Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MANUEL J. JIMENEZ, JR.,
Petitioner,

G.R. No. 209195

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

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PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. No. 209215

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
VILLARAMA, JR.,* and
LEONEN, *JJ.*

- versus -

Promulgated:

MANUEL J. JIMENEZ, JR.,
Respondent.

SEP 17 2014

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DECISION

BRION, *J.*:

Before the Court are two consolidated petitions for review on *certiorari* filed under Rule 45 of the Rules of Court, assailing the amended decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 121167 entitled *Manuel J. Jimenez, Jr. v. Hon. Zaldy B. Docena et al.*

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* Designated as Acting Member in lieu of Associate Justice Jose C. Mendoza, per Special Order No. 1767 dated August 27, 2014.

[1] The Decision's original *ponente*, Justice Agnes Reyes-Carpio, denied the OSG's motion for reconsideration, which denial was concurred in by Justice Priscilla J. Baltazar-Padilla. The *ponencia* of the Amended Decision, Justice Jose Reyes, dissented prompting the designation of two additional members, Hon. Associate Justices Celia C. Librea-Leagogo and Melchor Quirino C. Sadang, chosen by raffle, to form a

The CA did not find any grave abuse of discretion on the part of the Regional Trial Court (RTC Branch 170, Malabon) Judge Zaldy B. Docena *(Judge Docena)* in issuing the order which granted the People of the Philippines' motion to discharge Manuel A. Montero *(Montero)* as a state witness in Criminal Case No. 39225-MN.

The *G.R. No. 209195* petition was filed by Manuel J. Jimenez, Jr. *(Jimenez).* He prays in this petition for the reversal of the CA's amended decision insofar as it ruled that Judge Docena did not gravely abuse his discretion in issuing the assailed order.

The *People* likewise filed its petition, docketed as *G.R. No. 209215.* This petition seeks to reverse the amended decision of the CA insofar as it ordered the re-raffle of the criminal case to another RTC judge for trial on the merits.

The Factual Antecedents

On May 18, 2009 and June 11, 2009, Montero (a former employee of the BSJ Company owned by the Jimenezes) executed sworn statements confessing his participation in the killing of Ruby Rose Barrameda *(Ruby Rose),* and naming petitioner Jimenez, Lope Jimenez (*Lope*, the petitioner Jimenez's younger brother), Lennard A. Descalso *(Lennard)* alias "Spyke," Robert Ponce *(Robert)* alias "Obet," and Eric Fernandez *(Eric)*, as his co-conspirators.[2]

The statements of Montero which provided the details on where the alleged steel casing containing the body of Ruby Rose was dumped, led to the recovery of a cadaver, encased in a drum and steel casing, near or practically at the place that Montero pointed to.[3]

On August 20, 2009, the People, through the state prosecutors, filed an Information before the RTC, charging Jimenez, Lope, Lennard, Robert, Eric and Montero of murder for the killing of Ruby Rose.[4]

Montero thereafter filed a motion for his discharge entitled *"Motion for the Discharge of the Witness as Accused Pursuant to the Witness Protection Program"* pursuant to Republic Act No. 6981. The People also filed a motion to discharge Montero as a state witness for the prosecution. Jimenez opposed both motions.[5]

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special division of five. With the concurrence of Justices Leagogo and Sadang with Justice Jose Reyes, a majority was reached and after consultation, Justice Jose Reyes was chosen to become the *ponente; rollo,* pp. 86, 95 of G.R. No. 209195.

2 Id. at 81.

3 Id. at 166 and 177.

4 *Supra* note 2.

5 Id.

The RTC's ruling

On March 19, 2010, the RTC's Acting Presiding Judge Hector B. Almeyda *(Judge Almeyda)* denied the motion to discharge Montero as a state witness.[6]

Judge Almeyda ruled that the prosecution failed to comply with the requirements of Section 17, Rule 119 of the Revised Rules of Criminal Procedure for the discharge of an accused as a state witness; it failed to clearly show that Montero was not the most guilty or, at best, the least guilty among the accused. The judge further ruled that Montero's statements were not corroborated by the other evidence on record. The prosecution, too, failed to present evidence to sustain the possibility of conviction against Jimenez.[7]

Montero and the People filed separate motions for reconsideration.

The July 30, 2010 order

On July 30, 2010, Judge Docena, the newly-appointed regular judge, reconsidered and reversed Judge Almeyda's order and ruled that the prosecution had presented clear, satisfactory and convincing evidence showing compliance with the requisites of Section 17, Rule 119 of the Revised Rules of Criminal Procedure.

According to Judge Docena, the crime would have remained undiscovered and unsolved had it not been for Montero's extrajudicial confession that narrated in detail the ***manner of the abduction*** and ***subsequent murder*** of Ruby Rose. As the crime was committed in secret, only one of the co-conspirators, such as Montero, could give direct evidence identifying the other coconspirators.

Judge Docena further ruled that Montero is qualified to be discharged as a state witness as he does not appear to be the most guilty although he is a principal by direct participation. The principals by inducement are more guilty because, without their orders, the crime would not have been committed. Finally, Montero has not been convicted of any crime involving moral turpitude.

Jimenez moved for the reconsideration of Judge Docena's ruling.[8]

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6 Id.
7 Id.
8 Id. at 82.

The December 29, 2010 order

During the pendency of the motion for reconsideration, Jimenez filed a motion for inhibition, praying that Judge Docena inhibit himself from hearing the case on the ground of bias and prejudice. Judge Docena denied the motion in his order of December 29, 2010.[9]

The June 29, 2011 order

On June 29, 2011, Judge Docena issued an omnibus order: 1) denying the petitioner's motion for reconsideration of the July 30, 2010 order; 2) denying the petitioner's motion for reconsideration of the December 29, 2010 order; and 3) granting Manuel Jimenez III's alternative motion to suspend the proceedings, as his inclusion in the Information was still pending final determination by the Office of the President.

Jimenez responded to these adverse rulings by filing with the CA a petition for *certiorari* under Rule 65 of the Rules of Court. The petition sought the annulment of Judge Docena's orders dated July 30, 2010, December 29, 2010, and June 29, 2011. The petition also prayed for the issuance of a temporary restraining order and a writ of preliminary injunction that the CA both granted in its resolutions of December 8, 2011 and February 6, 2012, respectively.[10]

The CA's Decision

On May 22, 2012, the CA's then Tenth Division, through the *ponencia* of Associate Justice Agnes Reyes-Carpio (concurred in by Associate Justice Jose C. Reyes, Jr. and Associate Justice Priscilla J. Baltazar-Padilla) rendered a decision granting Jimenez' petition.[11]

However, on motion for reconsideration filed by the People, the CA **reversed** its earlier ruling and issued an Amended Decision penned by Associate Justice Jose Reyes.

The CA's Amended Decision

The CA held that Judge Docena did not gravely abuse his discretion in ordering Montero's discharge to become a state witness because the prosecution had complied with the requirements of Section 17, Rule 119 of the Revised Rules of Criminal Procedure.[12]

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9 Id.
10 Id.
11 Id. at 84.
12 Id. at 86-87.

First, Judge Docena acted in accordance with settled jurisprudence when he ruled that there was absolute necessity for the testimony of Montero as no other direct evidence other than his testimony was available. Additionally, since the determination of the requirements under Section 17, Rule 119 of the Revised Rules of Criminal Procedure is highly factual in nature, Judge Docena did not commit grave abuse of discretion in largely relying on the recommendation of the prosecution to discharge Montero as a state witness.[13]

Furthermore, the CA agreed with Judge Docena that Montero is not the most guilty among the accused because the principals by inducement are more guilty than the principals by direct participation. To the CA, this finding is highly factual in nature and it would not interfere with the trial court's exercise of discretion on factual issues in the absence of showing that the court had acted with grave abuse of discretion.[14]

On Judge Docena's 'no inhibition' order, the CA held that while the case does not call for mandatory inhibition, it should still be raffled to another sala for trial on the merits to avoid any claim of bias and prejudice.[15]

The CA likewise dismissed the motion for the issuance of a show cause order which Jimenez filed against Judge Docena.[16]

Both Jimenez and the People moved for partial reconsideration of the CA's order but these motions were all denied.[17] The denials prompted both parties to file with this Court the present consolidated petitions for review on *certiorari*.

The Present Petitions

I. G.R. No. 209195 (The Jimenez Petition)

Jimenez raises the following errors:

First, there is no necessity to discharge Montero as a state witness because: *1)* the voluntary sworn extrajudicial confessions of Montero are all in the possession of the prosecution which they could readily present in court without discharging Montero; and *2)* there was unjust favoritism in the discharge of Montero because all the other conspirators are equally knowledgeable of the crime.[18]

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13 Id. at 88-90.
14 Id. at 90-92
15 Id. at 93.
16 Id.
17 Id. at 41-46.
18 Id. at 7-15.

Second, contrary to the CA's ruling, the judge, and not the prosecution, has the ultimate discretion in ensuring that the requirements under Section 17, Rule 119 are complied with.[19]

Third, the cases the CA cited are factually different from the present case. *Chua v. CA*[20] should not apply as it deals with two accused, one of whom was ordered discharged.[21]

Fourth, Montero's testimony cannot be substantially corroborated in its material points as the prosecution's own evidence contradicts his declarations.

These inconsistencies include: Montero's statement that a *"busal"* was placed inside the mouth of Ruby Rose; this statement is belied by the other prosecution witness; Montero also never mentioned the presence of a packaging tape wrapped around the head and neck of the recovered cadaver; in Montero's *sinumpaang salaysay*, he stated that Ruby Rose was killed by strangulation using a "*lubid*" but the death certificate stated asphyxia by suffocation and not by strangulation; the identification of the cadaver as Ruby Rose is likewise questionable as there are differences in the height, and the dental and odontological reports of Ruby Rose and the recovered cadaver.

Jimenez argued that these inconsistencies would require a thorough scrutiny; hence, the immediate discharge of Montero as a state witness is suspicious. [22]

Fifth, Montero appears to be the most guilty. He was the architect who designed and actively participated in all phases of the alleged crime.[23]

Jimenez further argued that there is no authority supporting the ruling that the principals by inducement are more guilty than the principal by direct participation. On the contrary, the Revised Penal Code imputes on the principal by direct participation the heavier guilt; without the latter's execution of the crime, the principal by inducement cannot be made liable. Even if the principal by inducement is acquitted, the principal by direct participation can still be held liable and not *vice-versa*.[24]

Sixth, the discharge of Montero was irregular because Judge Docena failed to conduct a prior hearing.[25]

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19 Id. at 11.
20 329 Phil. 841 (1996).
21 *Rollo*, p. 12-15 of G.R. No. 209195.
22 Id. at 15-20.
23 Id. at 20-28.
24 Id. at 28-32.
25 Id. at 33-35.

Finally, Montero already executed a notice of withdrawal of consent and testimony which was submitted to the CA.[26]

Comment of the People

The People argued that Jimenez is now estopped from raising the lack of hearing as an issue since he raised this issue only after Judge Docena granted the motion to discharge and not after Judge Almeyda denied the motion – an action that was favorable to him.[27]

It also argued that Jimenez actively participated in the proceedings for Montero's discharge as the trial court received evidence for and against the discharge. In this light, Judge Docena's order granting or denying the motion for discharge is in order, notwithstanding the lack of actual hearing.[28]

The People also agreed with the CA's amended ruling that the requirements for the discharge of an accused as a state witness were complied with.[29] It added that the availability of the extrajudicial statements in the prosecution's possession is not a ground to disqualify an accused from being a state witness.[30]

It further maintained that the alleged contradictions between Montero's statements and other prosecution's evidence are better resolved during trial and are irrelevant to the issues in the present case.[31]

For purposes of the present case, the material allegations of Montero on the identity of the victim and the manner of her killing were substantially corroborated by the presence of the recovered original steel casing, the drum containing a cadaver, the place where it was found, and the cadaver's apparel.[32]

The People observed that Montero had already testified on direct examination on June 28, 2011 and October 25, 2011. He attested and affirmed his statements in his affidavits dated May 18 and June 11, 2009; he narrated in his statements the murder of Ruby Rose and Jimenez' participation.[33]

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26 Id. at 35-36.
27 Id. at 313-315.
28 Id.
29 Id. at 307-309.
30 Id. at 315
31 Id. at 325-326.
32 Id at 322-324.
33 Id. at 328-331.

Reply of Jimenez

Jimenez reiterated his allegations in the comment. He added that Montero did not identify or authenticate his sworn statements in support of the motion for his discharge.[34]

According to Jimenez, the notice of withdrawal of consent and testimony of Montero rendered his discharge as a state witness moot and academic.[35]

II. G.R. No. 209215 (The People's Petition)

The People, through the Office of the Solicitor General, argue that the CA's order to re-raffle the case to another sala is not supported by Section 1, Rule 137 of the Rules of Court, either under mandatory or voluntary inhibition.[36]

To disqualify a judge from hearing a case, bias and prejudice must be proven, in the manner being done in cases of voluntary inhibition.[37]

Jurisprudence establishes, too, that affiliation does not necessarily translate to bias.[38] A judge's non-favorable action against the defense is not also necessarily indicative of bias and prejudice.[39]

Finally, the administrative case filed against Judge Docena is not a ground to disqualify him from hearing the case.[40]

Comment of Jimenez

The option for voluntary inhibition does not give judges unlimited discretion to decide whether or not they will desist from hearing a case. Jimenez enumerated Judge Docena's acts that allegedly constituted bias and prejudice:

First, Judge Docena granted the motion to discharge even though the legal requirements under Section 17, Rule 119 of the Revised Rules of Criminal Procedure were not factually and legally proven. He also relied on the suggestions and information of the prosecutors thereby surrendering his duty to ensure that the requirements for a discharge are duly complied with.

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34 Id. at 344-345.
35 Id. at 346-347.
36 *Rollo*, p. 24 of G.R. No. 209215.
37 Id. at 25.
38 Id. at 26.
39 Id. at 28.
40 Id. at 30.

Second, in a previous case where his fraternity brother appeared as counsel, Judge Docena inhibited himself from hearing the case. Thus, no reason exists for him not to similarly act in the present case where Jimenez is his fraternity brother and State Prosecutor Villanueva was his classmate.

Third, Judge Docena granted the prosecution's motion for cancellation of the September 29, 2011 hearing because the state prosecutor would be attending a legal forum. This was improper since other prosecutors were available and other prosecution witnesses could be presented.

Fourth, Judge Docena has an uncontrolled temper and unexplainable attitude. In Jimenez' bail hearing, Judge Docena immediately shouted at Jimenez' counsel when he made a mistake.[41]

The Issues

1) Whether or not the CA erred in ruling that Judge Docena did not commit grave abuse of discretion in granting the motion to discharge Montero as a state witness; and

2) Whether or not the CA erred in ordering the re-raffle of Criminal Case No. 39225-MN to another RTC branch for trial on the merits.

THE COURT'S RULING:

G.R. No. 209195

We agree with the CA's ruling that Judge Docena did not gravely abuse his discretion when he granted the motion to discharge Montero as a state witness.

The well-settled rule is that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is clear and patent. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.

Notably, mere abuse of discretion is not enough; the abuse must be grave. Jurisprudence has defined "grave abuse of discretion" as the capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty

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41 Jimenez' Comment, unnumbered pages.

enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[42]

We agree with the CA that the prosecution has complied with the requisites under Section 17, Rule 119 of the Revised Rules of Criminal Procedure which provides that:

> In the discharge of an accused in order that he may be a state witness, the following conditions must be present, namely:
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> (1) Two or more accused are jointly charged with the commission of an offense;
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> (2) The motion for discharge is filed by the prosecution before it rests its case;
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> (3) The prosecution is required to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge;
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> (4) The accused gives his consent to be a state witness; and
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> (5) The trial court is satisfied that:
>
> a) There is absolute necessity for the testimony of the accused whose discharge is requested;
>
> b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
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> c) The testimony of said accused can be substantially corroborated in its material points;
>
> d) Said accused does not appear to be the most guilty; and,
>
> e) Said accused has not at any time been convicted of any offense involving moral turpitude.

No issues have been raised with respect to conditions (1), (2), (4), and 5(e). The parties dispute the compliance with conditions (3) and 5(a) to (d) as the issues before us. We shall discuss these issues separately below.

Absolute necessity of the testimony of Montero

We see no merit in Jimenez's allegation that no absolute necessity exists for Montero's testimony.

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[42] *Tan v. Spouses Antazo*, 644 SCRA 337, 342 (2011).

Absolute necessity exists for the testimony of an accused sought to be discharged when he or she alone has knowledge of the crime. In more concrete terms, necessity is not there when the testimony would simply corroborate or otherwise strengthen the prosecution's evidence.[43]

We do not agree with Jimenez that the Court's pronouncement in *Chua v. CA et al.* is inapplicable in the present case simply because more than two accused are involved in the present case. The requirement of absolute necessity for the testimony of a state witness depends on the circumstances of each case regardless of the number of the participating conspirators.

In *People v. Court of Appeals and Perez et al.*,[44] the Court ordered the discharge of the accused Roncesvalles, ruling that his testimony is absolutely necessary to prove conspiracy with his other co-accused. The Court agreed with the Solicitor General that considering the circumstances of the case and that the other accused could not be compelled to testify, certain facts necessary for the conviction of the accused would not come to light unless the accused Roncesvalles was allowed to testify for the State. Specifically, unless accused Roncesvalles was allowed to testify for the government, there would be no other direct evidence available for the proper prosecution of the offense charged, particularly on the role of his co-accused in the preparation and completion of the falsified loan application and its supporting papers.

Similarly in *People v. Court of Appeals and Tan*,[45] the Court reinstated the ruling of the trial court which ordered the discharge of accused Ngo Sin from among the five accused. The record justified his discharge as a state witness considering the absolute necessity of his testimony to prove that the accused Luciano Tan had planned and financed the theft.

In the present case, not one of the accused-conspirators, except Montero, was willing to testify on the alleged murder of Ruby Rose and their participation in her killing. Hence, the CA was correct in ruling that Judge Docena acted properly and in accordance with jurisprudence in ruling that there was absolute necessity for the testimony of Montero. He alone is available to provide direct evidence of the crime.

That the prosecution could use the voluntary statements of Montero without his discharge as a state witness is not an important and relevant consideration. To the prosecution belongs the control of its case and this Court cannot dictate on its choice in the discharge of a state witness, save only when the legal requirements have not been complied with.

The prosecution's right to prosecute gives it "a wide range of discretion — the discretion of whether, what and whom to charge, the

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43 *Supra* note 20 at 853.
44 216 Phil. 102, 108 (1984).
45 204 Phil 277, 281-282 (1983).

exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors." Under Section 17, Rule 119 of the Revised Rules of Criminal Procedure, the court is given the power to discharge a state witness only after it has already acquired jurisdiction over the crime and the accused.[46]

Montero's testimony can be substantially corroborated

We also do not find merit in Jimenez' argument that Montero's testimony cannot be substantially corroborated in its material points and is even contradicted by the physical evidence of the crime.

As the trial court properly found, the evidence consisting of the steel casing where the cadaver was found; the drum containing the cadaver which the prosecution successfully identified (and which even the acting Judge Almeyda believed) to be Ruby Rose; the spot in the sea that Montero pointed to (where the cadaver was retrieved); the apparel worn by the victim when she was killed as well as her burned personal effects, all partly corroborate some of the material points in the sworn statements of Montero.[47]

With these as bases, Judge Docena's ruling that Montero's testimony found substantial corroboration cannot be characterized as grave abuse of discretion.

Jimenez points to the discrepancies in Montero's statements and the physical evidence, such as the absence of "*busal*" in the mouth of the retrieved cadaver; his failure to mention that they used packaging tape wrapped around the head down to the neck of the victim; and his declaration that the victim was killed through strangulation using a rope *(lubid).*

However, the corroborated statements of Montero discussed above are far more material than the inconsistencies pointed out by Jimenez, at least for purposes of the motion to discharge.

The alleged discrepancies in the physical evidence, particularly on the height and dental records of Ruby Rose, are matters that should properly be dealt with during the trial proper.

We emphasize at this point that to resolve a motion to discharge under Section 17, Rule 119 of the Revised Rules of Criminal Procedure, the Rules only require that that the testimony of the accused sought to be discharged be substantially corroborated in its **material points,** not on all points.

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46 *Quarto v. Marcelo et al.*, 658 SCRA 580, 602 (2011).

47 *Rollo*, p. 171 of G.R. No. 209195.

This rule is based on jurisprudential line that in resolving a motion to discharge under Section 17, Rule 119, a trial judge cannot be expected or required, at the start of the trial, to inform himself with absolute certainty of everything that may develop in the course of the trial with respect to the guilty participation of the accused. If that were practicable or possible, there would be little need for the formality of a trial.[48]

Montero is not the most guilty

We also do not agree with Jimenez that the CA erred in finding that Montero is not the most guilty.

By jurisprudence, "most guilty" refers to the highest degree of culpability in terms of participation in the commission of the offense and does not necessarily mean the severity of the penalty imposed. While all the accused may be given the same penalty by reason of conspiracy, yet one may be considered to have lesser or the least guilt taking into account his degree of participation in the commission of the offense.[49]

What the rule avoids is the possibility that the most guilty would be set free while his co-accused who are less guilty in terms of participation would be penalized.[50]

Before dwelling on the parties' substantive arguments, we find it necessary to first correct the rulings of the CA that are not exactly correct.

Contrary to the CA's findings, a principal by inducement is not automatically the most guilty in a conspiracy. The decision of the Court in *People v. Baharan*[51] did not involve the resolution of a motion to discharge an accused to become a state witness. Instead, the pronouncement of the Court related to the culpability of a principal by inducement whose co-inducement act was the determining cause for the commission of the crime.

Thus viewed, *Baharan* cannot be the basis of a peremptory pronouncement that a principal by inducement is more guilty than the principal by direct participation.

In *Chua v. People*,[52] which involved a motion to discharge an accused, the Court declared that if one induces another to commit a crime, the influence is the determining cause of the crime. Without the inducement, the crime would not have been committed; it is the inducer who sets into motion the execution of the criminal act.

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48 *Supra* note 20 at 850.
49 *People v. Ocimar et al.*, 212 SCRA 646, 655 (1992).
50 Id.
51 639 SCRA 157, 176-177 (2011).
52 *Supra* note 20, at 843, 856.

To place the *Chua* ruling in proper perspective, the Court considered the principal by inducement as the most guilty based on **the specific acts done by the two accused and bearing in mind the elements constitutive of the crime** of falsification of private documents **where the element of "damage" arose through the principal by inducement's encashment of the falsified check**. This led the Court to declare that the principal by inducement is the "most guilty" (or properly, the more guilty) between the two accused.

Thus, as a rule, for purposes of resolving a motion to discharge an accused as a state witness, what are controlling are the specific acts of the accused in relation to the crime committed.

We cannot also agree with Jimenez' argument that a principal by direct participation is more guilty than the principal by inducement as the Revised Penal Code penalizes the principal by inducement only when the principal by direct participation has executed the crime.

We note that the severity of the penalty imposed is part of the substantive criminal law which should not be equated with the procedural rule on the discharge of the *particeps criminis*. The procedural remedy of the discharge of an accused is based on other considerations, such as the need for giving immunity to one of several accused in order that not all shall escape, and the judicial experience that the candid admission of an accused regarding his participation is a guaranty that he will testify truthfully.[53]

On the substantive issues of the present case, we affirm the CA ruling that no grave abuse of discretion transpired when Judge Docena ruled that Montero is not the most guilty.

We draw attention to the requirement that a state witness does not need to be found to be the least guilty; he or she should not only **"appear to be the most guilty."**[54]

From the evidence submitted by the prosecution in support of its motion to discharge Montero, it appears that while Montero was part of the planning, preparation, and execution stage as most of his co-accused had been, he had no direct participation in the actual killing of Ruby Rose.

While Lope allegedly assigned to him the execution of the killing, the records do not indicate that he had active participation in hatching the plan to kill Ruby Rose, which allegedly came from accused Lope and Jimenez, and in the actual killing of Ruby Rose which was executed by accused Lennard.[55] Montero's participation was limited to providing the steel box where the drum containing the victim's body was placed, welding the steel

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53 *People v. Hon. Sandiganbayan, et al.*, 341 Phil. 503, 524 (1997).
54 *People v. de la Cruz et al.*, 578 Phil. 314, 328 (2008).
55 *Rollo*, p. 88 of G.R. No. 209215.

box to seal the cadaver inside, operating the skip or tug boat, and, together with his co-accused, dropping the steel box containing the cadaver into the sea.

At any rate, the discharge of an accused to be utilized as a state witness because he does not appear to be the most guilty is highly factual in nature as it largely depends on the appreciation of who had the most participation in the commission of the crime. The appellate courts do not interfere in the discretionary judgment of the trial court on this factual issue except when grave abuse of discretion intervenes.[56]

In light of these considerations, we affirm the ruling of the CA that Judge Docena did not commit grave abuse of discretion in ruling that Montero is not the most guilty.

The discharge of Montero as a state witness was procedurally sound

We agree with the People that Jimenez is estopped from raising the issue of lack of hearing prior to the discharge of Montero as a state witness. Jimenez did not raise this issue when Acting Judge Almeyda denied the motion to discharge. This denial, of course, was favorable to Jimenez. If he found no reason to complain then, why should we entertain his hearing-related complaint now?

The People even supported its argument that Jimenez actively participated in the proceedings of the motion to discharge such as his filing of a 20-page opposition to the motion; filing a reply to the People's comment; submitting his memorandum of authorities on the qualification of Montero as state witness; and filing a consolidated opposition on the People's and Montero's motion for reconsideration of Judge Almeyda's order.[57]

In these lights, Jimenez cannot impute grave abuse of discretion on Judge Docena for not conducting a hearing prior to his grant of the motion to discharge. In *People v. CA and Pring*,[58] the Court ruled that with both litigants able to present their sides, the lack of actual hearing is not sufficiently fatal to undermine the court's ability to determine whether the conditions prescribed for the discharge of an accused as a state witness have been satisfied.

Contrary to Jimenez' argument, the *Pring* ruling is applicable in the present case. In *Pring*, the sworn statements of the accused sought to be discharged (Nonilo Arile), together with the prosecution's other evidence,

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56 *People v. Sison*, 371 Phil 713, 724 (1999).
57 *Supra* note 58 at 312.
58 223 SCRA 479, 488 (1993).

were already in the possession of the court and had been challenged by the respondent in his Opposition to Discharge Nonilo Arile and in his Petition for Bail. The issue in that case was the propriety of the trial court's resolution of the motion to discharge Nonilo Arile without conducting a hearing pursuant Section 9, Rule 119 of the 1985 Rules on Criminal Procedure (now Section 17, Rule 119 of the Revised Rules of Criminal Procedure).

With Jimenez' active participation in the proceeding for the motion to discharge as outlined above, the ruling of the Court in *Pring* should squarely apply.

Montero's Notice of Withdrawal of Consent is not material in the resolution of the present case

We find no merit in Jimenez' argument that Montero's submission of his notice of withdrawal of consent and testimony of Manuel dated February 26, 2013 rendered the present case moot, since the Court cannot consider this document in this petition.

It must be recalled that the present case involves an appellate review of the CA's decision which found no grave abuse of discretion on the part of Judge Docena in granting the motion to discharge.

Under the present recourse now before this Court, we cannot rule on the notice of withdrawal and consider it in ruling on the absence or presence of grave abuse of discretion in the issuance of the assailed orders. The present case is not the proper venue for the determination of the value of the notice.

This conclusion is all the more strengthened by the fact that Montero already testified on direct examination on June 28, 2011 and October 25, 2011. He attested and affirmed his statements in his affidavits dated May 18 and June 11, 2009; he not only narrated the grisly murder of Ruby Rose, but also revealed Jimenez' participation in the murder.

With this development, the notice may partake of the nature of a recantation, which is usually taken *ex parte* and is considered inferior to the testimony given in open court. It would be a dangerous rule to reject the testimony taken before a court of justice simply because the witness who gave it later changed his/her mind.[59]

In sum on this point, the appreciation of the notice of withdrawal properly belongs to the trial court.

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[59] *People v. Nardo*, 405 Phil. 826, 843. (2001).

Interplay between the judge and prosecutor in the motion to discharge an accused to become a state witness

As a last point, we find it necessary to clarify the roles of the prosecution and the trial court judge in the resolution of a motion to discharge an accused as a state witness. This need arises from what appears to us to be a haphazard use of the statement that the trial court judge must rely in large part on the prosecution's suggestion in the resolution of a motion to discharge.

In the present case, the CA cited *Quarto v. Marcelo*[60] in ruling that the trial court must rely in large part upon the suggestions and the information furnished by the prosecuting officer, thus:

> A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible there would be little need for the formality of a trial. He must rely in large part upon the suggestions and the information furnished by the prosecuting officer in coming to his conclusions as to the "necessity for the testimony of the accused whose discharge is requested"; as to the availability or non-availability of other direct or corroborative evidence; as to which of the accused is "most guilty," and the like.

We deem it important to place this ruling in its proper context lest we create the wrong impression that the trial court is a mere "rubber stamp" of the prosecution, in the manner that Jimenez now argues.

In *Quarto*, we emphasized that it is still the trial court that determines whether the prosecution's preliminary assessment of the accused-witness' qualifications to be a state witness satisfies the procedural norms. This relationship is in reality a symbiotic one as the trial court, by the very nature of its role in the administration of justice, largely exercises its prerogative based on the prosecutor's findings and evaluation.[61]

Thus, we ruled in *People v. Pring*[62] that in requiring a hearing in support of the discharge, the essential objective of the law is for the court to receive evidence for or against the discharge, which evidence shall serve as the court's tangible and concrete basis – independently of the fiscal's or prosecution's persuasions – in granting or denying the motion for discharge. We emphasize, in saying this, that actual hearing is not required provided that the parties have both presented their sides on the merits of the motion.

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60 *Supra* note 49, at 603.
61 Id. at 602-603.
62 *Supra* note 61, at 487-488.

We likewise do not agree with Jimenez that *Quarto* should not apply to the present case, since the principles laid down in that case similarly operate in the present case, specifically, on issue of the procedural processes required in the discharge of the accused as a state witness.

G.R. No. 209215

We find the People's petition meritorious.

We note at the outset that the CA did not provide factual or legal support when it ordered the inhibition of Judge Docena. Additionally, we do not find Jimenez' arguments sufficiently persuasive.

The second paragraph of Section 1 of Rule 137 does not give judges the unlimited discretion to decide whether or not to desist from hearing a case. The inhibition must be for just and valid causes. The mere imputation of bias or partiality is likewise not enough ground for their inhibition, especially when the charge is without basis.[63]

It is well-established that inhibition is not allowed at every instance that a schoolmate or classmate appears before the judge as counsel for one of the parties. A judge, too, is not expected to automatically inhibit himself from acting in a case involving a member of his fraternity, such as Jimenez in the present case. [64]

In the absence of **clear and convincing evidence** to prove the charge of bias and prejudice, a judge's ruling not to inhibit oneself should be allowed to stand.[65]

In attributing bias and prejudice to Judge Docena, Jimenez must prove that the judge acted or conducted himself in a manner **clearly** indicative of arbitrariness or prejudice so as to defeat the attributes of the cold neutrality that an impartial judge must possess. Unjustified assumptions and mere misgivings that the judge acted with prejudice, passion, pride and pettiness in the performance of his functions cannot overcome the presumption that a judge shall decide on the merits of a case with an unclouded vision of its facts.[66]

In the present case, Jimenez' allegation of bias and prejudice is negated by the CA finding in its amended decision, as affirmed by this Court, that Judge Docena did not gravely abuse his discretion in granting the motion to discharge. We support this conclusion as the cancellation of the September 29, 2011 hearing is not clearly indicative of bias and prejudice.

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63 *Gochan et al. v. Gochan et al.*, 446 Phil. 433, 447 (2003).
64 *Kilosbayan Foundation et al. v. Janolo, Jr. et al.*, 625 SCRA 684, 699.
65 Id.
66 Id.

On the allegation that Judge Docena's uncontrollable temper and unexplainable attitude should be considered as a factor, we note that the allegations and perceptions of bias from the mere tenor and language of a judge is insufficient to show prejudgment. Allowing inhibition for these reasons would open the floodgates to abuse. Unless there is **concrete proof** that a judge has a personal interest in the proceedings, and that his bias stems from an extra-judicial source, the Court would uphold the presumption that a magistrate shall impartially decide the merits of a case.[67]

WHEREFORE, we **DENY** the petition in *G.R. No. 209195* and affirm the CA's amended decision in CA-G.R. SP No. 121167 insofar as it found no grave abuse of discretion on the part of Judge Docena in granting the People's motion to discharge Montero as a state witness.

We **GRANT** the petition in *G.R. No. 209215* and modify the CA's amended decision in CA-G.R. SP No. 121167 in accordance with our ruling that Judge Docena's denial of the motion for inhibition was proper.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

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67 *Supra* note 66, at 448.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice