

## SECOND DIVISION

[ G.R. No. 199070, April 07, 2014 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. VICENTE R. ESPINOSA AND LINDSEY BUENAVISTA, RESPONDENTS.**

**[G.R. NO. 199237]**

**RAMON CAESAR T. ROJAS FOR HIMSELF AND AS REPRESENTATIVE OF THE HEIRS OF RAMON ROJAS JR., PETITIONERS, VS. VICENTE R. ESPINOSA PROMULGATED: AND LINDSEY BUENAVISTA, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Before this Court are consolidated petitions for review filed under Rule 45 of the Rules of Court assailing the following Resolutions of the Court of Appeals, Cebu City (CA-Cebu) in CA-G.R. SP No. 05617 entitled "*The People of the Philippines, et al. v. Judge Florian Gregory D. Abalajon et al.*": (a) the Resolution dated 21 January 2011 dismissing the Petition for Certiorari (under Rule 65) dated 14 December 2010;<sup>[1]</sup> and (b) the Resolution dated 3 October 2011 denying the Motion for Reconsideration dated 24 February 2011 filed by the People of the Philippines.<sup>[2]</sup>

G.R. No. 199070 was filed by the People of the Philippines (petitioner) represented by the Office of the Solicitor General (OSG), while G.R. No. 199237 was filed by Ramon Caesar T. Rojas, for himself and as representative of the heirs of Ramon Rojas, Jr. (private complainants).

#### The Facts

On 22 May 2008, Ramon Rojas, Jr. (Rojas), the former Vice-Mayor of Ajuy, Iloilo, was shot and killed in Sitio Casamata, Iloilo. Rojas was jogging with Armando Nacional (Nacional) when they met two assailants riding a motorcycle. Rojas was shot several times resulting in his death. Nacional later testified that Edgar Cordero (Cordero) shot Rojas while Dennis Cartagena (Cartagena) drove the motorcycle.<sup>[3]</sup>

On 26 May 2008, the Ajuy Municipal Police Office filed a Complaint for Murder against Cordero and Cartagena in the Iloilo Provincial Prosecutor's Office, which was docketed as I.S. No. 2008-835.<sup>[4]</sup>

After examining the testimonies of additional witnesses, the Ajuy Municipal Police Office filed a second complaint on 2 June 2008 which included Vicente Espinosa alias

“Bulldog” and Lindsey Buenavista alias “Bebe” (respondents).

Espinosa filed his Counter-Affidavit on 27 June 2008, denying any involvement in the killing.<sup>[5]</sup> In his Counter-Affidavit dated 30 June 2008, Buenavista also claimed that he did not participate in the killing.<sup>[6]</sup>

On 11 July 2008, Renyl Iran, who claimed to be a former bodyguard/helper of Espinosa, executed an affidavit stating that he personally heard Cartagena, Buenavista and other members of Espinosa’s staff planning the murder of several Ajuy government officials. According to Iran:

[o]n May 27, 2007, at around 9:00 in the evening, [he] was inside the compound serving beer to Vicente Espinosa, “Aldan” Padilla and “Eddie” Aguillon (Barangay Kagawad and Barangay Secretary of Barangay Lanjagan, Ajuy, Iloilo). Also drinking with them were Dennis Cartagena alias “Totong” and Lindsey Buenavista alias “Bebe” who acted as bodyguards of Vicente Espinosa during the last elections. Vicente Espinosa, “Aldan” Padilla and “Eddie” Aguillon were talking about the last elections and how they could get even at the group of Mayor Juancho Alvarez and Vice-Mayor Ramon Rojas, Jr. Then, as [Iran] was leaving their table after serving them beer, [he] clearly heard Vicente Espinosa telling “Aldan” Padilla and “Eddie” Aguillon “Ipatumba naton sila. Unahon ta si Vice Ramon” (Let’s eliminate them. Let’s get Vice Ramon first.) Then [Iran] [also] heard Vicente Espinosa [say] “Ti ano Bebe kag Totong, kaya nyo si Vice” (How about it “Bebe” and “Patong”, can you do it to Vice?);

x x x x

In the evening of June 30, 2007 at the compound, [Iran] noticed that Vicente Espinosa was angry. Then suddenly he called me and asked “Kaya mo patyon si Juancho?” (Can you kill Juancho?), to which [Iran] answered “Noy, maluoy ka man, pangita-i lang sang iban dira. Indi ko kaya.” (Noy, have pity, just look for other persons. I can’t do it.) Vicente Espinosa then ordered me to [light] some “pwitis” (pyrotechnic rockets) and aim them at the house of Juancho Alvarez which is just 200 meters away from the compound. As [Iran fired] the rockets towards the house of Juancho Alvarez x x x Vicente Espinosa was laughing and enjoying[.]<sup>[7]</sup>

The Iloilo Provincial Prosecutor’s Office recommended the filing of an Information for Murder against Cordero and Cartagena, but dismissed the case against respondents in its Resolution dated 12 August 2008. The Iloilo Provincial Prosecutor’s Office found that there was no probable cause against respondents:

The evidence submitted falls short of the quantum of proof required for a finding of probable cause against Vicente Espinosa and Lindsey Buenavista. Indeed, it is painful and heartbreaking for the Rojas family, however, the law must at all times be sustained. All doubts must be resolved in favor of the accused. The possibility of the guilt of Vicente

Espinosa and Lindsey Buenavista is not being ruled out, but the principle that [the] “insufficiency of evidence must be resolved consistent with the theory of innocence.”<sup>[8]</sup>

Thus, the private complainants filed a petition for review with the Secretary of Justice on 25 August 2008. The petition claimed that the Iloilo Provincial Prosecutor’s Office gravely erred in:

1. resolving the preliminary investigation based on degree of “proof beyond reasonable doubt” rather than degree of proof to establish “probable cause” against the appellees;
2. holding that the evidence of the appellants are purely circumstantial or indirect evidence;
3. refusing to give due credence to the straightforward, candid, positive and, most importantly, un rebutted declarations of the appellants’ witnesses, manifesting a clear bias in favor of appellees Vicente Espinosa and Lindsey Buenavista; and
4. finding no probable cause against appellees Vicente Espinosa and Lindsey Buenaventura.<sup>[9]</sup>

Meanwhile, the Information for Murder was filed with the Regional Trial Court, Branch 66, Barotac Viejo, Iloilo (RTC-Branch 66), which was docketed as Criminal Case No. 2008-4303.<sup>[10]</sup> The RTC-Branch 66 also issued warrants of arrest against Cordero and Cartagena.

On 29 August 2008, a group of armed assailants shot Cartagena and Cordero. While Cartagena survived, Cordero died of gunshot wounds. Cartagena was arrested and turned over to the custody of Col. Ricardo Delapaz, Iloilo Philippine National Police Provincial Director. Thereafter, he was brought back to Iloilo City.

In his sworn statement<sup>[11]</sup> dated 4 September 2008, Cartagena admitted that he was involved in the killing of Rojas. Cordero shot Rojas while Cartagena drove the motorcycle. He also claimed that Espinosa paid him and Cordero for killing Rojas. Cartagena stated:

21. Can you tell me the reason why you and Edgar Cordero shot Vice Mayor Rojas?

Because Vicente “Etik” Espinosa alias “Bulldog” of Barangay Lanjagan, Ajuy, Iloilo paid us[.]

22. Do you really know Vicente “Etik” Espinosa alias “Bulldog”?

Yes. Because I was one of his bodyguards during the elections in May 2007.

23. You said that you are only one of his bodyguards. [D]o you know his other bodyguards?

Yes. They are Rey Peña, Lindsey Buenavista alias "Bebe" and certain alias "Remy".

x x x x

26. When did Vicente "Etik" Espinosa tell you to murder Vice Mayor Rojas?

Sometime after the end of the election[s] in May 2007.<sup>[12]</sup>

Cartagena also claimed that it was Buenavista who shot and killed Cordero on 29 August 2008.<sup>[13]</sup>

While the petition for review filed by the private complainants was pending, former Secretary of Justice Raul M. Gonzales issued Department Order No. 360 on 14 May 2009 which created a panel of state prosecutors acting as Provincial Prosecutor to conduct a new preliminary investigation of the Complaint for Murder filed against Cordero and Cartagena.<sup>[14]</sup>

In its Resolution dated 9 October 2009, the panel found probable cause for Murder against respondents. Espinosa then filed a Motion for Reconsideration.

On 12 October 2009, this Court granted petitioners' Urgent Petition for Change of Venue in Criminal Case No. 2008-4303 and ordered the immediate transfer of the case from RTC-Branch 66 to the RTC-Branch 38, Iloilo City (RTC-Branch 38).<sup>[15]</sup>

On 24 February 2010, former Secretary of Justice Agnes VST Devanadera dismissed the private complainants' Petition for Review. The Resolution stated that in view of the panel's finding that there is probable cause to charge respondents with Murder, the Petition for Review was now moot.

In accordance with the Resolution dated 24 February 2010, then Acting Secretary of Justice Alberto C. Agra issued Department Order No. 409 directing the Regional State Prosecutor of Iloilo, who was designated as Acting Provincial Prosecutor, to "file an amended information for murder in Criminal Case No. 2008-4303, entitled People of the Philippines vs. Dennis Cartagena and Edgar Cordero."<sup>[16]</sup> Thus, on 14 July 2010, the Regional State Prosecutor, Region VI, filed with the RTC-Branch 38 an Amended Information for Murder in Criminal Case No. 2008-4303.

On 16 July 2010, Espinosa filed a Motion for Judicial Determination of Probable Cause.<sup>[17]</sup> According to Espinosa:

x x x the sworn statement of Dennis Cartagena x x x is only admissible against Cartagena and not against his co-accused or co-respondent. x x x [T]he exclusionary rule on admission and on confession as provided for

under Section[s] 30 and 33 of the Rules of Court can be invoked during the preliminary investigation and reinvestigation of a case.

x x x x

x x x [T]he panel of investigators overstretched their authority and showed manifest partiality and bias, when in resolving the Motion for Reconsideration filed by respondent Espinosa, they took in consideration the affidavits of Renyl Iran and Fidel Lavega. Said affidavits were never submitted to the Panel by either party to form part of their evidence. The affiants were not even called to affirm their statements.<sup>[18]</sup>

Judge Florian D. Abalajon (public respondent) issued the questioned Order dated 12 August 2010 dismissing the Amended Information against respondents. According to the RTC, "standing alone, the Extra-Judicial Confession of accused Dennis Cartagena as against his co-accused Vicente Espinosa and Lindsey Buenavista is inadmissible and considered hearsay against them."<sup>[19]</sup>

The RTC applied the *res inter alios acta* rule under Section 30, Rule 130 of the Rules of Court:

*Admission by a Conspirator* – The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence after the conspiracy is shown by evidence other than such act or declaration.

The RTC explained that:

x x x In order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that:

- a.) The conspiracy must first be proved by evidence other than the admission itself;
- b.) The admission relates to the common object; and
- c.) It has been made while the declarant was engaged in carrying out the conspiracy.

x x x x

Considering that the extrajudicial confession of accused Dennis Cartagena is not corroborated by independent evidence, it is therefore inadmissible and it would be unfair to hold accused Vicente Espinosa and Lindsey Buenavista for trial. Cartagena's confession is binding only on him and is not admissible against his co-accused Vicente Espinosa and Lindsey Buenavista. By the rule, his confession is considered hearsay against his x x x co-accused.<sup>[20]</sup>