

**REYNALDO RODIL, PETITIONER, VS. SEGUNDO M. GARCIA
(MUNICIPAL JUDGE OF STA. CRUZ, MARINDUQUE), AND PC TSGT.
IRENEO DELLOSA, RESPONDENTS.**

G.R. No. L-49155. May 13, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

It was the insistence of counsel for petitioner Reynaldo Rodil, against whom a warrant of arrest had been issued the charge against him being that of murder, to recall witnesses for the prosecution to enable such counsel to cross-examine them, on, to quote his words, "clarificatory and amplificatory matters" and the denial thereof by respondent Municipal Judge Segundo M. Garcia of Sta. Cruz, Marinduque[1] that led to this proceeding for certiorari and prohibition with preliminary injunction.[2] What is prayed for is not only that such order denying counsel's request to recall government witnesses be set aside and nullified, but also that bail be granted petitioner, a petition to that effect having been denied with a subsequent motion for reconsideration still undecided. Respondents were required to comment and the Court likewise issued a temporary restraining order. Such a comment was submitted on behalf of respondents by the Solicitor General[3] seeking the dismissal of the petition on the ground that the right to cross-examine in a preliminary investigation is not a right granted an accused and that the exercise of discretion by respondent Judge considering the evidence of record sufficed to justify denial of the application for bail. The case was then considered submitted for decision.

An examination of the record, as well as the pertinent doctrines, makes evident that the jurisdictional issue posed arises from the failure to accord petitioner a hearing on his application for bail. A resolution of that question in the sense of respondent Judge affording petitioner his day in court is equally decisive of the other issue, whether or not counsel for petitioner could recall witnesses for the prosecution for the purpose of asking clarificatory questions. That he could very well do when they testify to prove evidence of guilt is strong. Under the present state of the law, it cannot be said that the right to cross-examine is guaranteed an accused at the stage of preliminary investigation.

There is, in the light of the above, merit in the petition.

1. At the continuation of the hearing on the preliminary investigation conducted by respondent Judge, held after he denied the petition for bail, counsel for petitioner asked the categorical question whether in the opinion of the court "the evidence of guilt is strong, final and irreversible." [4] Respondent Judge categorically answered: "That is final, the said order of the Court states that the evidence of guilt is strong." [5] Moreover, the order of respondent Judge denying bail explicitly admitted he issued it on the basis of the motion of petitioner that he be granted such right and the opposition filed by the First Assistant Provincial Fiscal without conducting any hearing on such motion. Clearly, he acted on the mistaken belief that the presentation of evidence by the prosecution for the purpose of the issuance of the warrant of arrest, the preliminary examination proper, suffices for the denial of the plea for bail. In the latest case on the subject, *People v. Sola*, [6] decided on March 17, 1981, this Court relying

on *People v. San Diego*,^[7] nullified an order of a municipal judge named respondent in that case as he granted bail to the accused without hearing the prosecution. The present case is much stronger; it is the accused himself, the explicit beneficiary of the constitutional right, who was not heard.

2. There is misapprehension on the part of respondent Judge of the import of the ruling in *Ocampo v. Bernabe*,^[8] as to the summary nature of the hearing required to determine whether bail should be allowed. The opinion of the then Chief Justice Moran speaks for itself: "The course of the inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters avoiding unnecessary thoroughness in the examination and cross-examination of witnesses and reducing to a reasonable minimum the amount of corroboration particularly on details that are not essential to the purpose of the hearing. Objection has been made long ago to this method of hearing wherein the regular trial is anticipated though to a limited extent at least. But the objection was dismissed as follows: 'The second objection is more serious, and, if the courts possessed entire freedom of action in regard to the matter, would be very persuasive. The regular trial is, to a limited extent at least, anticipated. While the guilt or innocence of the accused is not to be determined, the quantity and character of the proofs on this point are, for the special purpose in hand, necessarily considered. Occasionally much time is thus consumed, and the court's attention is correspondingly diverted from other business. But these objections cannot avail against a positive constitutional command; if the Constitution requires the court to determine for itself whether or not the proof is evident or presumption great in a given case, all considerations of expediency or convenience, however potent they might be at the common law, must give way.'^[9] As a matter of fact, the decision in that case was in favor of petitioner *Ocampo*, with the Fourth Division of the People's Court being adjudged as having committed a grave abuse of discretion for denying bail. What cannot be too sufficiently stressed is that the procedure to be followed in the hearing on an application for bail, while summary in character, is not to be a mere sham or pretense. It must not be an exercise in futility. The accused is not to be denied his day in court.

3. That leaves the question of the alleged grave abuse of discretion in that he refused to allow counsel for petitioner during the stage of preliminary investigation proper to recall prosecution witnesses so that counsel could cross-examine them on "clarificatory and amplification matters." As set forth earlier, the accused is not by law entitled to such a right. The leading case is still *Abrera v. Muñoz and Flordeliza*,^[10] a 1960 decision, with Justice J.B.L. Reyes as ponente. While the specific question differs, the principle announced is applicable. In that certiorari proceeding, it was alleged that there was a grave abuse of discretion by respondent Justice of the Peace for permitting the cross-examination by the prosecution of the accused and her witnesses during the preliminary investigation. This Court held: "At the outset, it should be stated that the refusal of the Justice of the Peace to allow the defense to cross-examine the prosecution's witnesses presented prior to petitioner's arrest, cannot be utilized as argument for the contention that the prosecution should not have been allowed to cross-examine the defense witnesses. An accused is not entitled to cross-examine the witnesses presented against him in the preliminary investigation before his arrest, this being a matter that depends on the sound discretion of the Judge or investigating officer concerned (*People v. Ramilo*, 98 Phil., 545; *Dequito v. Arellano*, 81 Phil., 128; *Bustos v. Lucero*, 81 Phil., 640). Petitioner-appellant's attempt to draw a parallel between the refusal of the judge to allow her to cross-examine prosecution's witnesses, with the permission granted to the latter as against the defense witnesses, assumes the existence of a vested right of which petitioner-appellant had been deprived. In being denied confrontation of the prosecution witnesses, she was not deprived of any right but was merely refused the exercise of a privilege."^[11] With the ruling on the question for bail, counsel for petitioner, as above intimated, would be able to attain the objective which was denied him when he was not allowed to recall the prosecution witnesses. To follow the language of *Abrera*, petitioner as the accused "was not deprived of any right but was merely refused the exercise of a privilege."

4. The Abrera decision likewise stands for this proposition first set forth in the aforecited Dequito case: "There are an infinite number of things which a party may not in strict law do or cause to be done but which may be permitted by the court in the exercise of its discretion and in the interest of justice. Specially is this true in matters affecting the conduct of the trial and the calling, recalling and examination of witnesses." [12] There is added emphasis as shown by this excerpt: "The judge is not a ministerial officer reduced to recording what takes place and what witnesses say in the examination. Above all, his is the great responsibility of safeguarding the accused from ground-less or vindictive prosecution. If the justice of the peace is to ascertain, as he must, whether a crime has been committed and, if so, whether there is probable cause that the accused committed it, his authority cannot be confined as in a straight jacket to the stiffness of medieval and outmoded technicalities of practice." [13] It thus appears clearly that in the exercise of his discretion respondent Judge could have granted the request and thus avoided the necessity of a petition of this character having to be filed.

5. The interest of a more speedy and a more efficient administration of justice would be best served if there is a greater awareness on the part of judges that in addition to safeguarding the express rights of an accused person, a matter mandated by the Constitution or the Rules of Court, they should likewise exercise their discretion in such a way that the purpose of a preliminary investigation, the avoidance of groundless or vindictive prosecutions, could be attained in as fair and objective manner as possible. Nor is counsel for petitioner entirely blameless. From the transcript of stenographic notes submitted by him, there is readily discernible that tone of "asperity," as noted in the Comment of Solicitor General Mendoza, when he addressed respondent Judge. An occupant on the bench, while he should be on guard against undue emotional reaction, is, after all, not expected to be totally free from such traits as irritability and exasperation. Moreover, he is entitled and should get that proper degree of respect and courtesy from a lawyer appearing before him. While it is not only the right of an advocate but his duty to cite all pertinent authorities, counsel for petitioner could have done so in a less assertive manner and by way of a submission rather than a lecture. It must never be forgotten that a lawyer pleads; he does not dictate.

WHEREFORE, the writ of certiorari is granted. The order of respondent Judge denying bail is set aside. He, or whoever is now the Municipal Judge of Santa Cruz, Marinduque, must set forthwith the hearing on the application for bail of petitioner, to be conducted in accordance with the requirements of the Constitution, the Rules of Court, and this opinion. No costs.

Aquino, Abad Santos, Guerrero, and De Castro, JJ., concur.

Barredo, J., did not take part.

Concepcion, Jr., J., is on leave.

[1] The other respondent is PC TSGT. Ireneo Dellosa.

[2] Petition, Annexes A, B, and H.

[3] Solicitor General Estelito P. Mendoza was assisted by Assistant Solicitor General Santiago M. Kapunan and Solicitor Celso P. Ylagan.

[4] Annex F of Petition and Comment of Solicitor General, par. 4.

[5] Ibid.

[6] G.R. No. 56158-64. Cf. *Inocencio v. Alconcel*, G.R. No. 55658, February 5, 1981 citing *Teehankee v. Rovira*, 75 Phil. 634 (1945); *Ocampo v. Bernabe*, 77 Phil. 55 (1946); *De la Rama v. People's Court*, 77 Phil. 461 (1946); *Ching Juat v. Ysip*, 77 Phil. 849 (1947); *Sy Guan v. Amparo*, 79 Phil. 670 (1947); *People v. Berg*, 79 Phil. 842 (1947); *People v. Alano*, 81 Phil. 19 (1948); *Muñoz v. Rilloraza*, 83 Phil. 609 (1949); *Villaseñor v. Abano*,

L-23599, September 29, 1967, 21 SCRA 312; *People v. San Diego*, L-29676, December 24, 1968, 26 SCRA 522.

[7] L-29676, December 24, 1968, 26 SCRA 522.

[8] 77 Phil. 55 (1946).

[9] *Ibid*, 62-63. The case of *Re Losasso*, 10 L.R.A. 847, 850 (1890) was cited by Chief Justice Moran.

[10] 108 Phil. 1124.

[11] *Ibid*, 1126. It must be noted that while in *Dequito v. Arellano* it was at the stage of preliminary examination when a plea to allow the accused to cross-examine arose, in *Bustos v. Lucero*, the question came up at the preliminary investigation proper. In both cases, both decided in 1948, Justice Tuason spoke for the Court. The *Ramilo* decision reiterating such a rule was the result of the failure of a City Attorney to allow the accused to cross-examine witnesses during a reinvestigation.

[12] 81 Phil. at 130.

[13] *Ibid*, 130-131.

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