

**LEONARDO ALMEDA, PETITIONER, VS. HON. ONOFRE A. VILLALUZ,
IN HIS CAPACITY AS PRESIDING JUDGE OF THE CIRCUIT CRIMINAL
COURT, SEVENTH JUDICIAL DISTRICT, PASIG, RIZAL, AND HON.
GRE...**

G.R. No. L-31665. August 06, 1975

Ponente: CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d859a7c91f23/>

CASTRO, J.:

The petitioner Leonardo Almeda (alias Nardong Paa) was charged, together with five others, with the crime of qualified theft of a motor vehicle (criminal case 285-Pasay) in the Circuit Criminal Court of Pasig, Rizal, presided by the respondent Judge Onofre Villalluz. The amount of the bond recommended for the provisional release of Almeda was P15,000, and this was approved by the respondent judge with a direction that it be posted entirely in cash.

At the hearing of February 18, 1970, Almeda asked the trial court to allow him to post a surety bond in lieu of the cash bond required of him. This request was denied, and so was an oral motion for reconsideration, on the ground that the amended information imputed habitual delinquency and recidivism on the part of Almeda.

At the same hearing, the respondent city fiscal, thru his assistant, reiterated his oral motion made at a previous hearing for amendment of the information so as to include allegations of recidivism and habitual delinquency in the particular case of Almeda. The latter vigorously objected, arguing that (a) such an amendment was premature since no copies of prior conviction could yet be presented in court, (b) the motion to amend should have been made in writing in order to enable him to object formally, and (c) the proposed amendment would place him in double jeopardy considering that he had already pleaded not guilty to the information. The trial court nevertheless granted the respondent fiscal's motion in open court. An oral motion for reconsideration was denied.

Immediately thereafter, the assistant fiscal took hold of the original information and, then and there, entered his amendment by annotating the same on the back of the document. The petitioner forthwith moved for the dismissal of the charge on the ground of double jeopardy, but this motion and a motion for reconsideration were denied in open court.

Hence, the present special civil action for certiorari with preliminary injunction.

Two issues are posed to us for resolution: First, whether the respondent judge has the authority to require a strictly cash bond and disallow the petitioner's attempt to post a surety bond for his provisional liberty, and second, whether the amendment to the information, after a plea of not guilty thereto, was properly allowed in both substance and procedure.

1. As defined by section 1 of Rule 114 of the Rules of Court, bail is "the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance." The purpose of requiring bail is to relieve an

accused from imprisonment until his conviction and yet secure his appearance at the trial.[1]

In this jurisdiction, the accused, as of right, is entitled to bail prior to conviction except when he is charged with a capital offense and the evidence of guilt is strong. This right is guaranteed by the Constitution,[2] and may not be denied even where the accused has previously escaped detention,[3] or by reason of his prior absconding.[4]

In order to safeguard the right of an accused to bail, the Constitution further provides that "excessive bail shall not be required." This is logical because the imposition of an unreasonable bail may negate the very right itself. We have thus held 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." [5]

Coming to the issue at hand, the amount fixed for bail, while reasonable if considered in terms of surety or property bonds, may be excessive if demanded in the form of cash. A surety or property bond does not require an actual financial outlay on the part of the bondsman or the property owner, and in the case of the bondsman the bond may be obtained by the accused upon the payment of a relatively small premium. Only the reputation or credit standing of the bondsman or the expectancy of the price at which the property can be sold, is placed in the hands of the court to guarantee the production of the body of the accused at the various proceedings leading to his conviction or acquittal. Upon the other hand, the posting of a cash bond would entail a transfer of assets into the possession of the court, and its procurement could work untold hardship on the part of the accused as to have the effect of altogether denying him his constitutional right to bail.

Aside from the foregoing, the condition that the accused may have provisional liberty only upon his posting of a cash bond is abhorrent to the nature of bail and transgresses our law on the matter. The sole purpose of bail is to insure the attendance of the accused when required by the court, and there should be no suggestion of penalty on the part of the accused nor revenue on the part of the government. The allowance of a cash bond in lieu of sureties is authorized in this jurisdiction only because our rules expressly provide for it. Were this not the case, the posting of bail by depositing cash with the court cannot be countenanced because, strictly speaking, the very nature of bail presupposes the attendance of sureties to whom the body of the prisoner can be delivered.[6] And even where cash bail is allowed, the option to deposit cash in lieu of a surety bond primarily belongs to the accused. This is clearly deducible from the language of section 14 of Rule 114 of the Rules of Court:

"SEC. 14. Deposit of money as bail.— At any time after the amount of bail is fixed by order, the defendant, instead of giving bail, may deposit with the nearest collector of internal revenue, or provincial, city, or municipal treasurer the sum mentioned in the order, and upon delivering to the court a proper certificate of the deposit, must be discharged from custody. Money thus deposited, shall be applied to the payment of the fine and costs for which judgment may be given; and the surplus, if any, shall be returned to the defendant."

Thus, the trial court may not reject otherwise acceptable sureties and insist that the accused obtain his provisional liberty only thru a cash bond.

But while we repudiate the particular measure adopted by the respondent judge, we cannot fault the motive that caused him to demur to the petitioner's offer of a surety bond. Based on the petitioner's past record,[7] the range of his career in crime weighs heavily against letting him off easily on a middling amount of bail. The likelihood of his jumping bail or committing other harm to the citizenry while on provisional liberty is a consideration that simply cannot be ignored.

Fortunately, the court is not without devices with which to meet the situation. First, it could increase the amount of the bail bond to an appropriate level. Second, as part of the power of the court over the person of the accused and for the purpose of discouraging likely commission of other crimes by a notorious defendant while on

provisional liberty, the latter could be required, as one of the conditions of his bail bond, to report in person periodically to the court and make an accounting of his movements. And third, the accused might be warned, though this warning is not essential to the requirements of due process, that under the 1973 Constitution[8] "Trial may proceed notwithstanding his absence provided that he has been duly notified and his failure to appear is unjustified."

With respect to the amount of the bail bond, the trial court is well advised to consider, inter alia, the following factors, where applicable: (1) the ability of the accused to give bail; (2) the nature of the offense; (3) the penalty for the offense charged; (4) the character and reputation of the accused; (5) the health of the accused; (6) the character and strength of the evidence; (7) the probability of the accused's appearance or non-appearance at the trial; (8) forfeiture of previous bonds; (9) whether the accused was a fugitive from justice when arrested; and (10) whether the accused is under bond for appearance at trial in other cases.[9]

It is not amiss, at this point, to remind all courts to exercise extreme care and caution in the screening of bondsmen and sureties in regard to their reputation, solvency and promptitude. Aside from the other precautions hitherto considered useful, courts should see to it that all surety bonds are accompanied by corresponding clearances from the Office of the Insurance Commissioner. Bondsmen who cannot make good their undertakings render inutile all efforts at making the bail system work in this jurisdiction.

2. Anent the second issue posed by the petitioner, the amendment of the information to include allegations of habitual delinquency and recidivism, after a previous plea thereto by the accused, is valid and in no way violates his right to be fully apprised before trial of the charges against him.

Under section 13 of Rule 110 of the Rules of Court, the trial court has discretion to allow amendments to the information on all matters of form after the defendant has pleaded and during the trial when the same can be done without prejudice to the rights of the defendant. What are prohibited at this stage of the proceedings are amendments in substance. And the substantial matter in a complaint or information is the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form.[10]

Under our law, a person is considered a habitual delinquent "if within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robo, hurto, estafa, or falsification, he is found guilty of any of said crimes a third time or oftener." [11] The law imposes an additional penalty based on the criminal propensity of the accused, apart from that provided by law for the last crime of which he is found guilty. Habitual delinquency is not, however, a crime in itself; it is only a factor in determining a total penalty.[12] Article 62 of the Revised Penal Code which treats of habitual delinquency does not establish a new crime, but only regulates the "effect of the attendance of mitigating or aggravating circumstances and of habitual delinquency," as its caption indicates. In fact, the provision on habitual delinquency is found in a section of the Code prescribing rules for the application of penalties, not in a section defining offenses.[13] A recidivist, upon the other hand, is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the Revised Penal Code. Recidivism is likewise not a criminal offense; it is but one of the aggravating circumstances enumerated by the said Code.[14]

The additional allegations of habitual delinquency and recidivism do not have the effect of charging another offense different or distinct from the charge of qualified theft (of a motor vehicle) contained in the information. Neither do they tend to correct any defect in the jurisdiction of the trial court over the subject-matter of the case. The said new allegations relate only to the range of the penalty that the court might impose in the event of the conviction. They do not alter the prosecution's theory of the case nor possibly prejudice the form of defense the

accused has or will assume. Consequently, in authorizing the amendments, the respondent judge acted with due consideration of the petitioner's rights and did not abuse his discretion.

Anent the petitioner's claim that the amendment of the information by the State places him in double jeopardy, it should be remembered that there is double jeopardy only when all the following requisites obtain in the original prosecution: (a) a valid complaint or information; (b) a competent court; (c) the defendant had pleaded to the charge; and (d) the defendant was acquitted, or convicted, or the case against him was dismissed or otherwise terminated without his consent.[15]

It is clear that the petitioner Almeda has not yet been convicted nor acquitted of the charge of qualified theft of a motor vehicle contained in the original information. Neither has the case against him been dismissed or otherwise terminated. The mere amendment of the information to include allegations of habitual delinquency and recidivism does not have the effect of a dismissal of the criminal action for qualified theft alleged in the original information.[16]

It cannot likewise be said that the accused is being placed in jeopardy a second time for the past crimes of which he had been convicted. The constitutional objection, on the ground of double jeopardy, to the statute providing an additional penalty to be meted out to habitual delinquents, has long been rejected.[17]

The procedure taken by the respondent fiscal and allowed by the respondent judge in the amendment of the information does not, however, merit our approbation. Under section 2 of Rule 15 of the Rules of Court, "all motions shall be made in writing except motions for continuance made in the presence of the adverse party, or those made in the course of a hearing or trial." A motion to amend the information, after the accused has pleaded thereto, is certainly one that should be placed in writing and properly set for hearing. We are loath to give our imprimatur to the kind of shortcut devised by the respondents, especially as it relates to an alteration in the information. Considering, however, that the petitioner was not deprived of his day in court and was in fact given advance warning of the proposed amendment, although orally, we refrain from disturbing the said amendment.

ACCORDINGLY, the order, of respondent judge of February 18, 1970 denying the motion of the petitioner Almeda that he be allowed to post a surety bond instead of a cash bond is hereby set aside, without prejudice, however, to increasing the amount of the bail bond and/or the imposition of such conditions as the respondent judge might consider desirable and proper for the purpose of insuring the attendance of the petitioner at the trial, provided they are consistent with the views herein expressed. No costs.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., is on leave.

[1] Green vs. Petit, Sheriff, 54 N. E. 2d 281.

[2] Article IV, section 18, of the 1973 Constitution; Article 111, section 1, par. 16, of the 1935 Constitution.

[3] People vs. Alano, 81 Phil. 19.

[4] Sy Guan vs. Amparo, 79 Phil. 671.

[5] Villasenor vs. Abano, L-23599, Sept. 29, 1967, 21 SCRA 312.

[6] Sawyer vs. Barbour, 142 Cal. App. 2d 827, 300 P 2d 187; Isbell vs. Bay Circuit Judge, 183 N. W. 721, citing 1 Bishop's Criminal Procedure (2d Ed.), sec. 264; 6 Am. Jur. 98 (sec. 92), 158 (sec. 226).

[7] Per the amended information: "(1) Robbery (Hold-up) 23 May 1953 Convicted CFI Rizal, (2) Theft-Served sentence CC 4985 19 March 55, (3) Estafa-CC 4127 28 March 55 Convicted, (4) Vagrancy-Served sentence-Feb. 18/52, (5) Robbery-27 Oct. 54-dismissed, (6) Malicious mischief-31 May 56 Bonded, (7) Attempted Homicide-CFI CC 4387 17 Nov. 58, (9) [sic] Slight Phy. Inj. CC-8007 7 Nov. 58 Bonded, (10) Homicide-10 Dec. 59 CC 5038 Bonded CFI PC Br., (11) Frustrated Homicide-3 Nov. 62 Bonded CC 5681 P CFI PC."

[8] Article IV, Section 19.

[9] Villasenor vs. Abano, *supra*, at pages 316-317.

[10] 4 Moran, Comments on the Rules of Court (1970 ed.) 54.

[11] Article 62, par. 5, Revised Penal Code.

[12] People vs. Sanches 57 Phil. 770, 772; People vs. De Jesus, 63 Phil. 760, 767.

[13] People vs. Blanco, 85 Phil. 296.

[14] Article 14, par. 9, Revised Penal Code.

[15] Section 9, Rule 117, Revised Rules of Court; see People vs. Obsania, L-24447, June 29, 1968, 23 SCRA 1249, at p. 1254.

[16] See Guinto vs. Velez, 77 Phil. 801.

[17] People vs. Madrano, 53 Phil. 860, 862.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.