

JOSE T. OBOSA, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 114350. January 16, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The main issue in this case is whether petitioner Jose T. Obosa, who was charged with two (2) counts of murder (a capital offense)[1] for the ambush slaying of former Secretary of Interior and Local Governments Jaime N. Ferrer and his driver Jesus D. Calderon, but who was convicted only of two (2) counts of homicide by the trial court, may be granted bail after such conviction for homicide, a non-capital offense. The Regional Trial Court of Makati answered in the affirmative but the Court of Appeals ruled otherwise.

Petitioner thus asks this Court to resolve said issue in this petition under Rule 65 assailing the two Resolutions[2] of respondent Court[3] promulgated on November 19, 1993 and March 9, 1994, respectively. The first Resolution[4] of November 19, 1993 disposed as follows:[5]

"WHEREFORE, the Court GRANTS the Solicitor General's motion to cancel accused-appellant Jose T. Obosa's bailbond. The Court NULLIFIES the lower court's order dated May 31, 1990, granting bail to accused Obosa.

Let warrant issue for the arrest of the accused-appellant Jose T. Obosa."

On the same date, November 19, 1993, an Order of Arrest against petitioner was issued under signature of then Court of Appeals Associate Justice Bernardo P. Pardo. [6]

On December 7, 1993, petitioner filed a Motion to Quash Warrant of Arrest and to Set Aside and Reconsider Resolution of November 19, 1993.[7] The second assailed Resolution[8] promulgated on March 9, 1994 denied the motion as follows:

"IN VIEW WHEREOF, the Court hereby DENIES accused Obosa's 'Motion to quash warrant of arrest and to set aside and reconsider the resolution of November 19, 1993' dated December 4, 1993, for lack of merit.

Let a copy of this resolution be given to the Honorable, the Secretary of Justice, Manila, so that he may issue the appropriate directive to the Director, Bureau of Corrections, Muntinlupa, Metro Manila, for the rectification of the prison record of accused Jose T. Obosa."

The Facts

Aside from the disagreement as to the date when notice of appeal was actually filed with the trial court,[9] the facts precedent to this petition are undisputed as set out in the first assailed Resolution, thus: [10]

"On December 4, 1987, Senior State Prosecutor Aurelio C. Trampe charged the accused Jose T. Obosa and three others with murder on two counts, by separate amended informations filed with the Regional Trial Court of Makati, Branch 56, for the ambush-slaying of Secretary of Local Governments Jaime N. Ferrer and his

driver Jesus D. Calderon, which occurred on August 2, 1987, at about 6:30 in the evening, at La Huerta, Parañaque, Metro Manila, as Secretary Ferrer was riding in his car, going to the St. Andrew Church near the plaza of La Huerta, to hear Sunday mass.

Each information alleged that the killing was with the attendance of the following qualifying/aggravating circumstances, to wit: treachery, evident premeditation, abuse of superior strength, nighttime purposely sought, disregard of the respect due to the victim on account of his rank and age (as to Secretary Ferrer), and by a band. The Prosecutor recommended no bail, as the evidence of guilt was strong.

During the trial of the two cases, which were consolidated and tried jointly, the accused Obosa was detained at Camp Bagong Diwa, Taguig, Metro Manila.

At the time of the commission of the two offenses, the accused Obosa was a virtual 'escapee' from the National Penitentiary at Muntinlupa, Metro Manila, particularly, at the Sampaguita Detention Station, where he was serving a prison term for robbery as a maximum security prisoner.

Indeed, by virtue of a subpoena illegally issued by a judge of the Municipal Trial Court of Sariaya, Quezon, accused Obosa was escorted out of prison to appear before said judge on the pretext that the judge needed his presence so that the judge could inquire about the whereabouts of the accused therein. While accused Obosa was out of prison, he was able to participate in the commission of the double murder now charged against him as principal for the ambush-slaying of Secretary Ferrer and his driver (Lorenzo vs. Marquez, 162 SCRA 546, 553).

Witnesses positively identified accused Jose T. Obosa as one of three assassins firing at a car near the canteen at the corner of Victor Medina Street and Quirino Avenue, Parañaque, Metro Manila. It was the car of Secretary Ferrer. He sustained eight entrance gunshot wounds on the right side of his head, neck and body, while his driver sustained three entrance wounds on the left temple, right side of the neck, right arm, chest and right hip. They died on the spot.

In its decision dated May 25, 1990, the lower court found the accused Obosa guilty beyond reasonable doubt of homicide on two counts.[11] In ruling that the crime committed was homicide, not murder as charged in the informations, the lower court declared that there was no qualifying circumstance attendant. In fact, however, the lower court itself found that the accused shot the victims while the latter were inside the car, unwary of any danger to their lives, for unknown to them, were the assassins lurking in the dark, firing their guns from behind, a circumstance indubitably showing treachery (People vs. Tachado, 170 SCRA 611; People vs. Juanga, 189 SCRA 226). There is treachery when the victims were attacked without warning and their backs turned to the assailants, as in this case (People vs. Tachado, supra). There is treachery when the unarmed and unsuspecting victim was ambushed in the dark, without any risk to his assailants (People vs. Egaras, 163 SCRA 692). Moreover, the crimes could be qualified by taking advantage of superior strength and aid of armed men (People vs. Baluyot, 170 SCRA 569). Where the attackers cooperated in such a way to secure advantage of their combined strength, there is present the qualifying circumstance of taking advantage of superior strength (People vs. Baluyot, supra; People vs. Malinao, 184 SCRA 148).

On May 31, 1990, the lower court promulgated its decision and on the same occasion, accused Obosa manifested his intention to appeal and asked the Court to allow him to post bail for his provisional liberty. Immediately, the lower court granted accused Obosa's motion and fixed bail at P20,000.00, in each case.

On June 1, 1990, accused Obosa filed a written notice of appeal, dated June 4, 1990, thereby perfecting appeal from the decision (Alama vs. Abbas, 124 Phil. 1465). By the perfection of the appeal, the lower court thereby lost jurisdiction over the case and this means both the record and the person of the accused-appellant. The sentencing court lost jurisdiction or power to do anything or any matter in relation to the person of the accused-appellant (Director of Prisons vs. Teodoro, 97 Phil. 391, 395-396), except to issue orders for the protection and preservation of the rights of the parties, which do not involve any matter litigated by the appeal

(People vs. Aranda, 106 Phil. 1008).

On June 4, 1990, accused Obosa filed a bailbond in the amount of P40,000.00, through Plaridel Surety and Assurance Company, which the lower court approved. On the same day, June 4, 1990, the lower court issued an order of release. The prison authorities at the National Penitentiary released accused Obosa also on the same day notwithstanding that, as hereinabove stated, at the time of the commission of the double murder, accused Obosa was serving a prison term for robbery."

The respondent Court likewise discoursed on the service of sentence made by the accused. Thus, it extensively discussed the following computation on the penalties imposed upon the petitioner for his previous offenses, which all the more convinced respondent Court that petitioner was not entitled to bail on the date he applied therefor on May 31, 1990 and filed his bailbond on June 4, 1990, as follows: [12]

"At the time the accused committed the crimes charged, he was an inmate at the National Penitentiary, New Bilibid Prisons, Muntinlupa, Metro Manila. He was in jail, but was able to commit the Ferrer assassination. He was serving imprisonment by final judgment in each of three (3) cases, namely, (a) theft, for which he was sentenced to eleven (11) months and fifteen (15) days of prison correccional; (b) robbery in band, for which he was sentenced to an indeterminate penalty of six (6) months and one (1) day of prison correccional, as minimum, to four (4) years, two (2) months and one (1) day of prison correccional, as maximum, and (c) evasion of service of sentence, for which he was sentenced to six (6) months of arresto mayor. These sentences are to be served successively not simultaneously (Article 70, Revised Penal Code; People vs. Reyes, 52 Phil. 538; Gordon vs. Wolfe, 6 Phil. 76; People vs. Medina, 59 Phil. 134; United States vs. Claravall, 31 Phil. 652; People vs. Ofindo, 47 Phil. 1; People vs. Tan, 50 Phil. 660). In successive service of sentences, the time of the second sentence did not commence to run until the expiration of the first (Gordon vs. Wolfe, supra).

He commenced service of sentence on October 11, 1979 (with credit for preventive imprisonment) and was admitted to the New Bilibid Prisons on January 5, 1980 (See prison record attached to Supplement, dated January 31, 1994 of the Solicitor General; Cf. prison record [incomplete] attached to Manifestation dated February 2, 1994 of the Accused Appellant).

On December 25, 1980, he escaped from detention at Fort Del Pilar, Baguio City, where he was temporarily working on a prison project (See decision, Crim. Case No. 4159-R, Regional Trial Court, Baguio City, People vs. Jose Obosa y Tutaña). While a fugitive from justice, he committed other crimes, in Quezon City, Makati, and Muntinlupa, Metro Manila. The cases are pending (See prison record, supra).

He was recaptured on August 27, 1986. Under prison regulations, he forfeited his allowance for good conduct prescribed by law (Article 97, Revised Penal Code; Act 2489 of the Philippine Legislature). In addition, he must serve the time spent at large (TSAL) of five (5) years, eight (8) months and two (2) days, and the unserved portion of his successive sentences for robbery in band, theft and evasion of service of sentence aforementioned. In sum, he has to serve the balance of his sentence for robbery in band of four (4) years, two (2) months and one (1) day of prison correccional; the sentence for theft of eleven (11) months and fifteen (15) days of prison correccional; and the sentence for evasion of service of sentence of six (6) months of arresto mayor, reaching a total of five (5) years, seven (7) months and sixteen (16) days. Since his commitment to jail on October 11, 1979, to the time he escaped on December 25, 1980, he had served one (1) year, two (2) months, and fourteen (14) days, which, deducted from the totality of his prison term, would leave a balance of four (4) years, five (5) months and two (2) days. Thus, he must still serve this unserved portion of his sentences in addition to the time spent at large. Counting the time from his re-arrest on August 27, 1986, and adding thereto five (5) years, eight (8) months and two (2) days (time spent at large), the result is that he must serve up to April 29, 1992. To this shall be added the remaining balance of his successive sentences of four (4) years, five (5) months and two (2) day(s). Consequently, he has to serve sentence and remain in confinement up to October 1, 1996. Of course, he may be given allowance for good conduct. But good conduct time allowance can not be computed in advance (Frank vs. Wolfe, 11 Phil. 466). This is counted only during

the time an accused actually served with good conduct and diligence (Frank vs. Wolfe, supra; See Aquino, The Revised Penal Code, Vol. I, 1987 ed., pp. 803-804). However, accused Obosa can not avail himself of this beneficent provision of the law because, while he was at large, he committed infraction of prison rules (escaping) and other crimes, including the Ferrer assassination, and for which he was placed under preventive imprisonment commencing on December 4, 1987, the date the informations at bar were filed against him. Because he was then under custody, no warrant of arrest or commitment order need be issued (Asuncion vs. Peralejo, G.R. No. 82915, June 22, 1988, minute resolution; Cf. People vs. Wilson, 4 Phil. 381; Umil vs. Ramos, 187 SCRA 311). Allowance for good conduct does not apply to detention prisoners (Baking vs. Director of Prisons, 28 SCRA 851). Consequently, by all reckoning, accused Obosa could not be released from prison on June 4, 1990, when he was admitted to bail. His release was illegal. He still has to serve the balance of his unserved sentences until October 1, 1996."

On September 6, 1993, respondent People, through the Office of the Solicitor General (OSG), filed with respondent Court an urgent motion,[13] praying for cancellation of petitioner's bail bond.

Petitioner promptly filed an opposition,[14] to which respondent People submitted a reply.[15] Thereupon, respondent Court issued its first questioned Resolution dated November 19, 1993:[16] a) canceling petitioner's bail bond, b) nullifying the trial court's order of May 31, 1990 which granted bail to petitioner, and c) issuing a warrant for his immediate arrest.

Petitioner's twin motions for reconsideration[17] and quashal of warrant of arrest proved futile as respondent Court, on March 9, 1994, after the parties' additional pleadings were submitted and after hearing the parties' oral arguments, issued its second questioned Resolution denying said motions for lack of merit.

The Issues

The petitioner worded the issue in this case as follows: [18]

"The principal constitutional and legal issues involved in this petition is (sic) whether petitioner as accused-appellant before the respondent Honorable Court of Appeals is entitled to bail as a matter of right and to enjoy the bail granted by the Regional Trial Court, in Makati, Metro Manila, pending appeal from the judgment convicting him of Homicide on two (2) counts though charged with Murder; and assuming that bail is a matter of discretion, the trial court had already exercised sound discretion in granting bail to accused-appellant, now petitioner in this case, and respondent Court of Appeals is devoid of jurisdiction in cancelling said bailbond."

The Solicitor General stated the issues more clearly, thus: [19]

"I

Whether or not the trial court still have (sic) jurisdiction over the case when it approved petitioner's bail bond on June 4, 1990.

II

Considering that the murder charge against petitioner still stands pending his appeal and strong evidence of guilt actually exists based on respondent Court of Appeals' own preliminary determination and the lower court's initial finding as well, is petitioner entitled to bail as a matter of right pending review of his conviction for homicide?

III

How does petitioner's prison record affect his alleged right to bail?"

The Court's Ruling

First Issue: Trial Court's Jurisdiction

To decide the issue of whether the cancellation of bail bond by the respondent Court was correct, we deem it necessary to determine first whether the trial court had jurisdiction to grant bail under the circumstances of this case.

Petitioner contends that the trial court was correct in allowing him "to post bail for his provisional liberty on the same day, May 31, 1990 when the judgment of conviction of (sic) homicide was promulgated and the accused-appellant (petitioner) manifested his intention to appeal the judgment of conviction. At the time, the lower court still had jurisdiction over the case as to empower it to issue the order granting bail pending appeal. Appellant filed his notice of appeal only on June 4, 1990, on which date his appeal was deemed perfected and the lower court lost jurisdiction over the case. Hence, the grant of bail on May 31, 1990 cannot be validly attacked on jurisdictional grounds." [20]

Through its counsel, the Solicitor General, respondent People admits that petitioner manifested his intention to appeal on May 31, 1990 and filed his written notice of appeal on June 1, 1990. But the Solicitor General nevertheless contends that "x x x it was only on June 4, 1990, or three (3) days after perfecting his appeal that petitioner posted his bail bond in the amount of P40,000.00 through Plaridel Surety and Assurance Company. Clearly, when the lower court approved the bail bond on the same day (June 4, 1990), it no longer had jurisdiction over the case." [21]

The respondent Court found that "(o)n June 1, 1990, accused Obosa filed a written notice of appeal, dated June 4, 1990, thereby perfecting appeal from the decision x x x." [22]

We reviewed the page [23] cited by respondent Court, and found that indeed, the written notice of appeal, although dated June 4, 1990, was made and actually served upon the trial court on June 1, 1990. Such being the case, did the trial court correctly approve the bail bond on June 4, 1990? To answer this, there is a need to revisit Section 3, Rule 122 of the Rules of Court:

"Sec. 3. How appeal taken. — (a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal with the court which rendered the judgment or order appealed from, and by serving a copy thereof upon the adverse party.

xxx xxx xxx."

Since petitioner did file the written notice of appeal on June 1, 1990, petitioner's appeal was, perforce, perfected, without need of any further or other act, and consequently and ineluctably, the trial court lost jurisdiction over the case, both over the record and over the subject of the case. [24] As has been ruled: [25]

"The question presented for our resolution is: Did the Court of First Instance that convicted respondent Lacson have the power and authority to issue the writ of preliminary injunction, prohibiting the transfer of said Lacson from the provincial hospital of Occidental Negros to the Insular Penitentiary at Muntinlupa, Rizal? While there is no express provision on this point, it is contrary to the generally accepted principles of procedure for said court to be invested with said power or authority. A necessary regard for orderly procedure demands that once a case, whether civil or criminal, has been appealed from a trial court to an appellate (sic) court and the appeal therefrom perfected, the court a quo loses jurisdiction over the case, both over the record and over the subject of the case. Thus in civil cases the rule is that after the appeal has been perfected from a judgment of the Court of First Instance, the trial court loses (sic) jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal (Rule 41, Sec. 9). The jurisdiction of the court over the matters involved in the case is lost by the perfected appeal, save in those cases which the rules expressly except therefrom." (Underscoring supplied).

But it should be noted that the bail was granted on May 31, 1990 by the trial court.[26]The validity and effectivity of the subsequent approval of the bail bond by the trial court on June 4, 1990 is therefore the matter at issue. We agree with respondent Court and respondent People that, while bail was granted by the trial court when it had jurisdiction, the approval of the bail bond was done without authority, because by then, the appeal had already been perfected and the trial court had lost jurisdiction. Needless to say, the situation would have been different had bail been granted and approval thereof given before the notice of appeal was filed.

As the approval was decreed by the trial court in excess of jurisdiction then the bailbond was never validly approved. On this basis alone, regardless of the outcome of the other issues, it is indisputable that the instant petition should be dismissed.

Second Issue: Is Petitioner Entitled To Bail As A Matter of Right?

The second issue, while no longer critical to the disposition of this case, will nevertheless be tackled, in view of its importance.

The Solicitor General argues that "(f)or while petitioner was convicted of the lesser offense of homicide, the fact that he has appealed resultantly throws the whole case open for review and reverts him back to his original situation as a person charged with the capital offense of murder on two (2) counts against whom a strong evidence of guilt exists as initially found by the trial court during the bail proceedings a quo." [27]

Petitioner answers by saying that "once the accused who is charged with a capital offense is convicted not of the offense for which he is charged but for a lesser one which is not capital or punished with reclusion perpetua, he is entitled to bail as a matter of right because the fact that the evidence of his guilt of a capital offense is not strong is necessarily to be inferred from his conviction of the lesser offense." [28]

On this point, respondent Court ratiocinated: [29]

"In this case, although the accused is charged with murder on two counts, and evidence of guilt is strong, the lower court found him guilty of homicide also on two (2) counts. He has appealed. An appeal by the accused throws the whole case open for review and this includes the penalty, the indemnity and the damages awarded by the trial court which may be increased (*Quemuel vs. Court of Appeals*, 130 Phil. 33). The appellate court may find the accused guilty of the original crime charged and impose on him the proper penalty therefor (*Linatoc vs. People*, 74 Phil. 586). By virtue of the appeal, the conviction for the lesser offense of homicide is stayed in the meantime. Hence, the accused is back to the original situation as he was before judgment (*Cf. Peo. vs. Bocar*, 97 Phil. 398), that is, one charged with capital offenses where evidence of guilt is strong. Bail must be denied."

To resolve this issue, we refer to Section 13, Article III of the 1987 Constitution which provides:

"Sec. 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required."

In the case of *De la Camara vs. Enage*, [30] we analyzed the purpose of bail and why it should be denied to one charged with a capital offense when evidence of guilt is strong:

"x x x Before conviction, every person is bailable except if charged with capital offenses when the evidence of guilt is strong. 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. 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, temptation to flee the jurisdiction would be too great to be resisted." (Underscoring supplied).

The aforequoted rationale applies with equal force to an appellant who, though convicted of an offense not punishable by death, reclusion perpetua or life imprisonment, was nevertheless originally charged with a capital offense. Such appellant can hardly be unmindful of the fact that, in the ordinary course of things, there is a substantial likelihood of his conviction (and the corresponding penalty) being affirmed on appeal, or worse, the not insignificant possibility and infinitely more unpleasant prospect of instead being found guilty of the capital offense originally charged. In such an instance, the appellant cannot but be sorely tempted to flee.

Our Rules of Court, following the mandate of our fundamental law, set the standard to be observed in applications for bail. Section 3, Rule 114 of the 1985 Rules on Criminal Procedure,[31] as amended, provides:

"Sec. 3. Bail, a matter of right; exception. All persons in custody shall, before final conviction, be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by reclusion perpetua, when evidence of guilt is strong." (Underscoring supplied).

In *Borinaga vs. Tamin*,[32] which was promulgated in 1993, this Court laid down the guidelines for the grant of bail:

"The 1987 Constitution provides that all persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong shall, before conviction, be bailable by sufficient sureties or be released on recognizance as may be provided by law. Corollarily, the Rules of Court, under Section 3, Rule 114 thereof, provides that all persons in custody shall, before final conviction, be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by reclusion perpetua, when evidence of guilt is strong.

As now revised in the 1985 Rules of Criminal Procedure and provided in Rule 114 thereof, the rules on availability of bail to an accused may be restated as follows:

1. Admission to bail is a matter of right at any stage of the action where the charge is not for a capital offense or is not punishable by reclusion perpetua; [Sec. 3, Rule 114, 1985 Rules on Crim. Procedure]
2. Regardless of the stage of the criminal prosecution, no bail shall be allowed if the accused is charged with a capital offense or of an offense punishable by reclusion perpetua and the evidence of guilt is strong; [Idem].
3. Even if a capital offense is charged and the evidence of guilt is strong, the accused may still be admitted to bail in the discretion of the court if there are strong grounds to apprehend that his continued confinement will endanger his life or result in permanent impairment of health, [*De la Rama vs. People's Court*, 43 O.G. No. 10, 4107 (1947)] but only before judgment in the regional trial court; and
4. No bail shall be allowed after final judgment, unless the accused has applied for probation and has not commenced to serve sentence, [Section 21, Rule 114, 1985 Rules of Court] the penalty and offense being within the purview of the probation law."

However, the above guidelines, along with Rule 114 itself, have since been modified by Administrative Circular

No. 12-94, which was issued by this Court and which came into effect on October 1, 1994. Verily, had herein petitioner made application for bail after the effectivity of said circular, this case would have been readily and promptly resolved against petitioner. For, quite recently, in *Robin Carino Padilla vs. Court of Appeals, et al.*,^[33] we held, making reference to said administrative circular:

"Bail is either a matter of right, or of discretion. It is a matter of right when the offense charged is not punishable by death, reclusion perpetua or life imprisonment. On the other hand, upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment, bail becomes a matter of discretion. Similarly, if the court imposed a penalty of imprisonment exceeding six (6) years but not more than twenty (20) years then bail is a matter of discretion, except when any of the enumerated circumstances under paragraph 3 of Section 5, Rule 114 is present then bail shall be denied. But when the accused is charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, and evidence of guilt is strong, bail shall be denied, as it is neither a matter of right nor of discretion. If the evidence, however, is not strong bail becomes a matter of right." (Citations omitted; underscoring supplied).

And, as above adverted to, the circumstances mentioned in paragraph 3 of Section 5, Rule 114 of the 1994 Revised Rules on Criminal Procedure — the presence of any of which could preclude the grant of bail — are as follows:

- "(a) That the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- (b) That the accused is found to have previously escaped from legal confinement, evaded sentence, or has violated the conditions of his bail without valid justification;
- (c) That the accused committed the offense while on probation, parole, or under conditional pardon;
- (d) That the circumstances of the accused or his case indicate the probability of flight if released on bail; or
- (e) That there is undue risk that during the pendency of the appeal, the accused may commit another crime."

It will be readily noted that, pursuant to the foregoing amendments, not only does the conviction of petitioner for two counts of homicide disqualify him from being admitted to bail as a matter of right and subject his bail application to the sound discretion of the court, but more significantly, the circumstances enumerated in paragraphs a, b, d and e above, which are present in petitioner's situation, would have justified and warranted the denial of bail, except that a retroactive application of the said circular in the instant case is barred as it would obviously be unfavorable to petitioner.

But be that as it may, the rules on bail at the time of petitioner's conviction (i.e., prior to their amendment by Adm. Circular 12-94) do not favor petitioner's cause either. In *Quemuel vs. CA, et al.*,^[34] this Court held that the appeal in a criminal case opens the whole case for review and this includes the penalty, which may be increased. Thus, on appeal, as the entire case is submitted for review, even factual questions may once more be weighed and evaluated. That being the situation, the possibility of conviction upon the original charge is ever present. Likewise, if the prosecution had previously demonstrated that evidence of the accused's guilt is strong, as it had done so in this case, such determination subsists even on appeal, despite conviction for a lesser offense, since such determination is for the purpose of resolving whether to grant or deny bail and does not have any bearing on whether petitioner will ultimately be acquitted or convicted of the charge.

We have previously held that, while the accused, after conviction, may upon application be bailed at the discretion of the court, that discretion — particularly with respect to extending the bail — should be exercised not with laxity, but with caution and only for strong reasons, with the end in view of upholding the majesty of the law and the

administration of justice. [35]

And the grave caution that must attend the exercise of judicial discretion in granting bail to a convicted accused is best illustrated and exemplified in Administrative Circular No. 12-94 amending Rule 114, Section 5 which now specifically provides that, although the grant of bail is discretionary in non-capital offenses nevertheless, when imprisonment has been imposed on the convicted accused in excess of six (6) years and circumstances exist (inter alia, where the accused is found to have previously escaped from legal confinement or evaded sentence, or there is an undue risk that the accused may commit another crime while his appeal is pending) that point to a considerable likelihood that the accused may flee if released on bail, then the accused must be denied bail, or his bail previously granted should be cancelled.

But the same rationale obtained even under the old rules on bail (i.e., prior to their amendment by Adm. Circular 12-94). Senator Vicente J. Francisco's[36]eloquent explanation on why bail should be denied as a matter of wise discretion after judgment of conviction reflects that thinking, which remains valid up to now:

"The importance attached to conviction is due to the underlying principle that bail should be granted only where it is uncertain whether the accused is guilty or innocent, and therefore, where that uncertainty is removed by conviction it would, generally speaking, be absurd to admit to bail. After a person has been tried and convicted the presumption of innocence which may be relied upon in prior applications is rebutted, and the burden is upon the accused to show error in the conviction. From another point of view it may be properly argued that the probability of ultimate punishment is so enhanced by the conviction that the accused is much more likely to attempt to escape if liberated on bail than before conviction. x x x"

Third Issue: Petitioner's Record

Petitioner claims that respondent Court of Appeals erred in concluding "that at the time the bail was granted and approved by His Honor of the trial Court, he has still to serve sentence and remain in confinement up to October 1, 1996" and hence was not entitled to bail.[37] Petitioner, citing Luis B. Reyes,[38] maintains that the Bureau of Corrections properly released him from prison on July 18, 1990.

We find it unnecessary to address this issue in the resolution of the instant petition. Having already determined that the bail bond was approved without jurisdiction and that the Court of Appeals was correct in issuing the two questioned Resolutions, we thus hold that, petitioner cannot be released from confinement. The determination of whether or not petitioner should still be imprisoned up to October 1, 1996, and only thereafter may possibly be released on bail is no longer material for the disposition of this case. Thus, we shall longer burden ourselves with the resolution of this academic issue.

EPILOGUE

In sum, we rule that bail cannot be granted as a matter of right even after an accused, who is charged with a capital offense, appeals his conviction for a non-capital crime. Courts must exercise utmost caution in deciding applications for bail considering that the accused on appeal may still be convicted of the original capital offense charged and that thus the risk attendant to jumping bail still subsists. In fact, trial courts would be well advised to leave the matter of bail, after conviction for a lesser crime than the capital offense originally charged, to the appellate court's sound discretion.

We also hold that the trial court had failed to exercise the degree of discretion and caution required under and mandated by our statutes and rules, for, aside from being too hasty in granting bail immediately after promulgation of judgment, and acting without jurisdiction in approving the bailbond, it inexplicably ignored the undeniable fact of petitioner's previous escape from legal confinement as well as his prior convictions.

Upon the other hand, the respondent Court should be commended for its vigilance, discretion and steadfastness. In ruling against bail, it even scoured the records and found that treachery attended the killing thereby justifying its action. The trial court's literal interpretation of the law on bail was forcefully debunked by the appellate courts' excellent disquisition on the rationale of the applicable rules. Truly, law must be understood not by "the letter that killeth but by the spirit that giveth life." Law should not be read and interpreted in isolated academic abstraction nor even for the sake of logical symmetry but always in context of pulsating social realities and specific environmental facts. Truly, "the real essence of justice does not emanate from quibblings over patchwork legal technicality. It proceeds from the spirit's gut consciousness of the dynamic role of law as a brick in the ultimate development of the social edifice." [39]

WHEREFORE, for lack of merit, the instant petition is hereby DENIED and the two assailed Resolutions AFFIRMED.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1]Section 4, Rule 114 of the 1994 Revised Rules of Court provides:

"Sec. 4. Capital offense, defined. — A capital offense, as the term is used in these Rules, is an offense which, under the law existing at the time of its commission and at the time of the application to be admitted to bail, may be punished with death."

[2]In CA-G.R. CR No. 10533.

[3] Special Division of Five Members, composed of J. Bernardo P. Pardo, ponente; JJ. Cezar D. Francisco and Ma. Alicia Austria-Martinez, concurring; and JJ. Eubulo G. Verzola and Salome A. Montoya, dissenting.

[4] Rollo, pp. 129-148.

[5]Ibid., pp. 134-135.

[6] Ibid., p. 149; Justice Pardo is now Chairman of the Commission on Elections.

[7]Rollo, pp. 150-173.

[8]Ibid., pp. 228-236.

[9] Regional Trial Court of Makati, Metro Manila, Branch 56, presided by Judge Nemesio S. Felix.

[10] Rollo, pp. 129-131.

[11]The dispositive portion of the decision of the trial court convicting petitioner reads (rollo, pp. 96-97):

"WHEREFORE, finding accused Jose Obosa guilty beyond reasonable doubt of the commission of the offense of homicide in two counts, as defined and penalized in Art. 249 of the Revised Penal Code, there being no aggravating or mitigating circumstance that attended the commission of the offense, he is hereby sentenced in each case to suffer an indeterminate penalty of imprisonment from eight (8) years and one (1) day of prison mayor medium as minimum to seventeen (17) years and four (4) months of reclusion temporal medium as maximum, to pay the heirs of Secretary Jaime Ferrer the sum of P30,000.00 for the los(s) of his life and another sum of P30,00.00 for moral damages and also to the heirs of Jesus Calderon the sum of P30,000.00 for the los(s) of his life and another P30,000.00 for moral damages, and to pay the costs of the suit.

The preventive imprisonment accused Jose Obosa may have undertaken shall be deducted from the term of imprisonment imposed herein to its full extent if he signed an agreement to abide by the same rules upon convicted prisoners while in confinement (or) only four-fifths (4/5) thereof if he has not signed said agreement, pursuant to Art. 29 of the Revised Penal Code, as amended by Republic Act No. 6127.

xxx xxx xxx."

[12] Resolution promulgated on March 9, 1994; rollo, pp. 229-231.

[13] Rollo, pp. 98-103.

[14] Ibid., pp. 105-109.

[15] Ibid., pp. 121-127.

[16] Ibid., pp. 129-148.

[17] Ibid., pp. 174-177.

[18] Rollo, p. 339.

[19] Ibid., pp. 313-314.

[20] Rollo, pp. 22-23.

[21] Rollo, pp. 314-315.

[22] Ibid., p. 131.

[23] Original Records, p. 751.

[24] The Director of Prisons, et al. vs. Teodoro, etc., et al., 97 Phil. 391, 395 (1955).

[25] Ibid.

[26] Rollo, p. 231

[27] Rollo, p. 319.

[28] Ibid., p. 355.

[29] Resolution of November 19, 1993, p. 5; rollo, p. 133.

[30] 41 SCRA 1, 6-7, September 17, 1971. Though this case was decided prior the effectivity of the 1987 Constitution, the rationale enunciated therein is still good jurisprudence and appropriate in this case.

[31] The same section, as amended by Administrative Circular No. 12-94 which amendments took effect on October 1, 1994, is now renumbered as Section 4 of Rule 114 and reads as follows:

"Sec. 4. Bail, a matter of right. — All persons in custody shall: (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment, be admitted to bail as a matter of right, with sufficient sureties, or be released on recognizance as prescribed by law or this Rule."

[32] 226 SCRA 206, 213-214, September 10, 1993.

[33] G.R. No. 121917, July 31, 1996.

[34] 130 Phil. 33, 35 (1968), citing numerous cases.

[35] People vs. Caderao and Associated Insurance & Surety Co., Inc., 117 Phil. 650, 654(1963).

[36] The Revised Rules of Court in the Philippines- Criminal Procedure (Rules 110-127), 1963 Edition, p. 322.

[37] Rollo, pp. 229-231; CA Resolution of March 9, 1994, pp. 2-4.

[38] Revised Penal Code, 1981 edition, Book I, p. 738:

"Article 70 of the Revised Penal Code is concerned exclusively with the 'service' of sentence; it speaks of 'duration' of penalty and penalty to 'be inflicted'. It has nothing to do with the imposition of proper penalty. Nowhere is it there envisioned that the court should make a computation and, in its decision, sentence the culprit to not more than three-fold the most severe of the penalties imposable upon him. Computation is for the prison authorities to undertake. (People vs. Salazar, et al., C.A., 61 O.G. 5913)."

[39]Frivaldo vs. Comelec, G.R. No 120295, p. 56, June 28, 1996.

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