

EIGHTEENTH DIVISION

[CA-G.R. SP NO. 08162, March 14, 2014]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE
HONORABLE FRANKLIN J. DEMONTEVERDE, PRESIDING JUDGE,
BRANCH 44, REGIONAL TRIAL COURT, BACOLOD CITY, AND
ROMEO SORIBA Y MURILLO, RESPONDENTS.**

D E C I S I O N

DIY, J.:

Ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Branch 44, Regional Trial Court of Bacolod City in denying the request for subpoena and instead requiring the submission of judicial affidavits of hostile witnesses during the hearing for bail, petitioner, by way of the present petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, seeks the nullification of the following: (1) public respondent's Order dated September 8, 2013;^[1] and (2) its Order dated October 18, 2013^[2] denying petitioner's motion for reconsideration, both issued in Criminal Case No. 08-31906.

The factual antecedents of the case are as follows:

In the evening of September 17, 2008, at about 10:20 o'clock in the evening, Bailey Magallanes y Nograles was shot to death in front of Mega Bar along Nueva St., Brgy. 11, Bacolod City.

In the course of the police investigation, an eyewitness surfaced in the person of Neil C. Alvaran, who alleged in his Sworn Statement^[3] attached to the Complaint^[4] that a certain Romeo Soriba alias "Roming" shot Bailey Magallanes.

Based on the Resolution^[5] of the investigating prosecutor, on November 3, 2008, an Information^[6] was filed with the Regional Trial Court of Bacolod City, docketed as Criminal Case No. 08-31906, the accusatory charge reading as follows:

That on or about the 17th day of September, 2008, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused being armed with a .45 caliber pistol, with intent to kill, and by means of treachery, did, then and there willfully, unlawfully, and feloniously attack, assault and shoot, with said weapon Bailey Magallanes y Nograles @ "Boknoy". That the shooting incident and/or attack is sudden and unexpected without giving a chance to the victim to defend himself; thereby causing upon the person of the latter the following wounds, to wit: xxx.

On November 13, 2008, a Motion for Reconsideration^[7] of the investigating prosecutor's resolution was filed by private respondent Soriba, accused therein. In

said Motion for Reconsideration, private respondent Soriba alleged that he was not furnished a copy of the complaint against him. He attached his counter-affidavit as well as affidavits of his witnesses. On account of the pendency of said Motion for Reconsideration before the Office of the City Prosecutor of Bacolod City, a Motion to Suspend Service of Warrant of Arrest^[8] was likewise filed by private respondent before Branch 44, RTC of Bacolod City.

In the affidavit^[9] of private respondent Soriba, he maintained and categorically denied having killed Bailey Magallanes. By way of Reply, private complainant Pilar Magallanes, mother of Bailey Magallanes, submitted the *Panaysayon*^[10] dated February 6, 2009, accompanied by its English translation,^[11] of eyewitness Ma. Agnes Castellanes y Garfin identifying accused Romeo Soriba as the assailant.

On February 25, 2009, private respondent submitted the affidavits of recantation of Neil Alvaran and Ma. Agnes Martir y Garfin (a.k.a. Ma. Agnes Castellanes y Garfin)^[12] before the Office of the City Prosecutor of Bacolod City. Nonetheless, on May 14, 2009, the investigating prosecutor issued a Resolution^[13] denying private respondent's Motion for Reconsideration.

Private respondent filed a Motion to Reconsider Order dated May 14, 2009 with the City Prosecution Office of Bacolod City. Said motion was denied by said office in its Resolution^[14] dated March 11, 2010.

Meanwhile on February 2, 2010, while the Motion to Reconsider Order dated May 14, 2009 was still pending, Hon. Gorgonio J. Ybañez, Acting Presiding Judge of Branch 44, RCT of Bacolod City, issued an Order^[15] warning that he would order the release and implementation of the Warrant of Arrest already issued a year ago by the Executive Judge unless prevented or stopped by an appropriate resolution/action by the Prosecutor's Office within ten (10) days from receipt of the aforementioned Order.

After his Motion to Reconsider Order dated May 14, 2009 was denied, private respondent on March 29 2010 filed an Omnibus Motion to Determine Judicial Probable Cause and to Suspend Issuance of Warrant of Arrest and to Subpoena Witnesses^[16] before the court *a quo*. The Omnibus Motion was granted by the court *a quo* in an Order^[17] dated September 30, 2010.

Witnesses Neil Alvaran and Ma. Agnes Martir y Garfin a.k.a. Ma. Agnes Castellanes y Garfin were called by the court *a quo* for clarificatory questioning for the purpose of the determination of probable cause by respondent Judge, but without the right to examine or cross-examine on the part of the parties' counsel in accordance with the Rules. The court *a quo* eventually made a finding of probable cause against private respondent Soriba via its Order^[18] dated September 4, 2012. Subsequently, a Warrant of Arrest was issued on September 6, 2012.

On September 7, 2012, private respondent filed an Urgent Motion to Grant and Fix Bail.^[19]

On September 24, 2012, private respondent was arraigned. He pleaded "not guilty"

to the offense charged. Pre-trial conference was, however, suspended to give way to the bail hearing.

The prosecution presented SPO1 Vicente Canuday, Jr. and SPO1 Celito Dullan for purposes of the bail hearing .

On February 22, 2013, private respondent filed a Manifestation with Urgent Motion to Require Prosecution to Submit Judicial Affidavit of Witnesses^[20] invoking Section 9, par. 2 of the Judicial Affidavit Rule. The court *a quo* granted the same in its Order^[21] dated May 6, 2013 and directed the prosecution to submit the judicial affidavits of the remaining witnesses at least five (5) days prior to their scheduled hearing.

On August 6, 2013, private prosecutor Atty. Roem J. Arbolado, with the consent of the public prosecutor, filed a Manifestation with Reiteration of Earlier Request for Subpoena^[22] requesting Neil Alvaran and Agnes Castellanes for them to appear in court and to testify as hostile witnesses considering that both of them purportedly executed affidavits of retraction favoring the accused.

Private respondent vehemently opposed said Manifestation with Reiteration of Earlier Request for Subpoena through his Comment^[23] arguing that this request for subpoena is not sanctioned by Section 5 of the Judicial Affidavit Rule citing A.M. No. 12-8-8-SC (Judicial Affidavit Rule), which expressly provides that subpoena can only be issued against "a witness who is neither the witness of the adverse party nor a hostile witness."

On September 8, 2013, the court *a quo* issued the first assailed Order denying the Manifestation with Reiteration of Earlier Request for Subpoena filed by private prosecutor Atty. Roem Arbolado.

The public prosecutor moved for the reconsideration of the September 8, 2013 Order. However, it was denied by the court *a quo* via its Order dated October 18, 2013 (the second assailed order) which likewise considered that the presentation of hostile witnesses as waived for alleged failure of petitioner to submit the required judicial affidavits. Thus, petitioner is now before Us via the instant petition raising the following issues:

I.

THE HONORABLE RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S MANIFESTATION WITH EARLIER REQUEST FOR SUBPOENA ON THE GROUND THAT NEIL ALVARAN AND AGNES CASTELLANES, BEING HOSTILE WITNESSES, CANNOT BE SUBPOENAED UNDER SECTION 5 OF THE JUDICIAL AFFIDAVIT RULE.

II.

THE HONORABLE RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF