

FIRST DIVISION

[G.R. No. 132577, August 17, 1999]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HUBERT
JEFFREY P. WEBB, RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Challenged in this petition for review on *certiorari* is the Decision of the Court of Appeals in CA-G.R. SP No. 45399 entitled "*Hubert Jeffrey P. Webb v. Hon. Amelita Tolentino, in her capacity as Presiding Judge of Branch 274 of the Regional Trial Court of Parañaque, People of the Philippines and Lauro Vizconde*" which set aside the order of respondent judge therein denying herein respondent Hubert Jeffrey P. Webb's request to take the depositions of five (5) citizens and residents of the United States before the proper consular officer of the Philippines in Washington D.C. and California, as the case may be.

The factual and procedural antecedents are matters of record or are otherwise uncontroverted.

Respondent Hubert Jeffrey P. Webb is one of the accused in Criminal Case No. 95-404 for Rape with Homicide entitled "*People of the Philippines v. Hubert Jeffrey P. Webb, et al.*" presently pending before Branch 274 of the Regional Trial Court of Parañaque, presided by Judge Amelita G. Tolentino.

During the course of the proceedings in the trial court, respondent filed on May 2, 1997, a Motion To Take Testimony By Oral Deposition^[1] praying that he be allowed to take the testimonies of the following:

1.] *Steven Bucher*
Acting Chief, Records Services Branch
U.S. Department of Justice
Immigration and Naturalization Service
425 Eye Street, N.W.
Washington D.C. 20536
U.S.A.

2.] *Debora Farmer*
Records Operations, Office of Records
U.S. Department of Justice
Immigration and Naturalization Service
Washington D.C.
U.S.A.

3.] *Jaci Alston*
Department of Motor Vehicles

Sacramento, California
U.S.A.

4.] Ami Smalley
Department of Motor Vehicles
Sacramento, California
U.S.A.

5.] John Pavlisin
210 South Glasell, City of Orange
California, 92666
U.S.A.

before the general consul, consul, vice-consul or consular agent of the Philippines in lieu of presenting them as witnesses in court alleging that the said persons are all residents of the United States and may not therefore be compelled by subpoena to testify since the court had no jurisdiction over them.

Respondent further alleged that the taking of the oral depositions of the aforementioned individuals whose testimonies are allegedly 'material and indispensable' to establish his innocence of the crime charged is sanctioned by Section 4, Rule 24 of the Revised Rules of Court which provides that:

"SEC. 4. Use of depositions. - At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

(b) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;

(c) The deposition of a witness whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; (2) that the witness is out of the province and a greater distance than fifty (50) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used;

(d) If only part of a deposition is offered in evidence by a party, the

adverse party may require him to introduce all of it which is relevant to the part introduced and any party may introduce any other parts." (italics supplied).

The prosecution thereafter filed an opposition to the said motion averring that: 1.] Rule 24, Section 4 of the Rules of Court, contrary to the representation of respondent-accused, has no application in criminal cases; 2.] Rule 119, Section 4 of the Rules of Court on Criminal Procedure, being a mode of discovery, only provides for conditional examination of witnesses for the accused before trial not during trial; 3.] Rule 119, Section 5 of the Rules of Court on Criminal Procedure does not sanction the conditional examination of witnesses for the accused/defense outside Philippine jurisdiction.^[2]

In an Order dated June 11, 1997, the trial court denied the motion of respondent on the ground that the same is not allowed by Section 4, Rule 24 and Sections 4 and 5 of Rule 119 of the Revised Rules of Court.^[3]

A motion for reconsideration^[4] thereto on the grounds that: 1.] The 1997 Rules of Court expressly allows the taking of depositions, and 2.] Section 11 of Rule 23 of the 1997 Rules of Court expressly allows the taking of depositions in foreign countries before a consul general, consul, vice-consul or consular agent of the Republic of the Philippines, was likewise denied by the trial court in an order dated July 25, 1997.^[5]

Dissatisfied, respondent elevated his cause to the Court of Appeals by way of a petition for *certiorari*^[6] naming as respondents therein the Presiding Judge Amelita G. Tolentino, the People and private complainant Lauro Vizconde. In the petition, docketed as CA-G.R. SP No. 45399, respondent Webb argued that: 1.] The taking of depositions pending action is applicable to criminal proceedings; 2.] Depositions by oral testimony in a foreign country can be taken before a consular officer of the Philippine Embassy in the United States; and, 3.] He has the right to completely and fully present evidence to support his defense and the denial of such right will violate his constitutional right to due process.

Commenting^[7] on the petition, the People contended that the questioned orders of the Presiding Judge are well within the sphere of her judicial discretion and do not constitute grave abuse of discretion amounting to lack or excess of jurisdiction and that if at all, they may be considered merely as errors of judgment which may be corrected by appeal in due time because: a.] The motion failed to comply with the requirements of Section 4, Rule 119 of the Rules of Court; b.] The conditional examination must be conducted before an inferior court; and c.] The examination of the witnesses must be done in open court.

In his Comment,^[8] private respondent Lauro Vizconde sought the dismissal of the petition contending that:

1.] The public respondent did not commit grave abuse of discretion in denying petitioner [now herein respondent] Webb's motion to take testimony by oral deposition dated 29 April 1997 as well as petitioner's motion for reconsideration dated 23 June 1997 for not being sanctioned by the Rules of Court.

a.] The public respondent correctly held that Rule 23, Section 1 of the 1997 Revised Rules of Civil Procedure finds no application in criminal actions such as the case at bar.

b.] The public respondent correctly ruled that Rule 119, Section 4 of the Rules of Criminal Procedure only provides for conditional examination of witnesses *before* trial but not during trial.

c.] The public respondent correctly ruled that Rule 119 of the Rules on Criminal Procedure does not sanction the conditional examination of witnesses for the accused/defense outside of Philippine jurisdiction.

2.] The public respondent did not commit any grave abuse of discretion in denying petitioner Webb's motion to take testimony by oral deposition considering that the proposed deposition tends only to further establish the admissibility of documentary exhibits already admitted in evidence by the public respondent.

On February 6, 1998, the Fourth Division^[9] of the Court of Appeals rendered judgment,^[10] the dispositive portion of which reads:

"WHEREFORE, the petition is GRANTED. The orders of respondent judge dated 11 June 1997 (Annex `A' of the Petition) and 25 July 1997 (Annex `B' of the Petition) are hereby ANNULLED and SET ASIDE. It is hereby ordered that the deposition of the following witnesses be TAKEN before the proper consular officer of the Republic of the Philippines in Washington D.C. and California, as the case may be:

(a) Mr. Steven Bucher;

(b) Ms. Deborah Farmer;

(c) Mr. Jaci Alston;

(d) Ms. Ami Smalley; and

(e) Mr. John Pavlisin.

SO ORDERED."

From the foregoing, the People forthwith elevated its cause to this Court by way of the instant petition dispensing with the filing of a motion for reconsideration for the following reasons: 1.] The rule that the petitioner should first file a motion for reconsideration applies to the special civil action of *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure and there is no similar requirement in taking an appeal from a final judgment or order^[11] such as the present appeal by *certiorari*; 2.] Section 4, Rule 45 in requiring a petition for review on *certiorari* which indicates that "when a motion for new trial or reconsideration, *if any*, was filed" implies that petitioner need not file a motion for reconsideration; 3.] The questions being raised before the Court are the same as those which were squarely raised before the Court of Appeals;^[12] 4.] The issues being raised here are purely legal;^[13] 5.] There is an urgent need to resolve the issues considering that the trial of the accused in the criminal case is about to end; and, 6.] The nature of this case requires a speedy and

prompt disposition of the issues involved.^[14]

What are challenged before this Court are interlocutory orders and not a final judgment. The respondent has filed his Comment^[15] which We treat as an Answer. The petitioner, in turn, filed a Reply.^[16] The petition is ripe for decision.

In urging this Tribunal to exercise its power of review over the assailed decision of the Appellate Court, petitioner asserts that the Court of Appeals committed serious and reversible error -

I

IN RULING THAT RULE 23 OF THE 1997 RULES OF CIVIL PROCEDURE IS APPLICABLE TO CRIMINAL PROCEEDINGS.

II

IN RULING THAT THE DEPOSITION MAY BE TAKEN BEFORE A CONSULAR OFFICER OF THE PHILIPPINES WHERE THE PROSPECTIVE WITNESSES RESIDE OR ARE OFFICIALLY STATIONED.

III

IN RULING THAT RESPONDENT WAS DEPRIVED OF DUE PROCESS OF LAW BY THE TRIAL COURT.

which can be reduced to the primordial issue of whether or not the trial judge gravely abused her discretion in denying the motion to take testimony by oral depositions in the United States which would be used in the criminal case before her Court.

In setting aside the order of the trial judge, the Appellate Court's Fourth Division reasoned, *inter alia*, thus:

"Settled is the rule that the whole purpose and object of procedure is to make the powers of the court fully and completely available for justice. Thus, as the Supreme Court has ruled in Manila Railroad Co. vs. Attorney General and reiterated in subsequent cases:

"x x x The most perfect procedure that can be devised is that which give the opportunity for the most complete and perfect exercise of the powers of the court within the limitations set by natural justice. It is that one which, in other words, gives the most perfect opportunity for the powers of the court to transmute themselves into concrete acts of justice between the parties before it. The purpose of such a procedure is not to restrict the jurisdiction of the court over the subject matter, but to give it effective facility in righteous action. It may be said in passing that the most salient objection which can be urged against procedure today is that it so restricts the exercise of the court's powers by technicalities that part of its authority effective for justice between the parties is many times an inconsiderable portion of the whole. The purpose of procedure is not to thwart justice. Its proper aim is to facilitate the application of