168431. The decretal portion of the Order reads:

> **WHEREFORE**, the testimony of **ALFRED MENDIOLA y RAMOS** given on June 27, 2011 for purposes of his discharge as a state witness is **HEREBY ORDERED STRICKEN OFF THE RECORD** of this case. With respect to the documents and other evidence authenticated by Mendiola as a discharge witness, this Court will rule upon their admissibility when the same are formally offered in evidence.
>
> **SO ORDERED.**[8]

According to the trial court, Mendiola's testimony on June 27, 2011 was offered only for the purpose of substantiating the motion for him to be discharged as a state witness, and does not yet constitute evidence in chief. Thus, the defense counsel limited his questions during cross-examination to only those matters relating to Mendiola's qualifications to become a state witness and expressly reserved the right to continue the cross-examination during trial proper. As ratiocinated by the RTC:

> There is no question that when Mendiola was cross-examined, such cross-examination was limited by the purpose of the hearing, that is, whether the court would be satisfied of the absolute necessity of his testimony; that "there is no other direct evidence available for the proper prosecution"; that his "testimony could be substantially corroborated in its material points"; that he "does not appear to be the most guilty"; and he "has not been convicted, at any time, of any offense involving moral turpitude". In short, these are the purposes for the discharge hearings.[9]
> x x x

The trial court likewise cited Section 18, Rule 119 of the Rules of Court,[10] noting that there is a requirement that Mendiola must testify again as a regular witness during trial proper to secure his acquittal. Non-compliance with this requirement, according to the RTC, amounted to the deprivation of respondents of their constitutional right to due process, and of their right to confront the witnesses against them.

Ruling of the Court of Appeals

The issue was elevated to the Court of Appeals via petition for certiorari under Rule 65, but the appellate court found no grave abuse of discretion on the part of the trial court. It thus dismissed the petition in its assailed May 27, 2016 Decision in the following wise:

> **WHEREFORE**, in view of the foregoing, the Petition is **DENIED**. Accordingly, the Orders dated 10 January 2014 and 1 December 2014 issued by public respondent Judge Wildredo L. Maynigo in Criminal case no. Q-11-168431, pending before Branch 215 of the Regional Trial Court of Quezon City are hereby **AFFIRMED**.
>
> **SO ORDERED.**[11]

The CA denied petitioner's motion for reconsideration therefrom through its January 18, 2017 Resolution. Hence, the instant recourse.

The Issue

The primordial issue to be resolved in this case is whether or not the testimony of Mendiola should be stricken off the records of Criminal Case No. Q-11-168431.

Petitioner posits that the right afforded to an accused to confront and cross-examine the witnesses against him is not an absolute right. Hence, when respondents failed to avail themselves of the constitutional guarantee when Mendiola gave his testimony on June 27, 2011, they have effectively forfeited their right thereto.

The Court directed respondents to file their respective comments within fifteen (15) days from notice. Respondent Jayson Miranda y Nacpil, in his Comment,[12] argues that the testimony of Mendiola was offered in the discharge proceeding for the limited purpose of qualifying the latter as a state witness, and Section 18, Rule 119 of the Rules of Court requires for the state witness to be presented again during trial proper. Failure of the prosecution to again offer the testimony of the state witness, as part of their evidence-in-chief, unlawfully deprived the respondents of the opportunity to conduct a full and exhaustive cross-examination. For even though Mendiola was cross-examined during the discharge proceedings, respondents nevertheless intimated to the trial court that they were reserving the right to propound further questions when Mendiola is again to take the witness stand. Miranda adds that the respondents are just as without fault that Mendiola died without completing his testimony.

Miranda adds that at the time Mendiola testified during the discharge proceedings, his co-respondents Rolando M. Taiban (Taiban) and Joel C. Jacinto (Jacinto) were not yet arrested. Thus, to allow the testimony of Mendiola to remain on record would be tantamount to a denial of their right to cross-examine the witness against them.

On the other hand, it appears that Atty. Oscar Raro, the counsel of record for respondent Roger Dominguez, failed to inform this Court that he has changed his office address. Service upon counsel was therefore not actually effected. Nevertheless, We have held time and again that notices to counsel should properly be sent to his or her address of record in the absence of due notice to the court of a change of address. Thus, respondent Roger Dominguez is deemed to have received

the order to comment by fiction of law and has, consequently, waived his right to counter the allegations in the petition after fifteen (15) days from the date of his constructive receipt thereof. Meanwhile, Atty. Jose M. Cruz, who represents Raymond Dominguez, has likewise not filed a Comment in behalf of his client herein. The Court resolves, however, to dispense with the same.

The Court's Ruling

The petition is meritorious.

The death of the state witness prior to trial proper will not automatically render his testimony during the discharge proceeding inadmissible

Section 17 of Rule 119 of the Rules of Court pertinently provides:

> **Section 17.** *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 each 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) The 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 in its material points;
> **(d) Said accused does not appear to be the most guilty;** and
> (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. (emphasis added)

The rule is explicit that the testimony of the witness during the discharge proceeding will only be inadmissible if the court *denies* the motion to discharge the accused as a state witness. However, the motion hearing in this case had already concluded and the motion for discharge, approved. Thus, whatever transpired during the hearing is already automatically deemed part of the records of Criminal Case No. Q-11-168431 and admissible in evidence pursuant to the rule.

Mendiola's testimony was not incomplete, contrary to how Miranda paints it to be. The contents of his lengthy narration were more than sufficient to establish his possession of all the necessary qualifications, and none of the disqualifications, under Section 17, Rule 119 of the Rules of Court to be eligible as a state witness. The argument of incompleteness even contradicts respondent Miranda's own position since he does not contest here the RTC's Order granting Mendiola's motion