

SECOND DIVISION

[G.R. NO. 161330, February 20, 2007]

**RENE CABARLES, PETITIONER, VS. HON. JUDGE BONIFACIO
SANZ MACEDA AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

QUISUMBING, J.:

In an original action filed under Rule 65 of the 1997 Rules of Civil Procedure, petitioner Rene Cabarles seeks to annul the Order^[1] issued by respondent Judge Bonifacio Sanz Maceda in Criminal Case No. 99-0878, entitled *People of the Philippines v. Rene "Nonoy" Cabarles y Adizas*, for murder, filed with the Regional Trial Court of Las Piñas City, Branch 275. The questioned Order dated April 1, 2003 cancelled the scheduled promulgation of judgment and reopened the case for reception of evidence from two prosecution witnesses who were not presented during trial.

The facts of the case are as follows:

On June 18, 1999, Cabarles was charged with murder under the following information:

The undersigned Prosecutor II accuses *RENE "NONOY" CABARLES Y ADIZAS* of the crime of **Murder**, committed as follows:

That on or about the **25th** day of **April, 1999**, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without justifiable motive with intent to kill and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and stab with a deadly weapon (fan knife) one **Antonio Callosa**, which directly caused his death.

CONTRARY TO LAW.^[2]

Cabarles pleaded not guilty. The trial court scheduled the case for hearing on the following dates, to wit: pre-trial on November 22, 2000; presentation of prosecution's evidence on April 18, May 4, 11, 18, and 23, 2001; and presentation of defense evidence on June 20 and 27, July 4 and 18, and August 1, 2001.^[3]

The prosecution had subpoenas issued to its witnesses: Flocerfina Callosa, the mother of the deceased; Imelda Pedrosa, the alleged eyewitness; Carlos Callosa, brother of the deceased; and Dr. Romeo T. Salen, Police Senior Inspector of the Southern Police District (SPD) Crime Laboratory to testify on the contents of the

death certificate of Antonio Callosa.

Through no fault of its own, the prosecution was unable to present its evidence on the first four hearing dates. Instead, trial on the merits began only on May 23, 2001 when the prosecution called Carlos Callosa to the witness stand. Since defense counsel agreed to stipulate that Carlos would testify on matters in his May 13, 1999 *Sinumpaang Salaysay*, his testimony was dispensed with.

The second prosecution witness, Police Inspector Prudencio Parejos, was presented in court during the June 20, 2001 hearing. His testimony was likewise dispensed with after defense counsel agreed to stipulate that Police Inspector Parejos would testify on what was in the spot report of the stabbing incident. In the June 20, 2001 hearing, the prosecution said it would offer its evidence and rest its case should the People fail to present a witness at the next scheduled hearing.^[4]

When the case was called on June 27, 2001, the prosecution failed to present a witness. Neither Pedrosa nor Dr. Salen appeared during the said hearing. Records show that four subpoenas were issued to Pedrosa informing her that she had to appear on November 22, 2000,^[5] April 11^[6] and 18,^[7] May 11 and June 20,^[8] and August 1, 2001.^[9] The first subpoena was personally received by her; the second subpoena by her husband, Salvador Pedrosa; and the third and fourth subpoenas had no proofs of service. Meanwhile, the three subpoenas issued to Dr. Salen requiring his attendance on May 11^[10] and 23,^[11] June 20,^[12] and August 1, 2001,^[13] were all returned with the notation "*addressee moved.*" There was no evidence, however, that subpoenas were issued to these two witnesses requiring their attendance for the June 27, 2001 hearing, which would explain why they were absent. Taking into consideration the absence of a subpoena issued to Pedrosa and Dr. Salen and notwithstanding the vehement objection registered by Cabarles, Judge Maceda gave the prosecution a last chance but warned:

... It is however understood whether the subpoena is actually issued and served or not upon the prosecution witnesses and service of such subpoena or notice will not relieve (sic) the prosecution to make a formal offer of evidence should the prosecution failed (sic) to present any witness in the next scheduled hearing.^[14]

With no witness for the August 1, 2001 hearing, the prosecution rested its case and formally offered its evidence.^[15]

Thereafter, Cabarles, with leave of court, filed a demurrer to evidence but it was denied by Judge Maceda.^[16] Two witnesses were called for the defense, accused Cabarles and Luisito Javier, a fisherman.

A day before the scheduled promulgation of judgment on April 2, 2003, Judge Maceda *motu proprio* issued the questioned order reopening the case. In it, he observed that the prosecution may not have been given its day in court resulting in a miscarriage of justice. He explained that because there was a mix-up in the dates specified in the subpoena and the hearing dates of when the case was actually heard, the prosecution was unable to present its evidence on the first four of the five hearing dates: April 18, May 4, 11 and 18, 2001 assigned to it. Judge Maceda found that there was no hearing conducted on April 18, 2001. Thereafter, the

subpoena issued to Pedrosa required her to appear on April 11, 2001, which was not a date assigned for the prosecution but May 11, 2001. Also, Judge Maceda noted that another subpoena was issued to Pedrosa and Dr. Salen requiring them to appear on May 11 and June 20, 2001. But, the May 11, 2001 hearing was reset to May 25, 2001 because the judge was indisposed, and insofar as the June 20, 2001 setting was concerned, it was not one of the days set by the court for the prosecution. Judge Maceda further observed that the May 18, 2001 hearing was never scheduled and May 25, 2001 was likewise not a hearing date set by the court. According to Judge Maceda, since the prosecution was not able to present its evidence on the first four hearing dates and there was either no return on the subpoenas subsequently issued or there was no subpoena issued at all to Pedrosa and Dr. Salen, the prosecution should have been given a last chance to present the alleged eyewitness and the doctor. His order in part read:

... As a consequence[,] the promulgation set tomorrow, April 2, is canceled. Set the reception of the testimony of the eye witness and the doctor on May 1, 2003 at 2:00 [p.]m. to enable the prosecution to avail [of] the last chance granted by this Court.

Issue the corresponding subpoena to Imelda Pedrosa and Dr. Romeo T. Salen directing them to appear on the aforesaid date and time, to be served by the Branch Sheriff who is required to make a prompt return thereof.

SO ORDERED.^[17]

Judge Maceda denied Cabarles's motion for reconsideration in an Order dated April 25, 2003 and set the case for hearing on May 8, 2003 to hear the testimonies of Pedrosa and Dr. Salen. The subpoena issued to Pedrosa for that hearing was duly served,^[18] but service upon Dr. Salen failed since the doctor was no longer assigned to the SPD Crime Laboratory. Notwithstanding the service upon Pedrosa, the prosecution still failed to present a witness during the May 8, 2003 hearing. Nonetheless, Judge Maceda, upon motion, again decided to extend to the prosecution another chance, giving the People June 19 and July 3, 2003 as additional hearing dates.^[19]

Finally, on June 19, 2003, Pedrosa took the witness stand and completed her direct examination. A few days thereafter, Cabarles filed the present petition questioning Judge Maceda's order, alleging that it was issued with grave abuse of discretion. Since trial in the lower court continued, on July 3, 2003, the Public Attorney's Office conducted its cross-examination of Pedrosa.

On July 24, 2003, the defense counsel agreed on the facts contained in the death certificate of the victim, so the testimony of Dr. Salen was dispensed with. Thereafter, Judge Maceda set the date for the reception of evidence on the civil aspect of the criminal case on August 14, 2003, when Carlos, the deceased's brother, was recalled to the witness stand.^[20]

Cabarles was then given a chance to adduce further evidence on his behalf.

On August 9, 2004, Judge Maceda deferred the promulgation of judgment and

ordered the case archived pending this Court's resolution of the case.^[21]

In his petition, Cabarles raises as issues the following:

[1] WHETHER THE RESPONDENT HONORABLE JUDGE GRAVELY ABUSED HIS DISCRETION WHEN HE ISSUED THE QUESTIONED ORDER DESPITE THE ABSENCE OF A FINAL JUDGMENT OF CONVICTION.

[2] WHETHER PETITIONER'S RIGHT TO DUE PROCESS AND SPEEDY DISPOSITION OF HIS CASE WAS VIOLATED.^[22]

Did Judge Maceda act with grave abuse of discretion in issuing *motu proprio* the April 1, 2003 Order reopening the case, before judgment was rendered, to receive the testimonies of two prosecution witnesses after both parties had rested their case? Did the said order violate Cabarles's right to due process and speedy disposition of his case?

On the first issue, Cabarles insists that Judge Maceda gravely abused his discretion when he ordered the reopening of the case before promulgation of judgment although both parties had already rested their case. Cabarles argues that a case may only be reopened after a judgment of conviction has been made but before its finality, as provided in Section 24,^[23] Rule 119 of the Revised Rules of Criminal Procedure. Cabarles insists that the reopening of a case under Section 24 presupposes that judgment has already been promulgated, which is not the case here. According to petitioner, the cases cited by the People are not at all applicable in this case since they were tried and decided before the introduction of Section 24 under the Revised Rules of Criminal Procedure.

For Judge Maceda, the Office of the Solicitor General (OSG) contends that Section 24 is a new provision which merely formalized the long accepted practice of judges of reopening a case to avoid a miscarriage of justice. This being the case, jurisprudence providing that a judge has the discretion to reopen a case even before promulgation of judgment still holds.

After a thorough consideration of the submissions by the parties, we find that the petition is meritorious.

A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage.^[24] This lack of a specific provision covering motions to reopen was remedied by the Revised Rules of Criminal Procedure which took effect on December 1, 2000.

The April 1, 2003 Order was issued under the Revised Rules of Criminal Procedure. Section 24, Rule 119 and existing jurisprudence stress the following requirements for reopening a case: (1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.

Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears.^[25] A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered,^[26] and even after promulgation but before finality of judgment^[27] and the only controlling guideline governing a motion to reopen is the paramount interest of justice.^[28] This remedy of reopening a case was meant to prevent a miscarriage of justice.^[29]

However, while Judge Maceda is allowed to reopen the case before judgment is rendered, Section 24 requires that a hearing must first be conducted. Judge Maceda issued the April 1, 2003 Order without notice and hearing and without giving the prosecution and accused an opportunity to manifest their position on the matter. This failure, to our mind, constitutes grave abuse of discretion and goes against the due process clause of the Constitution which requires notice and opportunity to be heard.^[30] The issuance of the said order, without the benefit of a hearing, is contrary to the express language of Section 24, Rule 119.

Although the defense counsel had cross-examined Pedrosa and had participated in the proceedings after the case was reopened by Judge Maceda, the same does not amount to a waiver of Cabarles's objection to the April 1, 2003 Order. To be effective, a waiver must be certain and unequivocal.^[31] Here, Cabarles filed the present petition seeking for a writ of certiorari against Judge Maceda before Pedrosa was cross-examined. Also, when asked to comment on the prosecution's formal offer of evidence taken after the case was reopened, Cabarles objected to its admission on the ground that the same was inadmissible having been received by the court after Judge Maceda issued the questioned order.

On the second issue, Cabarles maintains that contrary to Judge Maceda's observation, the prosecution was given ample opportunity to present its case as seen by the issuance of several subpoenas to Pedrosa and Dr. Salen. Cabarles argues that he is presumed innocent until proven guilty and should not be made to wait indefinitely for prosecution witnesses to testify. To do so would violate his constitutional right to due process and a speedy disposition of his case. According to Cabarles, the reopening of the case is clearly detrimental to him since it meant another day in prison.

The OSG counters that the reopening of the case was made in accordance with Section 24 since the prosecution is entitled to the reopening of the case to prevent a miscarriage of justice. Furthermore, Cabarles's right to a speedy trial had not been violated since delays caused by the absence of a prosecution witness are excluded when computing the time within which trial should start under Section 3,^[32] Rule 119 of the Revised Rules of Criminal Procedure.

Although the matter of reopening a case for reception of further evidence is largely a matter of discretion on the part of the trial court judge, this judicial action must not, however, be done whimsically, capriciously and/or unreasonably.^[33] In this particular case, the prosecution was given ample opportunity to present all its