

EDUARDO OCAMPO, PETITIONER, VS. JOSE BERNABE, EMILIO RILLORAZA, AND ANGEL GAMBOA, JUDGES OF PEOPLE'S COURT*G.R. No. L-439. August 20, 1946*

Ponente: MORAN, C. J.

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This is a petition for certiorari filed by Eduardo Ocarapo to set aside an order issued by the Fourth Division of the People's Court denying his application for bail.

The petitioner was arrested by the Counter intelligence Corps of the Armed Forces- of the United States and confined in Muntinglupa Prisons since July 30, 1945, and pursuant to Executive Order No. 65 he was turned over to the Commonwealth of the Philippines and later on filed with the People's Court his application for bail under Act No. 582. At the hearing of the application, the special prosecutor stated that petitioner would be charged on four counts, the most serious of which was No. 4 which charges, petitioner with having pointed out Placido Trinidad as a guerrilla to the Japanese and for that reason Placido Trinidad was shot to death. No evidence, however, was presented by the special prosecutor and all that he did at the hearing was to recite the contents of an affidavit which has no reference to count No. 4, and to state further that he had 27 more affidavits. Petitioner made an objection stating that a mere recital is not evidence and that evidence cannot be considered strong which has not been subjected to the test of cross-examination. He testified in his own behalf denying all the charges preferred against him and stated that said charges are mere intrigues of his political enemy Marcelo Trinidad. He presented two affidavits, one of Leoncia Nario and the other of Eugenio Trinidad, mother and uncle, respectively, of Placido Trinidad, wherein it is stated that Placido Trinidad was killed by the Japanese because of his having attempted to wrest a revolver from, a foreman in charge of a detail at work under orders of the Japanese and that petitioner had nothing to do with such killing.

Under all these circumstances, the Fourth Division of the People's Court composed of Judges Jose Bernabe, Emilio Rilloraza and Angel Gamboa, issued an order dated February 23, 1946, denying the application for bail. Hence, this petition for certiorari, predicated upon the theory that no proof having been presented by the special prosecutor to show that the evidence of guilt is strong, the People's Court committed a grave abuse of discretion in denying the application for bail.

We have held in *Herras Teehankee vs. Director of Prisons*, (76 Phil., 756), that all persons shall before conviction be bailable except when the charge is a capital offense and the evidence of guilt is strong. The general rule, therefore, is that all persons, whether charged or not yet charged, are, before their conviction, entitled to provisional release on bail, the only exception being where the charge is a capital offense and the evidence of guilt is found to be strong. At the hearing of the application for bail, the burden of showing that the case falls within the exception is on the prosecution, according to Rule 110, section 7. The determination of whether or not the evidence of guilt is strong is, as stated in the Teehankee case, a matter of judicial discretion. This discretion, by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing. Since the discretion is directed to the weight of evidence and since evidence cannot properly be weighed if not

duly exhibited or produced before the court (*Ramos vs. Ramos*, 4-5 Phil. 362), it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court the petitioner having the right of cross-examination and to introduce his own evidence in rebuttal. Mere affidavits or, recital of their contents are not sufficient since they are mere hearsay evidence, unless the petitioner fails to object thereto.

And this is the prevailing doctrine in the United States according to authorities to be quoted later. In some states of the American union, the burden of showing that proof is evident or the presumption great, lies on the prosecution while in others on the petitioner, but the rule seems to be uniform to the effect that no matter which side bears the burden of proof, the evidence of guilt should be adduced before the court for a proper determination of its probative force. In American Jurisprudence the following appears:

"* * * The English rule is, however, by no means uniformly followed in the United States, In some jurisdictions the case is heard de novo the solicitor and prosecutor are notified to attend, and witnesses are subpoenaed both for the state and for the defendant and are examined before the court. This practice seems generally to be followed, and it may be laid down as a broad principle that where bail is not a matter of right, the burden is upon the petitioner to produce facts sufficient to entitle him to bail at the hearing. He is therefore both required and permitted to introduce evidence going to the merits of the case against him. Ordinarily, the presumption is with the state, and it is proper to require the prisoner to introduce evidence in the first instance, although it imposes upon him the necessity of producing evidence upon which the state intends to rely for his conviction on the final trial. The accused will not, by this procedure, be denied the opportunity of cross-examining the people's witnesses. However, in some jurisdictions the courts have gone so far as to hold that the duty is upon the prosecuting attorney, in resisting an application; to begin the proceedings by the introduction of evidence showing that the applicant is not entitled to bail." (6 Am. Jur., sec. 47, p. 70).

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"The general rule followed in the United States is more liberal than that of the common law, and the mere fact that a grand jury has found an indictment for murder will not generally preclude the court from inquiry into the facts of the case. On this inquiry the witnesses for the prosecution may be called, and the accused is not required to produce the testimony of any other witnesses. Furthermore, the accused is entitled to go behind the indictment and introduce evidence going to the merits of the case. The inquiry should not be limited to determining the probable degree of the homicide, but should include the determination of the character of the proof or the strength of the presumption respecting whether or not the defendant did the killing or was connected with it as a guilty agent. A case for the allowance of bail after indictment may also be presented where the public prosecutor admits that under the evidence obtainable no conviction of a capital offense can be had, or where there has been a failure to convict, or where a verdict of guilt has been reversed by reason of the insufficiency of the evidence." (6 As. Jur., sec. 50, p. 71)

In *Corpus Juris Secundum* the rule is summarized as follows:

"Unless the presumption from an indictment for a capital offense is conclusive against accused which has been considered in sec. 34 b (2) (b) the determination as to whether the proof is evident or the presumption great must, on an original application, be determined from the evidence adduced on the application no matter which side bears the burden of proof, "here accused under a capital indictment bears the burden of proof he should offer the witnesses whose names are indorsed on the indictment, although he is not limited to such witnesses.

"The court should hear all material and relevant evidence offered by either party, such as the grand jury minutes, and should consider the evidence as a whole." (8 C. J. S., sec. 46 (b), p. 94).

See also the following authorities:

"Under the 17th section of the Alabama Bill of Rights, which declares that 'all persons shall, before conviction, be bailable by sufficient securities, except for capital offenses where the proof is evident or the presumption

great,' and under the Alabama statutes upon the hearing of applications for bail, either before or after indictment, the the court is not, as according to the practice in England, confined to the written evidence taken down. before the committing magistrate; but the case is heard de novo the solicitor and prosecutor are notified to attend, and witnesses are subpoenaed both for the state and for the defendant, and examined before the court, which is to decide the application upon the evidence produced. Code sees. 3721, 3722, 3732; 3733, 3745, 3746, 3669, 3673. Ex parte Bryant, 34 Ala., 270." (Re Thomas et al., 20 Okla. 167, 93 Pac. 980; 39 L.R.A., New Series, pp. 752, 775).

"In capital case, application for bail calls for exercise of judicial discretion in determining probability of defendant's guilt which requires submission of evidence." (Shaw vs.State, 47 S.W. (2d), 92, 164 Tenn. 192. 8 C. J. S., p. 94, fn. 80).

"Applicant for bail under Burns' St. Annot. (1914), sec. 2025, seeking to overcome presumption of truth of indictment, must introduce the evidence of witnesses indicated by indictment, and also such witnesses as state indicates it relies on." (Mc Adams vs. State, 147 N.E., 764, 196 Ind. 184; 8 C. J. S., p. 94, fn. 80).

"When names of state witnesses are placed upon the indictment, the presumption is that all of the witnesses relied en by the state are named and the accused should not be required to produce the testimony of any other witnesses on behalf of the state. Where no witnesses are placed on the indictment, it is incumbent on the state attorneys, on application for bail, to furnish the accused with a list of the witnesses relied on by the state in due time to secure their presence or testimony; otherwise he could not know what was the testimony upon which the state relied. In case no witnesses are placed upon the indictment and a list is duly furnished by the prosecuting officer, the accused should produce the witnesses for the state in connection with his own, if he had any, in order that the judge may determine from all the testimony in the case whether the proof was not evident or the presumption not great."

* * * * *

"Upon the hearing it is proper to require the prisoner to begin the evidence, although it imposes upon him the necessity of producing evidence upon which the state intended to rely for his conviction on the final trial. But the accused will not by this procedure be denied the opportunity of cross-examining the people's witnesses. Ex parte Heffren, 27 Ind. 87. To the same effect, Rigdon vs. State, 41 Fla. 308, 26 So. 711; Ex parte Nathan, [Fla.]; 50 So., 38." (39 L. R. A., New Series, pp. 752, 774, 775).

"The evidence for the state, as well as that for the accused, should be presented (1) by the petitioners in an application for bail. (Ex parte Tully [Fla.], 66 S., 296; Rigdon vs. State, 41 Fla., 308; 26 S., 711; Ex parte Heffren, 27 Ind., 87. (2) But the petitioner, by proper procedure, may test the probative force of the testimony for the state in order to fully present his case for the purposes of the hearing. Ex parteTully, supra; Ex parte Heffren, supra." (6 C.J., p. 984, fn. 50[a], section 214.)

"Where on a motion to admit to bail after the indictment, the evidence of the witnesses who testified before the grand jury does not make a prima facie case against the accused, he is entitled to bail, and it is an error to refuse bail upon the statement of the district attorney that he has other evidence which he will not disclose for fear of weakening the state's case." (In ex parte Reynald, 37 Texas, 1).

And this is in conformity with the former rulings of this Court. In Marcos vs. Judge of First Instance of Ilocos Sur (G, R. No. 46490, January 24, 1939), we said:

"Se arguye que el Juez recurrido, antes de expedir el mandamiento de arresto de los acusados, examino a los dos ^estigos de cargo que presento el fiscal y que estas pruebas establecieron asimismo la presuncion de culpabilidad de los acusados y el recuerimiento adicional de que las pruebas de culpabilidad deben ser evidentes. No podemos prestar nuestro asentimiento a esta pretension. No debe olvidarse que tales pruebas se recibieron en ausencia de los acusados y estos no tuvieron oportunidad de verles declarar ni de repreguntarles.

* * * Otras razones que irapiden el que tales pruebas se puedan tener en cuenta contra los acusados son: que el fiscal no las produjo ni ofreci6 en la vista de las peticiones de libertad bajo fianza * * *. En tales circunstancias era deber del Juez recurrido requerir al fiscal que presente sus pruebas para demostrar que el delito imputado era capital, que las pruebas eran evidentes y que la presuncion de culpabilidad era fuerte."

In *Herras Teehankee vs. Director of Prisons*, supra, we said:

"When the first proviso of section 19 of Commonwealth Act No. 682 and Article III, section 1, paragraph 16, of the Constitution, refer to the case where the court finds that there is strong 'evidence' of the commission of a capital offense, they necessarily mean evidence properly adduced by the parties or any of them before it, in the manner and form prescribed by the laws and rules of judicial procedure.* * *"

True that in the same case of *Herras Teehankee vs. Director of Prisons*, supra, we said that the hearing of an application for bail should be summary or otherwise in the discretion of the court. By "summary hearing" we meant such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of the evidence for purposes of bail. On such hearing, the court "does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted." (8 C. J. 8., 93, 94.) 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." (Re *Losasso et al.*, 10 L. R. A. [1890,] p. 847, 850).

It appearing in the instant case that on the hearing of the application for bail filed by the petitioner no proof was offered by the prosecution to show that the evidence of guilt is strong, the Fourth Division of the People's Court committed a grave abuse of discretion in denying the bail applied for.

In view of the foregoing, the order of the Fourth Division of the People's Court dated February 23, 1946, denying the application for bail filed by the petitioner, is hereby set aside, and it appearing that said order is but a misconception of the procedure to be followed in this kind of cases, the respondent Court is hereby ordered to hold another hearing in the manner hereby described and within seven days from notice for the purpose of determining whether the evidence of guilt is strong and, therefore, whether petitioner may be released on bail. Without costs.

Paras, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

Pablo, M., conforme con la parte dispositiva.

DISSENTING

PERFECTO, J.:

There should, not be any disagreement that at the hearing of the application for bail in capital offenses "the burden of showing that the ease falls within the exception is on the prosecution"; that the determination of whether or not the evidence of guilt is strong is a matter of judicial discretion; that this discretion may rightly be exercised "only if the evidence is submitted to the court at the hearing"; that petitioner had the "right of cross-examination and to introduce his own evidence in rebuttal" ; that contrary to the wrong doctrine set up in *Duran vs. Abad Santos*, (75 Phil., 410), "mere affidavits or recital of their contents are not sufficient since they are mere hearsay evidence, in which, in our opinion, even if not objected to, are inadmissible, because the omission can not turn a bad evidence into a good one.

Upon the facts of this case, we fully concur in the following pronouncement in the majority opinion:

"It appearing in the instant case that on the hearing of the application for bail filed by the petitioner no proof was offered by the prosecution to show that the evidence of guilt is strong, the Fourth Division of the People's Court committed, a grave abuse of discretion in denying the bail applied for."

The natural and logical consequence of the above pronouncement, to any one's mind, will be that the "grave abuse" of denial should be corrected by a reverse action, that is, ordering the People's Court to first Instance bail applied for, or by following-the short-cut procedure adopted by this Court in *Herras Teehankee vs. Director of Prison* (76 Phil., 630), that of directly granting the bail, a prompt procedure wholly justified in view of the fact that petitioner Qcampo has already been deprived of his liberty for more than one year (since July 50, 1945), and (the delay in granting him bail, notwithstanding that he is entitled to it, is in a great measure, due 'to the lower court's "grave abuse."

We can not but be painfully surprised by the fact that the majority add more delay in the granting of bail, in giving the prosecution further chance to correct its error and the lower court additional opportunity, in an unnecessary procedure, to commit more errors and grave abuses as those four ones committed by the same People's Court in the two *Herras Teehankee* cases (75 Phil., 634 and 76 Phil., 360), by disposing of the case as follows:

"In view of the foregoing, the order of the Fourth Division of the People's Court dated February 23, 1946 denying the application for bail filed by the petitioner, is hereby set aside, and it appearing that said order is but a misconception of the procedure to be followed in this kind of cases", the respondent Court is hereby ordered to hold another hearing in the manner herein-described and within seven days from notice for the purpose of determining whether the evidence of guilt is strong and, therefore, whether petitioner may be released on bail. Without costs."

It was since October 5, 1945, more than ten months ago, when petitioner filed his original application for bail. It was denied on October 18. On October 30, petitioner prayed for its reconsideration and at the same time asked the People's Court to set the ease for hearing and to require the prosecution to show that there was strong evidence of petitioner's guilt. On November 10 the motion for reconsideration was denied, the People's Court stating that it had granted an ex parte hearing to the special prosecutor. On November 26 petitioner filed a pleading alleging that, contrary to what was stated in the lower court's order of November 10, neither the Solicitor General nor any of the special prosecutors appeared at the hearing of the motion for reconsideration in spite of the fact that their office had been notified before hand of the hearing. On December 28 petitioner moved that a day be set for the hearing of his petition dated October 30, in which both parties should be present and the prosecution should

adduce evidence, with the corresponding right of the petitioner to prove that he was entitled to be released on bail, in accordance with the ruling in *HerrasTeehankee vs. Rovira* (75 Phil., 634). The inaction of the People's Court upon the motion of December 28, compelled petitioner to file another motion on January 13, 1945, reiterating his request that hearing be granted. The People's Court set the petition for hearing, which took place on February 18, and in which the prosecution, instead of proving the existence of strong evidence of petitioner's guilt, merely informed the court, over petitioner's objection, that it was in possession of a number of affidavits against the petitioner and gave an idea of the contents thereof, none of said affidavits was, however, presented. In order to counteract whatever influence the statements of the prosecution might bring to bear upon the court, petitioner took the witness stand and denied under oath all the charges imputed against him by the prosecution. To rebut the imputation that he caused the death of a guerrilla, Placido Trinidad, he presented affidavits of the mother and uncle of the alleged victim showing that petitioner had nothing to do with his death, because the deceased was killed by the Japanese for his attempt to wrest a revolver from a foreman in charge of a work under orders of the Japanese. On February 23, 1945, more than four months after the original petition for bail was filed, the lower court denied petitioner's prayer to be bailed.

In April, 1946, the petition was filed before this Supreme Court. It is regrettable that on so urgent a matter as the present one, affecting as it does the personal freedom of a citizen, the Supreme Court had to need more than four months to render a decision. The situation is aggravated by the fact that, delaying further the granting of petitioner's bail, the People's Court is ordered to hold, another hearing.

If in the *HerrasTeehankee* case (*supra*), the Supreme Court, losing patience for the errors, grave abuses and dillydallying of the People's Court, ordered directly the granting of bail to *Hrs. Teehankee*, the petitioner in the present case has a better claim to a similar relief, not only because the prosecution did not present any evidence to show petitioner's guilt, a situation identical to the one in *Teehankee*, but petitioner volunteered evidence showing, without any contradiction, that he is innocent of the charges against him. In the *Herras Teehankee* case, there was only an absence of evidence of guilt; whereas in the present case, there is the presence of evidence of innocence.

In view of all the foregoing, and because the dispositive part of the majority decision is irreconcilably inconsistent with the premises of fact and law in the same decision, we dissent and vote that petitioner should be released on bail upon the filing of a bond in the amount of P10,000.00.

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