

## TWELFTH DIVISION

[ CA-G.R. SP NO. 132221, November 28, 2014 ]

**RONALDO ALDANA, REPRESENTED BY HIS ATTORNEY-IN-FACT, ALICIA ALDANA, PETITIONER, VS. HON. MATIAS M. GARCIA II, AS PRESIDING JUDGE OF BRANCH 19, REGIONAL TRIAL COURT OF BACOR, PEOPLE OF THE PHILIPINES, AND RODERICK MACKAY, RESPONDENTS.**

### D E C I S I O N

**DIMAAMPAO, J.:**

Via this *Petition for Certiorari*,<sup>[1]</sup> petitioner fulminates against the *Order*<sup>[2]</sup> dated 14 August 2013 of the Regional Trial Court (RTC), Fourth Judicial Region, Bacoor, Branch 19 in Crim. Case No. B-2004-1063, the full text of which is quoted hereunder:

"When this case was called for trial, Private Pros. Atty. Michael Vernon Guerrero presented accused Joy Dawa as a hostile witness in order to qualify her as a state witness.

Considering that it's already 12:20 noon when her direct testimony was finished, Atty. Nichole Gonzales, counsel for accused Ronald Aldana, will conduct his cross-examination questions on said witness on the next scheduled hearing.

WHEREFORE, set the cross-examination of accused Joy Dawa on NOVEMBER 14, 2013, and additional setting will be on DECEMBER 05, 2013, both at 2:00 o'clock in the afternoon.

SO ORDERED."<sup>[3]</sup>

The precursor facts are not in dispute.

Petitioner Ronaldo Aldana was charged with the crime of *Parricide* for allegedly killing his wife Charlotte Mackay Aldana on 6 November 2004 inside their house in Cavite. Joy Dawa (Dawa), the housemaid of petitioner and the deceased victim, was also indicted as an accomplice in the commission of the crime.

While the case was on trial, the prosecution filed an *Omnibus Motion to Discharge accused Joy Dawa as a State Witness and Motion to Present her as Witness for the Hearing on the Petition for Bail*.<sup>[4]</sup> In its Order dated 7 December 2011, the court *a quo* deferred the resolution of the said *Motion* and instead set the date for the presentation of Dawa to qualify herself as a state witness. On 14 August 2013, the

court *a quo* allowed Dawa to testify notwithstanding the opposition interposed by petitioner. In the same breath, petitioner's oral motion for reconsideration was denied.

Unfazed, petitioner is now before Us raising this solitary ground—

**GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE PUBLIC RESPONDENT WHEN HE ISSUED THE ASSAILED ORDERS DURING THE 14 AUGUST 2013 HEARING.**

***The Petition is barren of merit.***

The issue in this case is not a hard row to hoe— Did the court *a quo* gravely abuse its discretion when it allowed Dawa to testify as a hostile witness sans her judicial affidavit?

*We answer in the negative.*

"Grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose.<sup>[5]</sup> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.<sup>[6]</sup> Mere abuse of discretion is not enough.<sup>[7]</sup>

In the case at bench, We discern no grave abuse of discretion on the part of the court *a quo* when it approved the prosecution's plea to allow Dawa to take the witness stand notwithstanding the non-submission of her judicial affidavit prior to the scheduled hearing. Section 9(a) of SC A.M. No 12-8-8 explicitly provides that a judicial affidavit is required in criminal actions where the maximum imposable penalty does not exceed six years—

"Sec. 9. *Application of rule to criminal actions.*—

(a) This rule shall apply to all criminal actions:

- (1) Where the maximum of the imposable penalty does not exceed six years;
- (2) Where the accused agrees to the use of judicial affidavits, irrespective of the penalty involved; or
- (3) With respect to the civil aspect of the actions, whatever the