

G.R. No. L-27120

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**THE PEOPLE OF THE PHILIPPINES,
PETITIONER, VS. JUDGE JUAN L. BOCAR AND JOSE SIMBORIO Y SALONGA,
RESPONDENTS.**

D E C I S I O N

REYES, J. B. L., J.:

Petition for certiorari against the order of the Court of First Instance of Manila dated 13 May 1966 (in Criminal Case No. 82116) granting the petition for bail of therein accused Jose Simborio y Salonga on a P20,000.00 bond.

In an information filed on 19 April 1966, Jose Simborio y Salonga was charged with the crime of murder for the fatal shooting of Avelino Concepcion, Jr. in the evening of 11 March 1966. It was there alleged that the accused, in conspiracy with Marmolito Catelo y Rivera (alias Sonny Catelo) and others whose identity and whereabouts were unknown, shot Avelino Concepcion, Jr. with a gun, wounding the latter in the abdomen which directly and immediately caused his death (on 14 March 1966). The offense was said to have been attended by the circumstances of premeditation, treachery, abuse of superior strength, and the use of motor vehicle.

On 22 April 1966, the accused filed a motion for his provisional release on bail, claiming that the evidence of his guilt was not strong and, considering his personal circumstances and social standing, there is no probability that he would flee. Thereupon, the motion was heard on

29 April 1966, during which hearing the prosecution presented its evidence, consisting of the ante mortem statement of the victim, Avelino Concepcion, Jr., given to Patrolman J. Sta. Maria at the Philippine General Hospital to the effect that accused Simborio was in the company of gunwielder Sonny Catelo when he (Concepcion) was shot; the statement of alleged eyewitness Ruben Sumalde y Olisco that when Sonny Catelo shot Concepcion, Jr. the accused was holding the victim's left arm; and the statement of Manolito Gascon, the driver of the car used by Catelo and company, to the effect that the accused was with them at least before the incident happened. Upon the other hand, the accused contended that at the time of the incident he was taking an examination at the Mapua Institute of Technology. To support this allegation, he presented the examination paper and the testimonies of his instructor and the latter's assistant that the said examination paper could not have been submitted if movant did not take the test on the date in question.

After the parties had filed their respective memoranda, the court, considering the fact that -

"The prosecution admits that it was not. Simborio who fired the gun and shot Concepcion but another suspect still at-large by the name of Sonny Catelo. But the prosecution insists that Simborio was present, was the one who identified the victim, and was in fact holding the victim's arm when the latter was fired upon.

"In view of the claim of the accused that he was not present at the scene of the crime, but was in fact taking a final examination in the Mapua Institute of Technology at the time the alleged crime was committed, the fact of his examination paper having been produced, and the testimony of the professor that it can not happen that a student can submit an examination paper without attending the test, or that an examination paper can be submitted without the student having taken part in the examination, added to

the fact that the killer and the trigger man was not Simborio but another suspect named Sonny Catelo, who is still at-large, which the prosecution admits, as in fact it states in its memorandum that the principal suspects are still at-large', which is an indirect admission that the herein accused is not as guilty as the said real principal suspects; the counter statement of the assistant to the professor, Gumangan, to the contrary notwithstanding, which in effect does not substantially alter his first affidavit because he did not have to personally know the student, but the fact remains that 'an examination paper submitted after the examination bearing the name of Jose Simborio' make out a very controversial issue as to whether or not Simborio was present at the scene of the crime at the time",

reached the conclusion that the prosecution evidence as such does not meet the required standard of "strong evidence" to justify the denial of the accused's right to bail. Consequently, the petition was granted and the provisional release of the accused allowed on a bond for P20,000.00. The Assistant City Fiscal filed the present petition, claiming that the respondent judge acted in grave abuse of discretion and with bias in issuing the aforementioned order.

Petitioner's charge of grave abuse of discretion on the part of the respondent judge is premised on the allegation that the motion for bail was granted in disregard of the manifestation of the trial fiscal that he was introducing witnesses to amplify the exhibits already presented. In short, it is here contended that in granting the petition for bail before the trial fiscal could introduce his witnesses, the prosecution had been deprived of its right to present complete evidence that would justify the disapproval of the petition, or that the order allowing the temporary liberty of the accused on bail was based on incomplete evidence.

It can not be denied that, under our regime of laws, and concomitant with the legal presumption of innocence before conviction, an accused is entitled to provisional liberty on bail,^[1] the only exception being when he is charged with a capital offense and the

evidence of his guilt is strong.^[2]

But even in the latter instance, the high regard reserved by the law for personal freedom is underscored by the provision placing upon the prosecution, not on the defense, the burden of proving that the accused is not entitled to bail.^[3]

This protective attitude towards the sanctity of the liberty of a person notwithstanding, due process also demands that in the matter of bail the prosecution should be afforded full opportunity to present proof of the guilt of the accused.^[4]

Thus, if it were true that the prosecution in this case was deprived of the right to present its evidence against the bail petition, or that the order granting such petition was issued upon incomplete evidence, then the issuance of the order would really constitute grave abuse of discretion that would call for the remedy of certiorari.^[5]

There is record, however, that while the trial fiscal manifested his intention to introduce witnesses to amplify the exhibits already adduced by the prosecution, such manifestation was in effect withdrawn when he offered to submit the matter for resolution of the court on the evidence already presented, provided the accused would admit said exhibits — which condition the accused accepted. The transcript of the notes of the proceedings in the court below reads as follows:

“FISCAL

If the accused will admit the affidavits, the exhibits that we have presented, then we will submit and rest our case on this motion for bail.

“COURT

What do you say about that?

“ATTY.
CONCEPCION (for the accused)

As far as Exhibit A^[6]
is concerned, your Honor, we have no objection that if this witness will testify,
he will reiterate the contents of that statement.

X X
X X X X X
X X X X X
X X X

“ATTY.
CONCEPCION

For the purpose of this petition for bail, your Honor, we have no
objection to the admission of Exhibit B.

“COURT

That is?

“ATTY.
CONCEPCION

Manolito Gascon, with the

reservation that it is without prejudice to cross examine during the hearing.

X X

X X X

X X X

X X X

X X

X X

“COURT

How about the other affidavits?

“ATTY.

CONCEPCION

As far as Exhibit C,^[7]

we have no objection, inasmuch as anyway the statement is obviously contrary to the statement of the witness Gascon.

X X

X X X

X X X

X X X

X X

X X

“COURT

How about the ante-mortem statement?

“ATTY.
CONCEPCION

The ante-mortem statement, we have no objection also. And we would like to invite attention of the Court that the deceased only stated that Simborio was present.

X X
X X X X X
X X X X X
X X X

“COURT

All right. With the manifestation and reservation, defense admits the several exhibits.

“FISCAL

Yes, your Honor.

“COURT

That was your challenge.

“FISCAL

Yes, your Honor, we will submit memorandum. Ten (10) days, or, two weeks, your Honor. (t.s.n., pages 15-20, session of 6 May 1966).” (Underscoring supplied; pages 3-6, Answer.)

And there is nothing unlawful or irregular about the above procedure. The declarations constitute judicial admissions, which are allowed by the rules^[8] and are binding on the parties, by virtue of which the prosecution dispensed with the introduction of additional evidence and the defense waived the right to contest or dispute the veracity of the statements contained in the exhibits. Clearly, it can not be claimed that there had been deprivation of the prosecution’s right to present all its evidence. If the evidence already adduced turned out to be inadequate for purposes of denying the petition for bail, the prosecution can not lay the blame at anyone else’s door; it took the risk in resting its case on the exhibits already presented, which, in the lower court’s opinion, did not suffice.

Neither is it correct to say that the respondent judge gave more credence to the alibi of the accused rather than to the statements made by the victim and an eyewitness to the incident, thereby showing bias in favor of the accused. It must be remembered that the question raised for the determination of the lower court was not the guilt or innocence of the accused of the crime charged, but whether or not the evidence of his guilt is strong. In taking cognizance of the fact that the statements of the victim and witness Sumalde, that the accused was present at the scene of the incident and even held the arm of the victim when the latter was shot at, is contradicted by the examination paper and the testimonies of the instructor and his assistant tending to establish the presence of the accused in school at the time when the shooting occurred, the respondent judge did not rule on the admissibility

and probative value of said evidence. It was merely held that with the issue of the whereabouts of the accused when the crime was committed having thus become contentious, the evidence of guilt of the accused (so far presented) can not be considered strong.

WHEREFORE, finding no grave abuse of discretion in the order here in question, the petition is hereby dismissed, without costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

^[1] Marcos vs. Judge Cruz, 67 Phil. 82.

^[2] Sec. 1 (16), Article III, Philippine Constitution.

^[3] Sec. 7, Revised Rule 114.

^[4] See Angeles vs. Abaya, 90 Phil. 172, 218.

^[5] Teehankee vs. Rovira, 75 Phil. 634.

^[6] Statement of the assistant to the MIT instructor who watched the examination.

^[7] Statement of eyewitness Ruben Sumalde y Olisco.

^[8] Section 2, Revised Rule 129.

