

SECOND DIVISION

[G.R. No. 148000, February 27, 2003]

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE PATERNO V. TAC-AN (IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, FOURTH JUDICIAL REGION, BRANCH 84, BATANGAS CITY) AND MARIO N. AUSTRIA, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on certiorari of the decision^[1] of the Court of Appeals in CA-G.R. No. 61535 (SP) dismissing the petition for certiorari filed by petitioner for the nullification of the Order^[2] dated August 1, 2002 and the subsequent Order^[3] denying the motion for reconsideration issued by the Regional Trial Court, Branch 84 of Batangas City in *People vs. Mario Austria*, docketed as Criminal Case No. 10766.

On February 22, 2000, an Information^[4] was filed by the Office of the City Prosecutor of Batangas City against Mario N. Austria for falsification of public official document. The Information reads:

That on or about June 2, 1999 at Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, he being the Officer-in-Charge Provincial Warden of the Batangas Provincial Jail located at Brgy. Cuta Bilibid, Batangas City, and taking advantage of his official position, did then and there wilfully, unlawfully and feloniously falsify a Memorandum Receipt for Equipment Semi-Expendable and Non-Expendable Property, a public/official document of the Office of the Provincial Warden of Batangas, by stating in said memorandum receipt dated June 2, 1999 that Colt MKIV Series '80 Government Model, Pistol Cal. .380 SN-26917 with 40 rounds of ammunitions, is a provincial government property duly registered with the Firearms and Explosives Unit, Batangas PNP Command, Kumintang Ilaya, Batangas City, and issued to Mr. Alberto Tesoro, Civilian Agent, for his own use in connection with the performance of his official duties and functions, when in truth and in fact said statements are absolutely false when he has the legal obligation to disclose the truth, as said firearm is not a property of the Provincial Government of Batangas; that it is not registered with the Firearms and Explosives Units of Batangas PNP Command, Batangas City and Camp Crame, Quezon City; and that Alberto Tesoro is not an employee of the Provincial Government of Batangas, to the damage and prejudice of public interest.

CONTRARY TO LAW.

The following were listed in the Information as witnesses for the People of the Philippines, and their respective addresses/places of station/assignment were also indicated therein:

1. SPO3 Gaudencio C. Aguilera, Malvar Police Station, Malvar, Batangas;
2. SPO2 Simplicio M. Bejasa, - do -
3. PG2 Sofronio Vicencio, c/o Provincial Jail, Brgy. Cuta Bilibid, Batangas City;
4. SPO4 Benjamin Geron, Batangas Provincial Police Office, Camp Malvar, Kumintang Ilaya, Batangas City;
5. PCI Franklin Moises, Mabanag, -do-
6. PCI Jonathan Viernes Ablang, -do-
7. PCI Edwin G. Nemenzo, Firearms and Explosives Unit, Camp Crane (sic), Quezon City – RE: Verification dated September 30, 1999.
8. P/Inspector Anacleto Cultura, PNP Regional Crime Laboratory Office IV, Camp Vicente Lim, Calamba, Laguna – RE: Document Examination Report No. DE-014-99 dated October 29, 1999;
9. Miguel C. Malvar III, General Services Office, Batangas Capitol, Batangas City;
10. Augusto M. Claveria, Office of the Provincial Administrator, Batangas Capitol, Batangas City
11. Personnel Officer, Office of the Provincial Governor, Batangas Capitol, Batangas City – RE: Appointment of Mario N. Austria as OIC, Provincial Warden from January 1999 to June 2, 1999;

xxx.^[5]

The trial court set the arraignment of the accused and the initial pre-trial on August 1, 2000.^[6] Apparently, out of the eleven witnesses listed in the Information, only the first three witnesses were notified of said arraignment and pre-trial. When the case was called for pre-trial, the trial court discovered that none of the three witnesses who were allegedly earlier notified by the court was in attendance. On motion of the accused and over the objection of the public prosecutor, the trial court issued an order dismissing the case for failure of said witnesses to appear before it. The bail bond posted by the accused for his provisional liberty was thereby cancelled. The public prosecutor filed a motion for reconsideration of said order, contending that the trial court acted arbitrarily and capriciously when it dismissed the case simply because three of its witnesses who were notified failed to appear at the initial pre-trial. The public prosecutor asserted that it had eleven witnesses but only three were subpoenaed by the trial court. He argued further that the dismissal of the case was not authorized under Republic Act No. 8493.^[7] The trial court issued an order denying the motion for reconsideration of the public prosecutor.

The trial court posits that under R.A. No. 8493 pre-trial is mandatory and the presence of the complaining witnesses is likewise required during the trial for the parties to participate in the plea bargaining and stipulation of facts during said proceedings. If the complaining witnesses are absent, the principal purpose of the pre-trial cannot be achieved. It was incumbent on the public prosecutor to procure the attendance of its witnesses for the pre-trial but this, he failed to do. The trial court stated that there were instances in the past when the public prosecutor manifested to the trial court that it had no witness for the pre-trial and moved for

the dismissal of criminal cases. The trial court contended that if the dismissal of the case was precipitate, it was the fault of the public prosecutor and not the trial court:

The prosecution filed a Motion for Reconsideration to the Order dated August 1, 2000 which dismissed this case during the arraignment and pre-trial due to the non-appearance of the complaining witnesses, namely SPO3 Gaudencio C. Aguilera and SPO2 Simplicio M. Mejasa as well as Sofronio Vicencio, despite notice. Material witness Sofronio Vicencio who had to identify the alleged falsified document also was not present for the reason that he was already not connected with the Batangas Provincial Jail where he used to be a provincial jailer. He could not be contacted anymore.

Section 2 of Republic Act No. 8493 provides, Mandatory Pre-trial in Criminal Cases. In all criminal cases cognizable by the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Regional Trial Court and the Sandiganbayan, the justice or judge shall, after arraignment, order a pre-trial conference to consider the following:

- (a) Plea bargaining;
- (b) Stipulation of Facts;
- (c) Marking for identification of evidence of parties;
- (d) Waiver of objections to admissibility of evidence;
and
- (e) Such other matters as will promote a fair and expeditious (sic) trial.

It is evident that the presence of the complaining witnesses is likewise mandatory because they have to participate in the plea bargaining and the stipulation of facts.

Upon motion of the accused on the ground that the presence of the complaining witnesses is likewise mandatory and that the accused is entitled to speedy trial, the Court was compelled to dismiss the case. Said dismissal is neither capricious and precipitate. The prosecution must likewise endeavor to secure the presence of its complaining witnesses or any witnesses by any form of communication such as telephone, telegram, or letter. That is the essence of vigorous and adequate prosecution. In fact prosecutors must interview their witnesses before the trial or before the hearing in Court. There were instances in the past when the trial prosecutor manifested to the Court that it had no witnesses and moved for the dismissal of the case during arraignment and pre-trial. Experience showed that in such cases, prolonging the case was an exercise in futility. If it was precipitate, then the prosecution had committed it.^[8]

The People of the Philippines, through the Office of the Solicitor General, filed a petition for certiorari with the Court of Appeals under Rule 65 of the 1997 Rules of Criminal Procedure, as amended, for the nullification of the orders of the trial court. The People alleged that the trial court acted without jurisdiction or with grave abuse of discretion amounting to excess or lack of jurisdiction in ordering the dismissal of the case and denying its motion for reconsideration.