




Republic of the Philippines  
**SUPREME COURT**  
 Manila

CERTIFIED TRUE COPY  
  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division

MAR 15 2018

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Petitioner,

**G.R. No. 229420**

- versus -

Present:

**ROGER DOMINGUEZ y SANTOS,**  
**RAYMOND DOMINGUEZ y**  
**SANTOS, JAYSON MIRANDA y**  
**NACPIL, ROLANDO TALBAN y**  
**MENDOZA, and JOEL JACINTO y**  
**CELESTINO,**

VELASCO, JR., *J.*, Chairperson,  
 BERSAMIN,  
 LEONEN,  
 MARTIRES, and  
 GESMUNDO, *JJ.*

Promulgated:

Respondents.

February 19, 2018

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**DECISION**

**VELASCO, JR., *J.*:**

**Nature of the Case**

For consideration is the Petition for Review under Rule 45 of the Rules of Court, filed by the Office of the Solicitor General (OSG), seeking to nullify the May 27, 2016 Decision<sup>1</sup> and January 18, 2017 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 139255. The challenged rulings affirmed the January 10, 2014 Order<sup>2</sup> of the Regional Trial Court (RTC), Branch 215 in Quezon City directing that the testimony of the deceased state witness Alfred Mendiola (Mendiola) be stricken off the records of Criminal Case No. Q-11-168431.

**The Facts**

On January 13, 2011, Venson Evangelista, a car salesman, was abducted in Cubao, Quezon City by a group of men later pinpointed as the respondents herein. Evangelista's charred remains were discovered the following day in Cabanatuan City, Nueva Ecija.

<sup>1</sup> Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Edwin D. Sorongon and Eduardo B. Peralta, Jr.

<sup>2</sup> Penned by Acting Presiding Judge Wilfredo L. Maynigo.

In connection with the incident, Mendiola and Ferdinand Parulan (Parulan) voluntarily surrendered to the Philippine National Police (PNP) and executed extrajudicial confessions identifying respondents Roger and Raymond Dominguez (Dominguez Brothers) as the masterminds behind the killing. This led to the filing before the Quezon City RTC of an Information against Mendiola and the respondents for Carnapping with Homicide under Section 14 of Republic Act No. 6539,<sup>3</sup> otherwise known as the Anti-Carnapping Act, docketed as Criminal Case No. Q-11-168431. The accusatory portion of the Information reads:

That on or about the 13<sup>th</sup> day of January 2011, in Quezon City, Philippines, the above-named accused, and other persons who are at large and whose identities and whereabouts are still to be determined, conspiring and confederating together and helping each other, with intent to gain and to kill and by means of violence against and intimidation of person, did then and there wilfully, unlawfully, and feloniously take and carry away one (1) charcoal gray Toyota Land Cruiser model 2009 with Plate No. NAI-316, Engine No. 1VD-0049539 and Chassis No. JTMHV05J804031334, worth Php3,400,000.00, Philippine Currency, then driven by VENSON EVANGELISTA Y VELARO and registered in the name of Future Trade International, Inc. but already sold to Arsenio Evangelista per Deed of Sale dated December 13, 2010, to the damage and prejudice of the owner.

That during the commission of the said offense, or by reason thereof, the said accused, in conspiracy with one another and with intent to kill, carefully planned the execution of their acts and with the attendant circumstances of evident premeditation, treachery, and abuse of superior strength, cruelty, and by means of fire, attack (sic) and assaulted VENSON EVANGELISTA Y VALERO (sic) by shooting him on the head, mutilated his body, and set the same on fire thereby inflicting upon him fatal injuries which were the proximate cause of his untimely death, to the damage and prejudice of the heirs of the late VENSON EVANGELISTA Y VELARO.


Accused and their other unidentified cohorts committed the above attendant circumstances in the killing of their victim because they deliberately planned the commission of the offense consciously adopting the means and methods of attack done suddenly and unexpectedly, taking advantage of their numbers and strength to ensure its commission without risk to themselves arising from the defense which the victim might make, accompanied by fraud, deceit, disguise, cruelty and by abuse of superior strength by deliberately and inhumanly augmenting the suffering of the victim or outraging or scoffing at his person or corpse.

CONTRARY TO LAW.<sup>4</sup>

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<sup>3</sup> **Section 14. Penalty for Carnapping.** Any person who is found guilty of carnapping, as this term is defined in Section two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of life imprisonment to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed in the commission of the carnapping.

<sup>4</sup> *Rollo*, pp. 130-131.



Of the respondents, Rolando Talban (Talban) and Joel Jacinto (Jacinto) remained at large. Only the Dominguez brothers and Miranda were apprehended. And during arraignment on April 11, 2011, the three arrested respondents pleaded not guilty to the offense.

On June 27, 2011, a hearing was conducted on the prosecution's motion<sup>5</sup> that Mendiola be discharged as an accused to become a state witness. On the said date, Mendiola gave his testimony and was cross-examined by the counsel for the defense. Nevertheless, the defense manifested that the cross-examination was limited only to the incident of discharge, and that their party reserved the right to a more lengthy cross-examination during the prosecution's presentation of the evidence in chief.

On September 29, 2011, the RTC Branch 215, before which Criminal Case No. Q-11-168431 is pending, issued an Order granting the motion to discharge Mendiola as an accused to become a state witness. The Order further states:

WHEREFORE, premises considered, the Court resolves to GRANT the motion to discharge accused ALFRED MENDIOLA y RAMOS from the Information to become a state witness.

Accordingly, his testimonies given on June 27, July 8 and July 11, 2011 and all the evidence adduced in support of the discharge hereby form part of the trial of this case.

x x x x

SO ORDERED.<sup>6</sup>

Thereafter, by a surprise turn of events, Mendiola was found dead on May 6, 2012. The RTC then required the parties to submit their respective position papers on whether or not Mendiola's testimony during the discharge proceeding should be admitted as part of the prosecution's evidence in chief despite his failure to testify during the trial proper prior to his death.<sup>7</sup>

### **Ruling of the Regional Trial Court**

On January 10, 2014, the RTC issued the assailed Order directing that the testimony of Mendiola be stricken off the records of Criminal Case No. Q-11-168431. The decretal portion of the Order reads:


WHEREFORE, the testimony of **ALFRED MENDIOLA y RAMOS** given on June 27, 2011 for purposes of his discharge as a state witness is **HEREBY ORDERED STRICKEN OFF THE RECORD** of this case. With respect to the documents and other evidence authenticated by Mendiola as a discharge witness, this Court will rule upon their admissibility when the same are formally offered in evidence.

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<sup>5</sup> Dated March 18, 2011.

<sup>6</sup> *Rollo*, p. 177.

<sup>7</sup> Order dated March 31, 2013; *id.* at 205.



**SO ORDERED.**<sup>8</sup>

According to the trial court, Mendiola's testimony on June 27, 2011 was offered only for the purpose of substantiating the motion for him to be discharged as a state witness, and does not yet constitute evidence in chief. Thus, the defense counsel limited his questions during cross-examination to only those matters relating to Mendiola's qualifications to become a state witness and expressly reserved the right to continue the cross-examination during trial proper. As ratiocinated by the RTC:

There is no question that when Mendiola was cross-examined, such cross-examination was limited by the purpose of the hearing, that is, whether the court would be satisfied of the absolute necessity of his testimony"; that "there is no other direct evidence available for the proper prosecution"; that his "testimony could be substantially corroborated in its material points"; that he "does not appear to be the most guilty"; and he "has not been convicted, at any time, of any offense involving moral turpitude". In short, these are the purposes for the discharge hearings.<sup>9</sup> x x x

The trial court likewise cited Section 18, Rule 119 of the Rules of Court,<sup>10</sup> noting that there is a requirement that Mendiola must testify again as a regular witness during trial proper to secure his acquittal. Non-compliance with this requirement, according to the RTC, amounted to the deprivation of respondents of their constitutional right to due process, and of their right to confront the witnesses against them.

**Ruling of the Court of Appeals**

The issue was elevated to the Court of Appeals via petition for certiorari under Rule 65, but the appellate court found no grave abuse of discretion on the part of the trial court. It thus dismissed the petition in its assailed May 27, 2016 Decision in the following wise:

**WHEREFORE**, in view of the foregoing, the Petition is **DENIED**. Accordingly, the Orders dated 10 January 2014 and 1 December 2014 issued by public respondent Judge Wildredo L. Maynigo in Criminal case no. Q-11-168431, pending before Branch 215 of the Regional Trial Court of Quezon City are hereby **AFFIRMED**.

**SO ORDERED.**<sup>11</sup>

The CA denied petitioner's motion for reconsideration therefrom through its January 18, 2017 Resolution. Hence, the instant recourse.

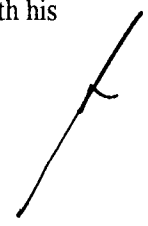
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<sup>8</sup> Id. at 230.

<sup>9</sup> Id. at 227.

<sup>10</sup> **Section 18.** *Discharge of accused operates as acquittal.* — The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, unless the accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for the discharge.

<sup>11</sup> *Rollo*, p. 62.



### The Issue

The primordial issue to be resolved in this case is whether or not the testimony of Mendiola should be stricken off the records of Criminal Case No. Q-11-168431.

Petitioner posits that the right afforded to an accused to confront and cross-examine the witnesses against him is not an absolute right. Hence, when respondents failed to avail themselves of the constitutional guarantee when Mendiola gave his testimony on June 27, 2011, they have effectively forfeited their right thereto.

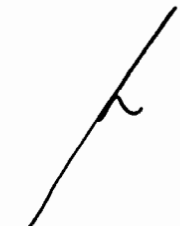
The Court directed respondents to file their respective comments within fifteen (15) days from notice. Respondent Jayson Miranda y Nacpil, in his Comment,<sup>12</sup> argues that the testimony of Mendiola was offered in the discharge proceeding for the limited purpose of qualifying the latter as a state witness, and Section 18, Rule 119 of the Rules of Court requires for the state witness to be presented again during trial proper. Failure of the prosecution to again offer the testimony of the state witness, as part of their evidence-in-chief, unlawfully deprived the respondents of the opportunity to conduct a full and exhaustive cross-examination. For even though Mendiola was cross-examined during the discharge proceedings, respondents nevertheless intimated to the trial court that they were reserving the right to propound further questions when Mendiola is again to take the witness stand. Miranda adds that the respondents are just as without fault that Mendiola died without completing his testimony.

Miranda adds that at the time Mendiola testified during the discharge proceedings, his co-respondents Rolando M. Talban (Talban) and Joel C. Jacinto (Jacinto) were not yet arrested. Thus, to allow the testimony of Mendiola to remain on record would be tantamount to a denial of their right to cross-examine the witness against them.

On the other hand, it appears that Atty. Oscar Raro, the counsel of record for respondent Roger Dominguez, failed to inform this Court that he has changed his office address. Service upon counsel was therefore not actually effected. Nevertheless, We have held time and again that notices to counsel should properly be sent to his or her address of record in the absence of due notice to the court of a change of address. Thus, respondent Roger Dominguez is deemed to have received the order to comment by fiction of law and has, consequently, waived his right to counter the allegations in the petition after fifteen (15) days from the date of his constructive receipt thereof. Meanwhile, Atty. Jose M. Cruz, who represents Raymond Dominguez, has likewise not filed a Comment in behalf of his client herein. The Court resolves, however, to dispense with the same.

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<sup>12</sup> Id. at 331-337.



### The Court's Ruling

The petition is meritorious.

***The death of the state witness prior to trial proper will not automatically render his testimony during the discharge proceeding inadmissible***

Section 17 of Rule 119 of the Rules of Court pertinently provides:

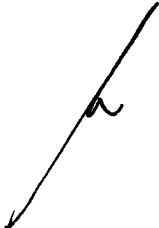
**Section 17. Discharge of accused to be state witness.** — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the 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;
- (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.

**Evidence adduced in support of the discharge shall automatically form part of the trial.** If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence. (emphasis added)

The rule is explicit that the testimony of the witness during the discharge proceeding will only be inadmissible if the court *denies* the motion to discharge the accused as a state witness. However, the motion hearing in this case had already concluded and the motion for discharge, approved. Thus, whatever transpired during the hearing is already automatically deemed part of the records of Criminal Case No. Q-11-168431 and admissible in evidence pursuant to the rule.

Mendiola's testimony was not incomplete, contrary to how Miranda paints it to be. The contents of his lengthy narration were more than sufficient to establish his possession of all the necessary qualifications, and none of the disqualifications, under Section 17, Rule 119 of the Rules of Court to be eligible as a state witness. The argument of incompleteness even contradicts respondent Miranda's own position since he does not contest here the RTC's Order granting Mendiola's motion to be a state witness, only the admissibility of his testimony following his demise.



Respondent raised that Section 18, Rule 119 of the Rules of Court makes it mandatory that the state witness be presented during trial proper and that, otherwise, his failure to do so would render his testimony inadmissible. On this point, Miranda, the RTC and the CA are mistaken in their interpretation of the rule, which pertinently provides:

**Section 18. *Discharge of accused operates as acquittal.*** — The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, **unless the accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for the discharge.** (emphasis added)

While respondent Miranda is correct that the motion hearing is different from the presentation of evidence in chief, it is precisely because of this distinction and separability that the validity of the discharge proceeding should remain untouched despite the non-presentation of Mendiola during trial on the merits. True, the provision requires the accused to testify again during trial proper after he qualifies as a state witness. However, non-compliance therewith would only prevent the order of discharge from operating as an acquittal; it does not speak of any penalty to the effect of rendering all the testimonies of the state witness during the discharge proceeding inadmissible. On the contrary, the testimonies and admissions of a state witness during the discharge proceedings may be admitted as evidence to impute criminal liability against him should he fail or refuse to testify in accordance with his sworn statement constituting the basis for the discharge, militating against the claim of inadmissibility.

***To qualify as a state witness, the respondent must testify on the details of the commission of the crime***

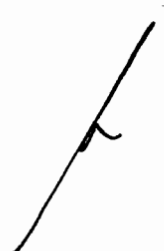
That the testimony of Mendiola was offered for the limited purpose of qualifying him as a state witness does not automatically render his statements as to the specifics on the commission of the offense inadmissible. To recall, one of the requirements under Section 17, Rule 119 is to establish that the erstwhile respondent does not appear to be the most guilty among him and his cohorts. Thus, it is quite understandable that, during the discharge proceeding, Mendiola narrated in graphic detail his entire knowledge of the crime and the extent of the participation of each of the accused, to wit:

Q: Mr. Witness, are you the same Alfred Mendiola[,] one of the persons being indicted in this instant crime of Carnapping with Homicide?

A: Yes, ma'am.

Q: Do you know the other accused in this case, Mr. Witness, namely, I will enumerate[:] Roger Dominguez, Raymond Dominguez, Jayson Miranda[,] alias Soy, Rolando Talban[,] a.k.a. Eduardo Fernandez[,] a.k.a. Rolly and one named alias Joel?

A: Yes, ma'am.



Q: Why do you know them, Mr. Witness?

A: I've been with them[,] with the group that I joined which is carnapping.

Q: In the said carnapping group that you mentioned, Mr. Witness, what is your role?

A: I served as the buyer or as poseur buyer of the vehicle that we were supposed to buy but actually we will carnap.

Q: What about the other named accused, No. 1 Roger and No. 2 Raymond, what are their roles?

A: We treat them as our leader because they are the ones planning the operations, they are the ones funding the operation, they are the ones providing us the money every time we have the operation.

x x x x

Court: What was your last statement? Can you repeat[?]

A: They are the ones who [are] also giving us our salary or payment for ever[y] successful operation.

Q: What about Jayson Miranda[,] alias Soy, what is his role in your group?

A: I came to know Jayson Miranda as the right hand of Roger Dominguez and he serve[d] as my driver for four times wherein I was involved in carnapping.

Q: What about this Joel, what is his role, Mr. Witness?

A: Joel [was] introduced to me and will also be my companion who will pose as a mechanic and will directly assist us if ever we are successful in test driving the said vehicle.

x x x x

Q: What about Rolly or Rolando Talban[,] also known as Eduardo Fernandez y Lopez, what is his role in your group?

A: I was only introduced once to Rolly and I also know him as a member of the group and he was assigned to help us on a certain operation.

x x x x

Q: Now Mr. Witness, you previously mentioned that you are a member of a group headed by Dominguez brothers. How did your group operate or what was your modus operandi?

A: The first time I met Roger Dominguez[,] he was able to tell me that theirs system of carnapping is by poking. But after that[,] he narrated some more regarding other systems of carnapping.

Q: And what are these other systems that were given to you or were relayed to you?

A: One strategy is they will look for sellers of vehicles through newspapers, magazines and internet then they will get the contact numbers of the person selling the vehicle.

Q: And what did they do with the contact numbers given to them by the owners of the vehicles?

A: Once contacted[,] they will schedule a meeting place of the poseur buyer and the seller.



Q: And what else are the modus operandi of your group?

A: And if the seller agrees on the road test[,] that is the time the group of the poseur buyer will poke and carnap the said vehicle.

Q: You continuously mentioned about, pagtutok, can you elaborate that, what, do you mean [by] pagtutok?

A: In my experience[,] every time we are successful in convincing a seller[,] it will be Joel who in the middle of the road testing will draw his gun and poke it to the seller.

x x x x

Q: Now Mr. Witness, you mentioned about this Toyota Land Cruiser, let's go to that, when for the first time did you hear about this Toyota Land Cruiser?

A: The first time I heard them talking about this Toyota Land Cruiser was January 12 during night time.

Q: What year?

A: 2011, ma'am.

Q: And what did you hear about this Toyota Land Cruiser?

A: We were in Greenville Subdivision over dinner with Roger Dominguez, Ann, Katrina Paula then Raymond Dominguez[,] together with Rolly[,] arrived.

Q: Who was the one who mentioned this Land Cruiser?

A: According to them[,] since it was night time when they say the vehicle[,] the owner did not agree for them to road test the said vehicle.

Q: What else did Raymond Dominguez tell you?

A: After that when the owner did not agree for the road test[,] they went to a gasoline station in Quezon City.

x x x x

Q: What happened next, Mr. Witness?

A: When Raymond Dominguez arrived[,] he gave me a number and asked me to contact that said number claiming the owner was selling a Toyota Land Cruiser.

Q: How did Raymond Dominguez give to you that number, how?

A: From his cellphone[,] he jotted down the number on a piece of paper[,] he gave it to me and asked me to call it if the Toyota Land Cruiser is still for sale.

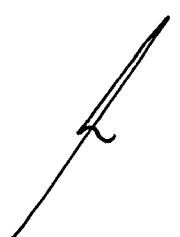
Q: Upon receiving the instructions of Raymond Dominguez[,] what did you do with that number?

A: Before I dialed the number[,] I asked him what to tell the owner in case he answers the call.

Q: What did Raymond Dominguez tell you?

A: I was asked to ask the owner if the Toyota Land Cruiser is still for sale and if yes[,] then I should schedule a meeting.

x x x x



Q: During the telephone conversation with as you mentioned with Boy Evangelista[,] what did you talk about?

A: He said that it's still available, it [is] still for sale.

Q: So what was your response, Mr. Witness?

A: I asked him where and when can I see the vehicle.

Q: What did Mr. Evangelista tell you?

A: He answered within the day, the vehicle is available.

Q: Mr. Witness, while you were talking to Mr. Boy Evangelista over the phone, where [we]re Raymond, Roger, Jayson Miranda and the rest of the accused, where were they?

A: In the sala of the house in Greenville Subdivision, ma'am.

x x x x

Q: How did you end your transaction or your telephone conversation with Mr. Boy Evangelista?

A: When I asked the person on the other line if I can see the vehicle within the day[,] Raymond signaled me to schedule a meeting around three to four that afternoon.

x x x x

Q: x x x After you were able to set up a meeting with Mr. Boy Evangelista over the telephone regarding the Land Cruiser, what happened thereafter?

A: He texted me the address where I can meet him.

Q: What were these instructions?

A: The first thing he told me was that he will be the first to leave the subdivision onboard a white Expedition and that he instructed me to act as a poseur buyer and to test drive the said vehicle since I will be giving it as a gift.

Q: What else did Raymond tell you?

A: He also told me that I will be with Jayson who will act as the driver of Pajero which we will use in going to that place. And Joel was also with us to act as merchant and Rolly will act as a back up for us in case the owner will agree to a road test.

Q: While Raymond was giving all these instructions to you, who were present at that time?

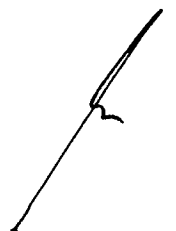
A: Roger Dominguez, Ann, Napoleon Salamat, Rolly, Jayson Miranda alias Soy.

x x x x

Q: So when Raymond was giving you all these instructions and these persons [we]re present, we [sic] first go to Roger[,] what was his reaction, what was his reply?

A: Roger told me "Hoy Bakla, kung hindi mo mapapapayag na i-road test yang sasakyan na iyan wag mong pilitin ha."

x x x x



Q: So when Roger Dominguez made his statement[,] what happened thereafter?

A: Raymond answered[,] “[s]ige kung hindi mo kaya ako na ang bahala, pero hindi ako aalis sa area na iyon na hindi ko tangay ang Toyota Land Cruiser”.

Q: With all these statements, Mr. Witness, what happened thereafter?

A: Rolly just interrupted, “Boss, kung saka-sakaling mapapapayag natin ang may-ari ng Toyota Land Cruiser na ipa-road test at kung sino man ang sasama itumba na natin dahil baka makilala pa niyan pag pinakita ng QCPD yung picture gallery ng mga carnappers dahil galing [sic] na tayo diyan noong gabing ‘yon January 13.”

x x x x

Q: So after you were already specifically assigned of [sic] your roles in the carnapping of the Land Cruiser as well as to how to execute and realize this, how did you go about this plan?

A: Raymond was the first one who left the subdivision onboard the said Ford Expedition.

Q: Would you recall what time was that?

A: Around 1:00 o’clock or past 1:00 o’clock.

Q: Of what date?

A: January 13, 2011.

Q: How about you, Mr. Witness, and the rest of the group[,] what time did you leave the apartment?

A: After Raymond left[,] we prepared and we left the subdivision at around 2:00 o’clock in the afternoon onboard a green Pajero together with Jayson and Rolly.

Q: You mentioned that you were onboard this Pajero together with Jayson and Rolly, but previously in your statement you said that Joel was also given a role by Raymond Dominguez, so where was this Joel at that time?

A: We fetched Joel at SM, San Fernando, he alighted from [a] gray van before he transferred to our vehicle.

Q: How about Roger[,] how come he did not come with your group?

A: Roger, Napoleon Salamat and Ann were left in the apartment but we were told [to] give updates to them if we were able to convince the seller.

Q: You previously mentioned that you left the apartment at around 2:00 o’clock onboard a green Pajero bound to Cubao, Quezon City, what time did you arrive at that area?

A: Past 3:00 o’clock in the afternoon when we arrived at the area.

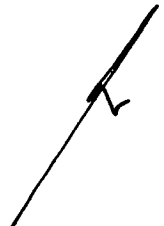
Q: What was this area again, Mr. Witness?

A: No. 47 Sgt. Catolos St., Cubao, Quezon City.

Q: So upon arriving at No. 47 Sgt. Catolos St., Cubao, Quezon City[,] what happened?

A: While we were at the front of the said residence[,] Jayson received a call from Raymond.

x x x x



Q: So when you asked Jayson about the instructions, what did Jayson tell you?

A: According to him[,] he was instructed by Raymond to go around on the place and look for a wider street wherein we can test drive the said vehicle.

Q: So what did you do with the instructions of Raymond Dominguez relayed to Jayson?

A: We went around the said area.

x x x x

Q: So after complying or following the instructions of Raymond of going around the area and looking for wider roads[,] what happened next?

A: We went back at the front of the house.

Q: Why did you go back in front of the house?

A: We were waiting for the go signal from Raymond for me to go down and check the vehicle.

Q: What is this go signal, Mr. Witness?

A: He texted go.

Q: When you say nagtext siya, whom are you referring to?

A: Raymond Dominguez, ma'am.

x x x x

Q: Upon these instructions[,] what did you do?

A: Joel and I alighted and Jayson, Rolly parked the vehicle.

Q: So upon alighting from this green Pajero together with Joel[,] what did you do?

A: After that[,] we pressed the door bell of the said house and then a small man, who appeared to be the boy, open[ed] the gate for us.

Q: What did you tell this boy?

A: I immediately asked him the person of Boy Evangelista.

x x x x

Q: So what happened thereafter when you were ushered inside the area?

A: This boy, the small one, called someone a person with a long hair.

Q: Would you know who this person is?

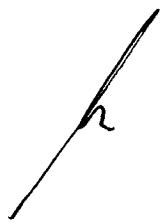
A: No, ma'am, he just introduced himself as the son of Boy Evangelista and was tasked to talk with me.

x x x x

Q: Okay, Mr. Witness, when you came face to face with this person whom you described as one tall person with fair complexion and with long hair, what did you talk about?

A: I asked him if the Land Cruiser I was looking at in the garage was still for sale.

Q: What was his reply?



A: He said yes.

Q: So what was your counter reply?

A: I asked how much. x x x

[Q]: And how did you reply to such price quotation of 3.4 Million[?]

[A]: I asked if it is still negotiable. x x x

Q: While you were talking with this fair complexion, tall and long hair, where was Joel?

A: He was just checking the said vehicle, the tires and the engine.

Q: After talking about the price, what else did you talk about regarding this vehicle?

A: Joel approached us and said the vehicle was okay and the long hair said if I buy it then it is as if I bought a brand new.

x x x x

Q: After you were assured by this person with long hair and that it was recommended to[o] by your mechanic Joel, what was your decision then about the vehicle?

A: I asked the long hair if we could roadtest the vehicle that he was selling.

Q: And what was his reply?

A: He said that they don't agree with road testing especially the father.

Q: And what was your response?

A: So on my part posting as a buyer[,] I answered in a sarcastic way, "[a]no ba naman kayong nagbebenta ng sasakyan na ganyan 3.4 Million is 3.4 Million tapos hindi nyo papayagang i-road test, maglalabas ako ng pera."

Q: And can you tell us what was the reaction of this person whom you were talking to when you made the sarcastic words?

A: I noticed that he was irritated by my remark and he ordered the boy, the small one, to get the key, cellphone and his wallet.

x x x x

Q: And when this person whom you described boarded the vehicle, what were you doing then?

A: I was still at the garage and he was the one who signal us to board on said vehicle and he said "let's go".

Q: And where did you position yourself?

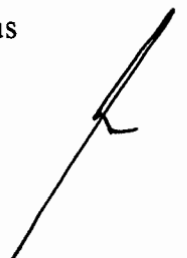
A: I positioned myself at the back of the driver.

Q: How about Joel?

A: At the right passenger seat, ma'am, beside the driver.

Q: Upon boarding this vehicle, you, Joel, and this person that you described[,] where did you go?

A: We went around the said area but the green Pajero was following us wherein Rolly and Jayson Miranda alias Soy were there.



Q: Why do you say that this Pajero was following you then?

A: I know that they were following us because Rolly even uttered a joke “[s]inusundan yata tayo ng father mo ah, ayan yung Pajerong green”.

Q: Why did Joel made that statement as far as you know?

A: That’s a part of our strategy because the long hair might be the person to notice that someone is following us.

x x x x

Q: So after circling the road as you mentioned[,] what happened next?

A: When Joel noticed that we were near the house of the owner[,] he immediately pulled out his gun and poked it to the person and asking [sic] to give him the vehicle.

Q: And what did this long hair do with that threat of Joel?

A: The long hair was able to stop the vehicle probably a house away from their house.

Q: And what was the reaction of this person whom you said was poked by a gun?

A: He raised his gun and said “[m]aawa na po kayo sa akin[,] may pamilya po ako.”

x x x x

Q: And at that time, where was Joel and Rolly whom you previously said was following the Land Cruiser?

A: Joel remained at the vehicle poking his gun while Rolly suddenly alighted from the Pajero and boarded the Land Cruiser and sat on the driver seat and pushed the long hair at the back portion of the said vehicle.

Q: After Rolly boarded the Land Cruiser and pushed this person with long hair at the back[,] what happened next?

A: Rolly went inside the vehicle through the driver side and after pushing the long hair, he also followed him, so we were all at the back, me the long hair and Rolly.

Q: While you were inside the vehicle[,] what were you doing at the time?

A: While I was seated at the back of the driver seat I was texting Roger and informing him that the vehicle and the owner were already taken. And Rolly was trying to put up packaging tape on the eyes and mouth of the long hair and also his hands were tied behind his back with the packaging tape. After he was tied with packaging tape[,] he was asked to lie facing down at the back and he was covered with a blanket which he took from his back pack.

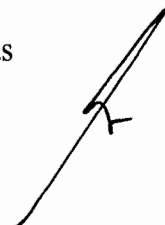
x x x x

Q: Now Mr. Witness, while Rolly was doing this to the long hair whom you just described[,] what was Joel doing?

A: Joel was the one driving the Land Cruiser away from the area.

x x x x

COURT. How about you[,] what were you doing then when Rolly was putting a packaging tape to the long hair?



A: I was sending text messages to Roger that we were able to take the vehicle.

x x x x

Q: Now, from Cubao, Quezon City, where did you go, where did you proceed then?

A: After we passed through the NLEX, what happened was the green Pajero was ahead of us and we were following it and the Expedition was following us.

Q: In that period of time that you were traveling[,] what happened inside the Land Cruiser while you were with this long hair, Joel and Rolly, what happened?

A: Rolly took the wallet of the long hair and gave it to me and the cellphone was handed to Joel, the necklace, bracelet and the money were taken by Rolly.

Q: You said that this wallet was handed to you by Rolly, what did you do with the wallet?

A: I opened the wallet and it contained Eight Thousand Pesos (P8,000.00) case [sic], Driver's License and that is where I saw that the name of the long hair was Venson Evangelista. . .

Q: From NLEX[,] where did you go thereafter?

A: Joel called someone, I don't know who among the Dominguez brothers he was talking to, but he was given instruction that we should proceed to a safe house in Mabalacat, Pampanga.

x x x x

Q: So what time did you arrive at [sic] Mabalacat, Pampanga?

A: Past 5:00, ma'am.

Q: Upon reaching that safe house[,] what happened there?

A: When we arrived there[,] Roger Dominguez was standing at the gate of the safe house and a green Lancer car was parked there.

x x x x

Q: What happened to the safe house after you arrived and when you saw Roger and Ann?

A: When I saw Roger and his girlfriend Ann, I alighted from the Land Cruiser.

x x x x

Q: What about Venson Evangelista, the long hair, where was he?

A: He was still with Rolly lying face down inside the vehicle.

x x x x

Q: So when you approached Roger Dominguez, what happened then?

A: He told me that Ann will bring me to SM San Fernando and to wait for his text or call if ever he will fetch me.

x x x x



Q: So when you were given instructions by Roger[, ] what did you do thereafter?

A: When I was approaching the Lancer where Ann was there[,] Roger whistled at me.

Q: So when Roger whistled at you[,] what did you do?

A: I approached the brothers.

Q: And when you approached[,] what happened?

A: He ordered me to place used tires and a gallon of gasoline at the green Pajero.

x x x x

Q: And what vehicle did they use in fetching you at SM San Fernando?

A: The Land Cruiser we used before I was brought to SM San Fernando.

x x x x

Q: Would you know who is the owner of the vehicle, the Land Cruiser?

A: That was the vehicle that we took on that day from the long hair.

x x x x

Q: After you were fetched by Roger and Ann using that Land Cruiser[,] where did you go?

A: We went to Kapalangan, Calumpit, Bulacan.

x x x x

Q: Upon arriving at the Greenville Subdivision[,] what did you observe?

A: We were the only ones who were there. After we alighted from the vehicle[,] Roger immediately replaced the plate number of the vehicle with the plate number we took from the person when we were at the Kalapangan.

x x x x

Q: Now we go back, Mr. Witness, to this long hair. Would you know, Mr. Witness, as to what happened to the gagged and hog-tied long hair after you last saw him hours earlier stay inside the Land Cruiser before you left for SM?

A: Roger Dominguez, Ann and I were having dinner already, Roger Dominguez received a call from Jayson and the reason why I know it came from Soy [is] because Roger answered "Soy".

Q: And what did you hear?

A: I heard that Roger Dominguez was asking Soy "[s]igurado kang patay na, sigurado kang sunog na, sigurado kang hindi na makikita yan?"

x x x x

Q: So when Jayson Miranda informed you what is his present to you[,] what was his response?

A: I asked him "kanino yan" and he said it's with the long hair and when I asked him the whereabouts[,] he said "patay na, sunog na".



Q: What did he tell you as to how Venson Evangelista was killed? x x x  
A: He narrated it, he said that he was first shot and his body was inserted inside two used tires after that they poured gasoline and he was burned in a rice field somewhere in Nueva Ecija.<sup>13</sup>

We cannot subscribe to Miranda's postulation that the above narration is extraneous to the purpose of qualifying Mendiola as a state witness. On the contrary, they were essential in establishing that he is not the main perpetrator of the murder of Venson Evangelista, rendering him eligible as a state witness under Sec. 17 of Rule 119 of the Rules of Court.

In any event, even assuming *arguendo* that the foregoing details are not germane to the purpose for which the testimony of Mendiola was offered, it was nevertheless incumbent upon respondents to have timely objected against the line of questioning for irrelevance. As prescribed by Section 36, Rule 132 of the Rules of Court:

**Section 36. Objection.** — Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

Noteworthy is that Miranda never raised in his Comment that he and his co-respondents have timely raised an objection when Mendiola delved into the particulars of the crime in his testimony. They are, thus, precluded from belatedly questioning the relevance of the said details.

***Respondents had the opportunity to cross-examine Mendiola***

What is more, embedded in Section 1, Rule 115 of the Rules of Court is the guideline for perpetuating the testimony of a deceased witness during criminal trial, viz:

**RULE 115  
Rights of Accused**

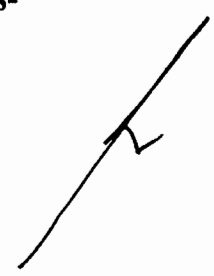
**Section 1. Rights of accused at the trial.** — In all criminal prosecutions, the accused shall be entitled to the following rights:

x x x x

(f) To confront and cross-examine the witnesses against him at the trial. **Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or cannot with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.** (emphasis added)

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<sup>13</sup> Id. at 27-40.



Verily, the sole condition imposed for the utilization of the testimony of a deceased witness is that the opposing party had the opportunity to cross-examine the same. In this regard, respondents lament that they were deprived of the opportunity to cross-examine Mendiola upon his passing prior to being presented as a witness during trial proper. Hence, they argue that Mendiola's testimony ought to be stricken off the records.

We are not persuaded.

One of the most basic rights of an accused person under our justice system is the right to confront the witnesses against him face to face.<sup>14</sup> Subsumed under this right of confrontation is the right to cross-examine the witnesses for the prosecution. And as the Court has elucidated in *People v. Seneris (Seneris)*,<sup>15</sup> the right, though fundamental, may be waived expressly or impliedly by conduct amounting to a renunciation of the same. As the case instructs:

The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. But the common basic principles underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone. **Thus, where a party has had the opportunity to cross-examine an opposing witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.** (emphasis added, citations omitted)

Here, respondents have to realize that their option to not ask for a continuance and reserve the right to continue with their line of questioning for trial proper instead carried inherent risks, including their present predicament. Respondents ought to have been aware that their decision would pave the way not only for the termination of the discharge proceedings, but also for the eventual application of the last paragraph of Section 17, Rule 119 of the Rules of Court should the RTC resolve to discharge Mendiola as a state witness, as it in fact did. The assumption of the risk, to Our mind, amounted to a waiver of any objection as to the admissibility of Mendiola's testimony during the discharge hearing.

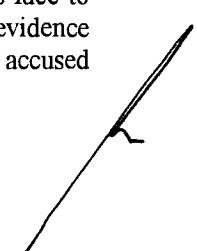
Furthermore, *Seneris* elucidates that the testimony of the deceased prosecution witness shall not be expunged from the records if the defense was able to conduct a rigorous and extensive cross-examination prior to the witness' demise. As held:

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<sup>14</sup> CONSTITUTION, Art. III, Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

<sup>15</sup> No. L-48883, August 6, 1980, 99 SCRA 92.



**Because the cross-examination made by the counsel of private respondent of the deceased witness was extensive and already covered the subject matter of his direct testimony as state witness relating to the essential elements of the crime of parricide, and what remained for further cross-examination is the matter of price or reward allegedly paid by private respondent for the commission of the crime, which is merely an aggravating circumstance and does not affect the existence of the offense charged, the respondent judge gravely abused his discretion in declaring as entirely inadmissible the testimony of the state witness who died through no fault of any of the parties before his cross-examination could be finished. (emphasis added)**

In the case at bar, the records disclose that Mendiola was cross-examined at length for his testimony by the counsels of Miranda and the Dominguez brothers. More, such cross-examination already covered the details of the commission of the offense, to wit:

ATTY. PEREZ for JAYSON MIRANDA

Q: You admitted in your Sinumpaang Salaysay dated January 20, 2011 that before the alleged carnapping and slaying of Mr. Venson Evangelista, you called Mr. Boy Evangelista over the cellphone, did you recall saying this, Mr. Witness? x x x

A: Yes, sir.

Q: So, it is a fact that you arranged in [sic] meeting with the Evangelistas before the alleged carjacking and slaying of Mr. Venson Evangelista?

A: Yes, sir.

x x x x

Q: And when Venson Evangelista told you that the Land Cruiser is still available, you asked him if you could road test the vehicle, is that correct?

A: Yes, sir.

Q: And is it not a fact, that Mr. Venson Evangelista initially refused to have the vehicle road tested, is that correct?

A: Yes, sir.

Q: And this is now the point, Mr. Witness, when you uttered the following remarks: "3.4 million yang sasakyang binibenta mo, hindi mo ipaparoad test", do you recall saying that?

A: Yes, sir.

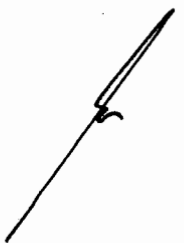
x x x x

Q: If not for your remark, the remark which I have said a while ago, Venson Evangelista would not have agreed to the road test?

A: That was the reason why I went there and it was my job to convince the owner to have the vehicle road tested so, I have to do my part, sir.

x x x x

Q: It was when you are about to go back to the residence of Mr. Venson Evangelista, it was at that point when Joel allegedly poked his gun against a [sic] person of Mr. Venson Evangelista, do you recall saying this?



A: Yes, sir.

Q: So, after allegedly seizing the vehicle and the person of Mr. Venson Evangelista, you proceeded to Mabida, Mabalacat, Pampanga?

A: Yes, sir.

x x x x

Q: During the 50-minute travel, never did it occur to you to object to the alleged plan to kill Mr. Venson Evangelista?

A: When I first saw that the victim was being half-tied [sic] and placed packaging tape on his mouth and hands and eyes, I was not able to say a word because as far as I know, I was hired only to sell total wrecked, flooded and carnapped vehicles and I never thought that I would be part of the group that would kill, sir.

ATTY. OSCAR RARO for the Dominguez Brothers

Q: Now what time did you arrive at Sgt. Catolos Street, 3:00 o'clock?

A: Around 4:00 o'clock in the afternoon, sir.

Q: And how long did it take you to convince Venson to road test the vehicle?

A: 10 to 20 minutes, sir.

Q: And after that you went around that place, twice and then you proceeded to NLEX?

A: After convincing him, we directly go out to road test the vehicle twice and go around the area of Sgt. Catolos Street in Cubao then after which we stopped near their house then we proceeded directly to NLEX[,] sir.

x x x x

Q: What time did you arrive at Mabalacat, Pampanga?

A: Almost 6:00 in the evening, sir.

x x x x

Q: You stated on page 17 of the transcript of stenographic notes on June 27, 2011 that the Dominguez brothers are the ones planning the operation and funding it, you stated that?

A: Yes, sir.

Q: But aside from your statement, do you have any other proof or witness that can corroborate this?

A: Probably what I can say is that the things that I saw, I had experienced and the orders that I have received from them, that's the reason why I am saying that they are the ones funding and planning all these things because all the orders that I followed came from the two (2) brothers, sir.

x x x x

Q: And you also stated and I was fascinated by this story on your direct that before you leave for SM, you were ask[ed] to find used tires and a gallon of gasoline and load it at the green pajero while at Mabalacat?

A: I did not say that I was asked to look for used tires because there are so many scattered tires in that safe house. I was just asked to pick up used

tires and get one (1) gallon of gasoline and bring them inside the green pajero, sir.

Q: How many people were there at the time you were ask[ed] to bring these tires to the green pajero?

A: Me, Raymond Dominguez and Roger Dominguez were there. Ann was inside the gray lancer. Inside the land cruiser were Joel, Rolly and the long hair who was covered with a blanket and Jayson Miranda was inside the pajero while I was loading the said items, sir.

COURT: But you were the only one who loaded the two (2) used tires and a gallon of gasoline inside the vehicle?

A: Yes, your Honor.


Q: Without anybody helped [sic] you?

A: Yes, your Honor.<sup>16</sup>

Respondents' reservation for trial proper of the right to further cross-examine Mendiola did not diminish the sufficiency of the opportunity that they were given to confront the adverse witnesses. Notwithstanding the said reservation, Mendiola's testimonies and admissions as regards the particulars of the crime already formed part of the records of the case when the RTC granted his motion to be declared a state witness. Respondents' constitutional rights were not violated since the fair hearing envisaged by criminal due process had been complied with when the counsels for the respondents conducted a rigorous and exhaustive cross-examination of the deceased witness during the discharge hearing.

**WHEREFORE**, in view of the foregoing, the instant petition is **GRANTED**. The May 27, 2016 Decision and January 18, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 139255 are hereby **REVERSED** and **SET ASIDE**. The testimony of Alfred Mendiola in Criminal Case No. Q-11-168431 pending before the Regional Trial Court, Branch 215 in Quezon City is hereby **REINSTATED**. With respect to the documents and other evidence authenticated by Mendiola during the discharge proceeding, the RTC shall rule upon their admissibility when the same are formally offered in evidence.

**SO ORDERED.**

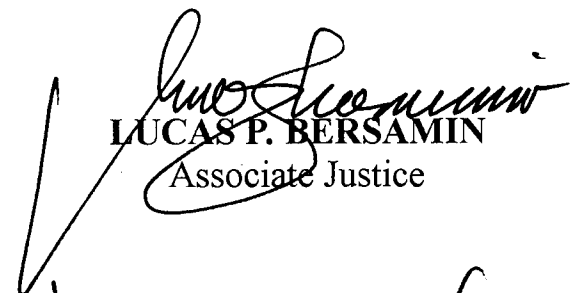


**PRESBITERO J. VELASCO, JR.**  
Associate Justice


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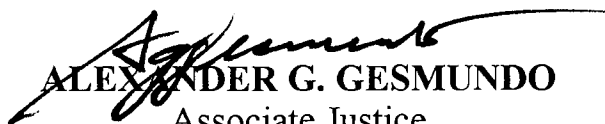
<sup>16</sup> *Rollo*, pp. 41-44.

WE CONCUR:

  
**LUCAS P. BERSAMIN**  
 Associate Justice

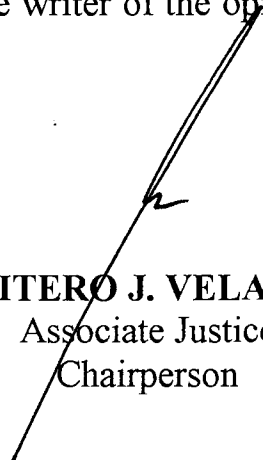
  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

  
**SAMUEL K. MARTIRES**  
 Associate Justice

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice


**ATTESTATION**

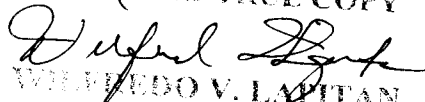
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson

**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

CERTIFIED TRUE COPY  
  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division

MAR 15 2018