

GAUDENCIO MANIGBAS, ET AL., PETITIONERS AND APPELLEES, VS. JUDGE CALIXTO P. LUNA, ETC., ET AL., RESPONDENTS. JUDGE CALIXTO P. LUNA, RESPONDENT AND APPELLANT.

G.R. No. L-8455. February 27, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

.On July 13, 1954, Gaudencio Manigbas and eleven others were charged with murder before the Justice of the Peace Court of Rosario, Batangas by Captain Epigenio Navarro, commanding officer of a constabulary detachment stationed in Alangilang, Batangas, Batangas. The complaint was later amended by including one Miguel Almario.

Three days after the, filing of the original complaint, counsel for the accused moved that they be granted bail for their provisional liberty and, on July 19, 1954, the court issued an order wherein, after reconsidering its previous order denying bail to all, allowed to some the right to bail and denied to others. Both defense and prosecution filed a motion for reconsideration, the former asking that all the accused be granted bail while the latter pleading that all of them be denied because the justice of the peace court has no jurisdiction to grant bail in cases involving, capital offenses. On July 21, 1954, the court entered an order setting aside its order of July 19, 1954, and restoring, its original order denying bail to all the accused for the reason that "in a long series of decisions promulgated by our Supreme Court in connection with the granting of bail to a person charged with a capital offense which were carefully examined by this court, there is not a single case wherein the Justice of the Peace Court entertained a petition for bail for a person charged with a capital offense and thereafter hear the evidence to determine whether the same is strong or not so as to warrant the giving of bail."

Upon receipt of a copy of the aforesaid order, counsel for the defense filed with the Court of First Instance of Batangas, sitting in Lipa City, a petition for mandamus seeking in effect to compel the justice of the peace court of Rosario to receive evidence to determine if the same warrants the granting of bail to the accused. After the provincial commander and the justice of the peace put in their answers, the court on August 24, 1954 granted the petition holding that respondent justice of the peace court has authority to grant bail even if the charge involves a capital offense and ordering said court to act on the application for bail. Hence this appeal.

Before proceeding to discuss the merits of the presents controversy, there is need to dwell on a point of procedure which came up during the deliberation of this case. This has reference to the fact that, according to the record, the accused who have interposed this petition for mandamus are still at large for so far no order has been issued for their arrest. The record discloses that immediately upon the filing, of the charge against them they applied for bail and their motion was immediately acted upon by the justice of the peace. And the denial of the bail eventually led to the filing of the present petition for mandamus.

We hold that this petition is premature for its purpose is to compel the performance of a duty which does not exist there being no correlative right the use Sir enjoyment of it has been denied which may be the subject of

mandamus (section 67, Rule 3) ; and this is so because the right to bail only accrues when a person is arrested. or deprived of his liberty. The purpose of bail is to secure one's release and it would be incongruous to grant bail to one who is. free. Thus; "bail is the security required and given for the release of a person who is in the custody of the law" (Rule 110, section 1), and evidently the accused do not come within its purview. We could therefore dismiss this petition on this score alone were it not for the importance of the issue now before us which requires proper elucidation for the guidance of all justices of the peace who may be found in similar predicament.

The issue to be determined is whether a justice of the peace can, in a case involving a capital offense, act on an application for bail and receive evidence to determine if the evidence of guilt is strong or otherwise grant bail if the evidence so warrants.

Under our Constitution, all accused persons before conviction are entitled to bail except those charged with capital offenses when evidence of guilt is strong (Article III, section 1, paragraph 16). Under our rules, in non-capital offenses, after judgment by a justice of the peace and before conviction by the court of first instance, an accused is entitled to bail as a matter of right (Rule 110, section 3); but, "after conviction by the Court of First Instance, defendant may, upon application, be bailed at the discretion of the court." (Rule 110, section 4.) And implementing the provision of our Constitution, the rule also provides that "No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong" (Rule 110, section 6). The burden of showing that the evidence of guilt is strong is on the prosecution (Rule 110, section 7).

While as a general rule it may be stated that an application for bail may be acted upon by the court which has cognizance of the case regardless of whether it involves a capital offense, or not, (Peralta vs. Ramos, 71 Phil., 271) and as a general proposition we may concede that justices of the peace before whom a case is initiated by the filing of the corresponding complaint or information have also authority to entertain petitions for bail in cases involving non-capital offenses as to which the accused are entitled to bail as a matter of right, however, doubt is entertained as to whether said justices of the peace can likewise entertain bail while the cases are under their control if they involve capital offenses like the one under consideration. This doubt has arisen because the law and the rules on the matter are not explicit enough and our jurisprudence has not so far laid down a clear-cut ruling clarifying this point in this jurisdiction.

In the United States "it may be stated as a general rule that all judicial officers having the power to hear and determine cases have the power to take bail." It is regarded as "a necessary incident to the right to hear and determine the cause" (6 Am. Jur., p. 67). And with particular reference to justices of the peace, the general rule is that "where, under the statutes, justices of the peace have power as examining magistrates, with power of commitment, they may in their discretion admit to bail"; except, where their power to "take bail" is limited by the Constitution, or by statute, in which case "they must act within the express or implied limitations thereby laid down" (6 C. J., 973-974). But the prevailing rule is that "inferior officers vested only with the power to commit cannot, without express legislative enactment, take bail in capital offenses, for the determination of the sufficiency of the evidence in such cases, in order to entitle the accused to bail, is a matter of the greatest importance both to the accused and to the state and is the appropriate province of the court entrusted with the trial of such cases" (6 Am. Jur., p. 67).

Considering the general rule that justices of the peace have the power as examining magistrates to commit and in their discretion admit to bail an accused person unless such power is limited by the Constitution or by statute, can we say that in this jurisdiction our justices of the peace have also the power to admit to bail a person accused of a capital offense?

Our answer must of necessity be in the affirmative not only because there is no such limitation in our Constitution

but because the Judiciary Reorganization Act of 1948 seems to expressly confer this power upon them. We refer to sections 87 and 91 of said Act relative to the power of justices of the peace to conduct preliminary investigations and the incidental powers they may exercise in relation thereto. The first section provides that the justices of the peace may conduct preliminary investigations "for any offense alleged to have been committed within their respective municipalities * * * without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance' before the proper court." And section 91 provides that the same justices of the peace may "require of any person arrested a bond for good behavior or to keep the peace, or for the further appearance of such person before a court of competent jurisdiction." The only limitation to this power is that the bond must be approved by that court.

These provisions are broad enough to confer upon justices of the peace the authority to grant bail to persons accused even of capital offenses for such is the only meaning that we can give to the phrase "bind over any person charged with such offense to secure his appearance before the proper court." This is the meaning of bail as defined in section 1 of Rule 110.

Some apprehension has been expressed by some members of the Court over the fact that if such power is given to justices of the peace in capital cases the power may be abused or improperly exercised considering the fact that some of them are not lawyers or are politicians like the mayors who may act under the law when the incumbent justices are temporarily absent (section B, Rule 108). While the possibility of abuse cannot be denied such cannot argue against the existence of the power and if there is need for a remedy such devolves upon Congress. But before such curative measure is adopted, our duty is to apply the law as we see it regardless of its implications. And in the event that an abuse is committed, the situation is not without a remedy. The government can immediately take steps to obtain appropriate relief and, we are sure, the proper court will not deny prompt action when necessary to promote the interests of justice. We are therefore of the opinion that respondent justice of the peace can act on the application for bail taking into account the evidence that may be presented by the prosecution. In this respect the order appealed from is correct.

Considering that the petition for mandamus is premature, the same should be dismissed with costs against petitioners.

Parás, C. J., Padilla, Reyes, A., Jugo, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

CONCURRING AND DISSENTING:

MONTEMAYOR, J.,

In so far as the majority opinion dismisses the petition for mandamus for being premature, I concur in it. But where it holds and lays down the doctrine that a Justice of the Peace Court may entertain and act upon petitions for bail in capital offense cases, I dissent. The reason is that a Justice of the Peace Court has a limited criminal jurisdiction and is allowed to try and decide only minor or petty offenses; it is not a court of record; and until the present, in some towns or districts the judicial officer presiding over it, is not even a member of the bar, and although he may have studied law, he has limited legal training, experience and knowledge of the law, especially that of evidence, and is not qualified and in a position to receive, pass upon and weigh evidence submitted to determine whether the evidence for the prosecution is strong, as provided by law. The very majority opinion in part says:

"But the prevailing rule is that 'inferior officers vested only with the power to commit cannot, without express legislative enactment, take bail in capital offenses, for the determination of the sufficiency of the evidence in

such cases, in order to entitle the accused to bail, is a matter of the greatest importance both to the accused and to the state and is the appropriate province of the court entrusted with the trial of such cases' (6 Am. Jur., 67)." (Italics supplied.)

That is partly correct. The complete rule seems to be that stated in *Ex-parte Kittrel*, 20 Ark. 400 where the Court said:

"* * * To hear the showing and determine upon the sufficiency in cases of so much magnitude is a matter of the greatest importance, both to the accused and to the state, and would seem to be the appropriate province of the court or judge in trusted, by the Constitution, with the trial of such causes; and in the absence of any clear and explicit act attempting to confer upon inferior officers authority to hear and determine a matter of so much consequence in the progress of capital cases, we are disposed to doubt that such was the intention of the legislature." (39 L.E.A. NS 768.) (Italics supplied.)

Now, is there any law, clear and explicit conferring upon a justice of the Peace Court the jurisdiction and authority to hear and determine applications for bail in cases involving capital offense? The majority opinion claims that there is such a law.—sections 87 and 91 of the Judiciary Act of 1948; and says:

"* * *. The first section provides that the justices of the peace may conduct preliminary investigations for any offense alleged to have been committed within their respective municipalities * * * without regard to the limits of punishments, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court.' And section 91 provides that the same justices of the peace may require of any person arrested a bond for good behavior or to keep the peace, or for the further appearance of such person before a court of competent jurisdiction' The only limitation to this power is that the bond must be approved by that court. These provisions are broad enough to confer upon justices of the peace the authority to grant bail to persons accused even of capital offenses for such is the only meaning that we can give to the phrase 'bind over any person charged with such offense to secure his appearance before the proper court.'" (Italics supplied.)

It will be noticed that the majority's whole claim or argument by reason of the above provisions rests mainly, if not entirely on the phrase "bind over" which according to Vol. I, Bouvier's Law Dictionary, p. 365, is "the act by, which a magistrate or court hold to bail a party accused of a crime or misdemeanor". But the phrase "bind over" does not stand alone in section 87 of the Judiciary Act of 1948. It is connected with the word "commit"; the whole phrase being "commit and bind over". According to Vol. I, Bouvier's Law Dictionary, p. 550, "commitment" is defined as "the warrant or order by which a court or magistrate directs a ministerial officer to take a person to prison," or "the act of sending a person to prison by means of such a warrant or order." In other words, the law says that the Justice of the Peace may admit a party accused of a crime or misdemeanor to bail and send that same party to jail. ' If the coordinating word "or" were used between the word "commit" and the phrase "bind over", then there would be offered an alternative or choice of either, that is to say, a magistrate may commit one to jail or admit him to bail. But the law used the conjunction "and" which would seem to mean that the magistrate must do both and not only one of them. What the Legislature meant by the phrase "commit and bind over" is not only not clear but doubtful and we cannot say that the law is clear and explicit in authorizing a Justice of the Peace to grant bail in capital offenses. The majority opinion itself admits "that the law and the rules are not explicit enough". Even assuming that the phrase could be interpreted to mean that the Justice of the Peace may put in jail or admit to bail, it may well be that such authority extends only to non-capital offenses, where the accused is entitled to bail as a matter of right and not to cases where admission to bail is a matter of discretion (Rule 110 section 8). The majority claims that the legal provisions are broad enough. Indeed they are broad, too broad and vague, and to me far from clear and explicit. Nowhere in sections 87 and 91 of the Judiciary Act can we find a single word, phrase or clause mentioning or referring even remotely to capital offenses. So, under the rule 1 have cited and reproduced, in the absence of a "clear and explicit Act attempting to confer upon inferior officers

authority to hear and determine a matter of so much consequence in the progress of capital cases" (petition for bail) the conclusion must be that said inferior officers have not such authority.

Let us start with the fact that a Justice of the Peace Court is not a court of record. There is no stenographer to take down the evidence submitted before it. So, if said court acting upon a petition for bail in a capital offense case grants bail on the ground that the evidence for the prosecution is not strong or, on the other hand, denies bail on the ground that said evidence for the prosecution is strong, it would be difficult, if not impossible, to appeal from said order or to correct it thru certiorari proceedings on the ground of abuse of discretion, for the simple reason that the appellate court where the appeal is taken nor where the extraordinary legal remedy is sought, cannot review the evidence received by, the Justice of the Peace Court to determine whether or not it abused its discretion, because there is no record of such evidence.

It is true that a Justice of the Peace may conduct preliminary investigation of any criminal case regardless of the seriousness thereof and the penalty attached to it. For that matter even the town mayor may also be called upon to conduct said preliminary investigation. Section 3, Rule 108 of the Rules of Court provides:

"Sec. 3. Preliminary investigation by the municipal mayor.—In case of temporary absence of both the justice of the peace and the auxiliary justice from the municipality,, town, or place wherein they exercise their jurisdiction, the municipal mayor shall make the preliminary investigation in criminal cases, when such investigation cannot be delayed without prejudice to the interest of justice. He shall make a report of any preliminary investigation so made to the justice of the peace or ,to the auxiliary justice immediately upon the return of one or the other. He shall have authority in such cases to order the arrest of the defendant and to grant, him bail in the manner and cases provided for in Rule 110."

Under the above provision, a mayor may conduct a preliminary investigation and may grant bail under Rule 110. But we should bear in mind that in a preliminary investigation said court determines only the existence or absence of probable cause and then decides whether to dismiss the case or to elevate the same to the Court of First Instance. However, to determine whether a person accused of a capital offense is entitled to bail, the court determines not only probable cause but also whether the evidence for the prosecution is strong. To make this determination involves a careful appraisal and weighing of the evidence, not only of the prosecution but also that of the defense, . for the reason that the evidence of the prosecution alone may be strong but when considered and weighed against that of the defense, it may be weak. In this appraisal and weighing of the evidence the court must pass upon and decide many legal points requiring legal training, experience, and knowledge if not mastery of the law of evidence. It must determine the admissibility of written statements and confessions claimed by the defense to have been extorted thru force, intimidation, torture or promise of reward. It must determine whether statements, verbal or written, made by the murder victim may be considered as a dying declaration, whether or not spontaneous statements or exclamations uttered by him are part of the *res gestae*, to determine their competence and admissibility. It must be able to tell if the crime committed is murder or simple homicide for if the latter, then it is not a capital offense and so the accused is entitled to bail; but the determination of this important point involves a finding of the existence or absence of qualifying or merely aggravating (generic) circumstances and requires knowledge of the distinction between them. It must pass upon the propriety relevancy and materiality of questions asked and the objections thereto. 'I am not sure that a Justice of the Peace with some exceptions of course, is in a position to do all this. And I greatly doubt that the Legislature by the general, if not vague, terms used in section 87 of the Judiciary Act intended to entrust all this task to a Justice . of the Peace who may not even be a lawyer or to the town mayor who may be a complete stranger to a law book.

We should also remember that in a position for bail in capital offenses the Provincial Fiscal must be notified and most likely he will appear at the hearing and fight the application every inch of the way,' especially when in his

opinion the evidence in his hands is strong and the accused is a dangerous criminal who would likely jump his bail. Now, in such a prolonged and bitter legal fight between the Fiscal and usually a battery of defense lawyers, considerable evidence, parole and documentary, is submitted. One side would be asking questions leading, impertinent or otherwise and the other vigorously objecting to them and vice-versa, and arguing all the way, and the court must decide all said questions and points on the spot. The hearing may last- several days. When the trial is finally ended and the justice of the Peace retires to his room to study the evidence, he has to rely entirely upon his memory unless he has taken down notes. He has no record of the evidence such as the transcript of stenographic notes of the testimony of witnesses to refresh his memory, to contrast the evidence for the prosecution with that of the defense and weigh both in the Judicial balance, because as we have already said, this court is not a court of record and there is no stenographer to take down the evidence. Considering all this, can we in conscience say that the Justice of the Peace is in a position to entertain and decide a petition for bail in a case involving a capital offense?

There is another important question that bears consideration. Let us suppose that the complaint for a capital offense is filed in a remote municipality far from the capital. A petition for bail is filed. The law says that the Provincial Fiscal must be notified. For him to leave his office and a trial being conducted by him in the Court of First Instance, may not be easy. He may have to ask for postponement of the hearing on the petition for bail. When he finally goes to the remote town for the hearing, he arrives there with no knowledge whatsoever of the case, much less, of the evidence of the prosecution. He would have to call and confer with the Government witnesses, take down their testimonies and otherwise prepare for the hearing. This may require several days and in the meantime the accused is in confinement. The hearing sometimes is a full-dress rehearsal of the regular trial and may take several days, all because, the defense attorneys knowing, that the Fiscal or his assistant had come to attend the hearing, have lined up many defense witnesses and prepared them. After the hearing, the Justice of the Peace or the Mayor acting in his place may also take time to study the evidence submitted and decide the petition for bail. All this lapse of time is prejudicial to the accused because in the meantime he is languishing in jail. Finally, the Court finds that the evidence for the prosecution is not strong and grants bail. The case is then set for preliminary investigation. This may have to be done because although the Justice of the Peace found after the hearing on the petition for bail that the evidence for the prosecution was not strong, nevertheless, to send the case up to the Court of First Instance, requires only probable cause if proven at the preliminary investigation. After the preliminary investigation and after the oral arguments by both parties, the Justice of the Peace decides that there is no probable cause and he dismisses the complaint. It is evident that all the proceedings at the hearing on the petition for bail was a waste of time and effort not only on the part of the court but also of the prosecution and the defense, and their witnesses, all because the hearing on the petition for bail was held before the preliminary investigation. It would have been better and more proper and advisable to have awaited the result of the preliminary investigation before filing a petition for bail, and file said petition in the Court of First Instance if the case is finally elevated to it because if after the preliminary investigation the case is dismissed and the accused released, then there would be no reason or occasion for the petition for bail. In the case or example I have given, preliminary investigation would not have lasted more than one or two hours because the Court found not even probable cause, and so the accused would have been released immediately; but because he filed a petition for bail, he spent many days in jail because the Fiscal had to be notified, the hearing had to be postponed, extensive preparation were made by both sides, a full-dress hearing was had where voluminous evidence was submitted, all to be studied and weighed by the Justice of the Peace.

Not infrequently, the accused in a capital offense are plain bandits charged with multiple murder, homicide, robbery, even rape. Because of the difficulty of capturing them, a reward of say P20,000 is set upon the head of the leader. After a campaign of months by the Army and the Constabulary with the aid of informers interested in

the reward but after the loss of lives of soldiers and guides, ¹ and expense to the Government of hundreds of thousands of pesos, including the payment of rewards, the bandits are finally- captured. The corresponding complaint is filed against them in the Justice of the Peace Court for multiple murder, homicide, kidnapping, robbery, rape, etc. They file a petition for bail. If the Justice of the Peace because of the reasons already given, namely, his limited legal preparation, experience and training, or for complete lack of the same in case the Mayor acts in the absence of the Justice of the Peace and his auxiliary, makes a mistake and grants the petition for bail, then all these defendants captured after so much sacrifice and expenses are set free and most likely would go back to the mountains and forests: to renew their acts of pillage and banditry. On this particular point the majority frankly admits the, possibility of abuse of such authority to grant bail in capital offense cases when it says;

"Sonic apprehension has been expressed by some" members of the Court over the fact that if such power is given to justices of the peace in capital' cases the power may be abused or improperly exercised considering the fact that some of them are not lawyers or are politicians like the mayors who may act under the law when the incumbent justices are temporarily absent {section 3, Rule 108). While the possibility of abuse cannot be denied such cannot argue against the existence of the power and if there is need for a remedy such devolves upon Congress. But before such curative measures is adopted, our duty is to apply the law as we see it regardless of its , implication."

But in ease of miscarriage of justice due to abuse, the majority with admirable ingenuousness, and with hope and trust manifestly misplaced, offers a remedy, saying:

"And in the event »that an abuse is committed, the situation is not without a remedy. The government can immediately take steps to obtain appropriate relief and we are sure, the proper court will not deny prompt action when necessary to promote the interests of justice."

True, the Fiscal may petition the Court of First Instance for the cancellation even for the confiscation of the bail bond. But that would be locking the door of the stable sifter the horse is gone. What shall it profit the Government to confiscate said bonds, even get their amounts, assuming that the sureties are all solvent, if after all, the Government will have to renew, even redouble its campaign to recapture the bandits, offer new rewards and lose more soldiers and innocent lives. Why not entrust that delicate and important task of determining in capital offense cases, whether or not the evidence for the prosecution is strong, for purposes of granting or denying bail, which according to prevailing rule cited by Kite majority opinion itself is "a matter of the greatest importance both to the accused and to the state", to the Court of First Instance, where it belongs and where, in the absence of clear and explicit legal provisions to the contrary, the Legislature in my opinion intended it to be?

Labrador, J., concurs.

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