

RICARDO DE LA CAMARA, PETITIONER, VS. HON. MANUEL LOPEZ ENAGE, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF AGUSAN DEL NORTE AND BUTUAN CITY (BRANCH II), RESPONDENTS.

G.R. Nos. L-32951-2. September 17, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

An order of respondent Judge Manuel Lopez Enage, fixing the bail of petitioner, Ricardo de la Camara, in the sum of P1,195,200.00 is assailed in this petition for certiorari as repugnant to the constitutional mandate prohibiting excessive bail.[1] The merit of the petition on its face is thus apparent. Nonetheless, the relief sought setting aside the above order by reducing the amount of bail to P40,000.00 cannot be granted, as in the meanwhile, petitioner had escaped from the provincial jail, thus rendering this case moot and academic. It is deemed advisable, however, for the guidance of lower court judges, to set forth anew the controlling and authoritative doctrines that should be observed in fixing the amount of the bail sought in order that full respect be accorded to such a constitutional right.

The facts are not in dispute. Petitioner, Ricardo de la Camara, Municipal Mayor of Magsaysay, Misamis Oriental, was arrested on November 7, 1968 and detained at the Provincial Jail of Agusan, for his alleged participation in the killing of fourteen and the wounding of twelve other laborers of the Tirador Logging Co. at Nato, Esperanza, Agusan del Sur, on August 21, 1968. Thereafter, on November 25, 1968, the Provincial Fiscal of Agusan filed with the Court of First Instance a case for multiple frustrated murder[2] and another for multiple murder[3] against petitioner, his co-accused Nambinalot Tagunan and Fortunato Galgo, resulting from the aforesaid occurrence. Then on January 14, 1969, came an application for bail filed by petitioner with the lower court, premised on the assertion that there was no evidence to link him with such fatal incident of August 21, 1968. He likewise maintained his innocence. Respondent Judge started the trial of petitioner on February 24, 1969, the prosecution resting its case on July 10, 1969. As of the time of the filing of the petition, the defense had not presented its evidence.

Respondent Judge, on August 10, 1970, issued an order granting petitioner's application for bail, admitting that there was a failure on the part of the prosecution to prove that petitioner would flee even if he had the opportunity, but fixed the amount of the bail bond at the excessive amount of P1,195,200.00, the sum of P840,000.00 for the information charging multiple murder and P355,200.00 for the offense of multiple frustrated murder. Then came the allegation that on August 12, 1970, the Secretary of Justice, Vicente Abad Santos, upon being informed of such order, sent a telegram to respondent Judge stating that the bond required "is excessive" and suggesting that a P40,000.00 bond, either in cash or property, would be reasonable. There was likewise a motion for reconsideration to reduce the amount. Respondent Judge however remained adamant. Hence this petition.

The answer filed by respondent Judge on March 5, 1971 set forth the circumstances concerning the issuance of

the above order and the other incidents of the case, which, to his mind, would disprove any charge that he was guilty of grave abuse of discretion. It stressed, moreover, that the challenged order would find support in circulars of the Department of Justice given sanction by this Court. He sought the dismissal of the petition for lack of merit.

In the hearing of the case set for March 31, 1971, there was no appearance for both the petitioner and respondents with the former, upon written motion, being given thirty days within which to submit a memorandum in lieu of oral argument, respondent Judge in turn having the same period from receipt thereof to file his reply. Such a memorandum was duly submitted by petitioner on April 6, 1971.

Instead of a reply, respondent Judge submitted, on May 26, 1971, a supplemental answer wherein he alleged that petitioner escaped from the provincial jail on April 28, 1971 and had since then remained at large. There was a reiteration then of the dismissal of this petition for lack of merit, to which petitioner countered in a pleading dated June 7, 1971, and filed with this Court the next day with this plea: "The undersigned counsel, therefore, vehemently interpose opposition, on behalf of petitioner, to respondent's prayer for dismissal of the present petition for lack of merit. For, the issue in this case is not alone the fate of petitioner Ricardo de la Camara. The issue in the present petition that calls for the resolution of this Honorable Tribunal is the fate of countless other Ricardo de la Camaras who may be awaiting the clear-cut definition and declaration of the power of trial courts in regard to the fixing of bail." [4]

While under the circumstances a ruling on the merits of the petition for certiorari is not warranted, still, as set forth at the opening of this opinion, the fact that this case is moot and academic should not preclude this Tribunal from setting forth in language clear and unmistakable, the obligation of fidelity on the part of lower court judges to the unequivocal command of the Constitution that excessive bail shall not be required.

1. Before conviction. every person is bailable except if charged with capital offenses when the evidence of guilt is strong.[5] Such a right flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal, unless his guilt be proved beyond reasonable doubt. Thereby a regime of liberty is honored in the observance and not in the breach. It is not beyond the realm of probability, however, that a person charged with a crime especially so where his defense is weak, would just simply make himself scarce and thus frustrate the hearing of his case. A bail is intended as a guarantee that such an intent would be thwarted. It is, in the language of Cooley, a "mode short of confinement which would, with reasonable certainty, insure the attendance of the accused" for the subsequent trial.[6] Nor is there anything unreasonable in denying this right to one charged with a capital offense when evidence of guilt is strong, as the likelihood is, rather than await the outcome of the proceeding against him with a death sentence, an ever-present threat the temptation to flee the jurisdiction would be too great to be resisted.

2. Where, however the right of bail exists, it should not be rendered nugatory by requiring a sum that is excessive. So the Constitution commands. It is understandable why. If there were no such prohibition, the right to bail becomes meaningless. It would have been more forthright if no mention of such a guarantee were found in the fundamental law. It is not to be lost sight of that the United States Constitution limits itself to a prohibition against excessive bail.[7] As construed in the latest American decision, "the sole permissible function of money bail is to assure the accused's presence at trial, and declared that 'bail set at a higher figure than an amount reasonably calculated to fulfill this purpose is "excessive" under the Eighth Amendment.' "[8]

Nothing can be clearer, therefore, than that the challenged order of August 10, 1970 fixing the amount of P1,195,200.00 as the bail that should be posted by petitioner, the sum of P840,000.00 for the information charging multiple murder, there being fourteen victims. and the sum of P355,200.00 for the other offense of multiple frustrated murder, there being twelve victims, is clearly violative of this constitutional provision. Under the

circumstances, there being only two offenses charged, the amount required as bail could not possibly exceed P50,000.00 for the information for murder and P25,000.00 for the other information for frustrated murder. Nor should it be ignored in this case that the Department of Justice did recommend the total sum of P40,000.00 for the two offenses.

3. There is an attempt on the part of respondent Judge to justify what, on its face, appears to be indefensible by the alleged reliance on *Villaseñor v. Abaño*.^[9] The guidelines in the fixing of bail was there summarized, in the opinion of Justice Sanchez, as follows: "(1) ability of the accused to give bail; (2) nature of the offense; (3) penalty for the offense charged; (4) character and reputation of the accused; (5) health of the accused; (6) character and strength of the evidence; (7) probability of the accused appearing in trial; (8) forfeiture of other bonds; (9) whether the accused was a fugitive from justice when arrested; and (10) if the accused is under bond for appearance at trial in other cases."^[10] Respondent Judge, however, did ignore this decisive consideration appearing at the end of the above opinion: "Discretion, indeed, is with the court called upon to rule on the question of bail. We must stress, however, that where conditions imposed upon a defendant seeking bail would amount to a refusal thereof and render nugatory the constitutional right to bail, we will not hesitate to exercise our supervisory powers to provide the required remedy."^[11]

No attempt at rationalization can therefore give a color of validity to the challenged order. There is grim irony in an accused being told that he has a right to bail but at the same time being required to post such an exorbitant sum. What aggravates the situation is that the lower court judge would apparently yield to the command of the fundamental law. In reality, such a sanctimonious avowal of respect for a mandate of the Constitution was on a purely verbal level. There is reason to believe that any person in the position of petitioner would under the circumstances be unable to resist thoughts of escaping from confinement, reduced as he must have been to a state of desperation. In the same breath that he was told he could be bailed out, the excessive amount required could only mean that provisional liberty would be beyond his reach. It would have been more forthright if he were informed categorically that such a right could not be availed of. There would have been no disappointment of expectations then. It does call to mind these words of Justice Jackson, "a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will."^[12] It is no wonder that the resulting frustration left resentment bitterness in its wake. Petitioner's subsequent escape cannot be condoned. That is why he is not entitled to the relief prayed for. What respondent Judge did, however, does call for repudiation from this Court.

Nor is there any justification then for imputing his inability to fix a lesser amount by virtue of an alleged reliance on a decision of this Tribunal. Even if one were charitably inclined, the mildest characterization of such a result is that there was a clear misreading of the *Abaño* opinion when such a meaning was ascribed to it. No doctrinal refinement may elicit approval if to do so would be to reduce the right to bail to a barren form of words. Not only is the order complained of absolutely bereft of support in law, but it flies in the face of common sense. It is not too much to say that it is at war with the command of reason.

With petitioner, however, having escaped from the provincial jail, no ruling can be had on his plea to nullify the above order.

WHEREFORE, this case is dismissed for being moot and academic. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Teehankee, Barredo, and Villamor, JJ., concur.
Ruiz Castro, J., in the result.
Makasiar, J., did not take part.

[1] The Constitution provides: "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required." Art. III, Sec. 1, par. 16.

[2] Criminal Case No. 3563.

[3] Criminal Case No. 3564.

[4] Reply, par. III, pp. 3-4.

[5] Art. III, Sec. 1, par. 16, Constitution.

[6] According to Cooley: "If there were any mode short of confinement which would, with reasonable certainty, insure the attendance of the accused to answer the accusation, it would not be justifiable to inflict upon him that indignity, when the effect is to subject him, in a greater or less degree, to the punishment of a guilty person, while as yet it is not determined that he has committed any crime. If the punishment on conviction cannot exceed in severity the forfeiture of a large sum of money, then it is reasonable to suppose that such a sum of money, or an agreement by responsible parties to pay it to the government in case the accused should fail to appear, would be sufficient security for his attendance; and therefore, at the common law, it was customary to take security of this character in all cases of misdemeanor; one or more friends of the accused undertaking for his appearance for trial, and agreeing that a certain sum of money should be levied of their goods and chattels, lands and tenements, if he made default. But in the case of felonies the privilege of giving bail before trial was not a matter of right; and in this country, although the criminal code is much more merciful than it formerly was in England, and in some cases the allowance of bail is almost a matter of course, there are others in which it is discretionary with the magistrate to allow it or not and where it will sometimes be refused if the evidence of guilt is strong or the presumption great. Capital offenses are not generally regarded as bailable; at least, after indictment, or when the party is charged by the finding of a coroner's jury: and this upon the supposition that one who may be subjected to the terrible punishment that would follow a conviction, would not for any mere pecuniary considerations remain to abide the judgment. And where the death penalty is abolished and imprisonment for life substituted, it is believed that the rule would be the same notwithstanding this change, and bail would still be denied in the case of the highest offenses, except under very peculiar circumstances. In the case of other felonies it is not usual to refuse bail, and in some of the State constitutions it has been deemed important to make it a matter of right in all cases except on capital charges 'when the proof is evident or the presumption great.' " I Cooley. A Treatise on the Constitutional Limitations, 643-644 (1927).

[7] According to the United States Constitution: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. " Eighth Amendment.

[8] *Stack v. Boyle* 342 US 1, 5 (1951).

[9] L-23599, September 29, 1967, 21 SCRA 312.

[10] *Ibid*, p. 317.

[11] *Ibid*, p. 321.

[12] *Jackson, J., con., Edwards v. California*, 314 US 160, 186 (1941).

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