

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. IRENEO GAKO, JR. (PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, 7TH JUDICIAL REGION, BRANCH 5, CEBU CITY) AND VICENTE GO, RESPONDE...

G.R. No. 135045. December 15, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is an appeal by certiorari under Rule 45, Rules of Court of the Resolution[1] of public respondent Court of Appeals (Former Third Special Division) dated August 12, 1998 in CA-G.R. SP No. 47142, entitled "PEOPLE OF THE PHILIPPINES versus HON. IRENEO GAKO, JR. ET. AL.," dismissing the petition of the Office of the Solicitor General (OSG), herein petitioner.

This instant petition stems from a murder case filed against private respondent Vicente Go (Go) and two co-accused Sonny Herodias (Herodias) and Leopoldo dela Peña (de la Peña). The victim, Rafael Galan, Sr. (Galan, Sr.), was shot dead on June 25, 1991.

Judge Priscila S. Agana (Judge Agana) originally presided over the criminal case subject of this petition. The prosecution sought to inhibit said judge for her alleged collusion with the accused when she repeatedly sustained the objections of the defense every time the prosecution attempted to establish the conspiracy to kill the victim. Judge Agana denied the motion to inhibit and dismissed the case with prejudice on the ground that the rights of the accused to a speedy trial were violated. The prosecution challenged the dismissal in the Court of Appeals, docketed as CA-G.R. SP No. 32954. In its Decision dated April 18, 1994, the Court of Appeals set aside the order of dismissal, granted the inhibition of the judge, and ordered the re-raffle of the case. The decision of the Court of Appeals gained finality when this Court dismissed the appeal of private respondent Go and co-accused Herodias in a Minute Resolution dated June 26, 1995. The criminal case was thus set for retrial. A series of delays beset the case when the judges to whom the case was raffled inhibited themselves. The case was finally presided over by public respondent Judge Ireneo Gako, Jr (Judge Gako, Jr.).

With the foregoing events as backdrop, the pertinent facts that led to the filing of this instant petition are as follows:

On July 3, 1991, de la Peña executed an Extra-judicial Confession implicating therein Herodias and Go in the conspiracy to kill and murder the victim.

On July 9, 1991, an Information was filed against the three accused namely, de la Peña, Herodias and Go, charging them with the murder of Galan, Sr. and the case was docketed as Criminal Case No. CBU-22474. Judge Godardo Jacinto,[2] then the Executive Judge of the Regional Trial Court of Cebu City, issued a Warrant of Arrest against the accused.

On July 22, 1991 an Urgent Motion to Confine private respondent Go in a hospital was filed.

On August 2, 1991, the hearing on said motion was conducted with the prosecution reserving its right to cross-examine Dr. Gonzales.

On August 6, 1991 an Order was issued to confine private respondent Go in a hospital without the prosecution having cross-examined Dr. Gonzales on his medical report.

On July 15, 1992, a hearing was conducted where de la Peña was presented as a witness for the prosecution. Presiding Judge Agana sustained the objections of the defense counsels each time that the prosecution attempted to establish the conspiracy to kill the victim. The prosecution filed a motion to inhibit Judge Agana, which motion was denied.

On November 20, 1992, the Information against Go and Herodias was dismissed with prejudice on the ground that their right to a speedy trial had been violated, leaving de la Peña to face trial.

The prosecution then challenged the Order of Dismissal with Prejudice before the Court of Appeals in CA-GR SP No. 32954. In its Decision dated April 18, 1994, the Court of Appeals annulled and set aside the Order of Dismissal, ordered the inhibition of Judge Agana, and ordered the raffle of the case to another branch. With the dismissal of the appeal of private respondent Go and co-accused Herodias by this Court in a Minute Resolution dated June 26, 1995, the criminal case was set anew for trial.

The case was re-raffled to RTC-17 and on October 28, 1996, an Alias Warrant of Arrest was issued against private respondent Go and co-accused Herodias.

On February 2, 1997, Dr. Matig-a, the physician of Go, filed a Clinical Summary on the illness of Go and on February 13, 1997 Go filed a Petition for Bail.

On March 7, 1997 and March 10, 1997, the prosecution presented de la Peña who was acquitted in 1993. De la Peña testified on matters which he was not allowed by then presiding Judge Agana to testify on.

On March 21, 1997, a Manifestation on the Confinement of private respondent Vicente Go was filed urging his arrest because he was out of the intensive care unit.

The motion of the prosecution to transfer the criminal case to a Special Heinous Crimes Court was denied by then presiding Judge Jesus de la Peña (Judge de la Peña). The case was finally assigned to Branch 5 with public respondent Judge Gako, Jr. as presiding judge.

On September 16 and 17, 1997, the hearing was resumed, now presided by public respondent Judge Gako, Jr.

On September 26, 1997, an Urgent Motion to Enforce the Alias Warrant of Arrest was filed praying for the arrest of private respondent Go first before his Clinical Summary Report could be heard.

On November 10, 1997, public respondent Judge Gako, Jr. issued an Order granting the Petition for Bail of private respondent Go.

On November 11, 1997, the prosecution filed a Vehement Motion to Inhibit public respondent Judge Gako, Jr. due to his alleged delay in resolving the incidents in connection with the arrest of private respondent Go.

On November 12, 1992, the prosecution moved for the reconsideration of the Order of the court dated November 10, 1997, the order which granted bail to private respondent Go.

On November 14, 1997, a Supplemental Motion to Inhibit public respondent Judge Gako, Jr. was filed by the counsel of the offended party because Judge Gako, Jr. allegedly pre-judged the evidence of the prosecution without carefully evaluating why it is short of the requirement to sustain a verdict of life imprisonment.

On November 15, 1997, a Supplemental Motion for Reconsideration was filed from the Order dated November 10, 1997 because the transcripts were allegedly not read.

On December 1, 1997, a Motion for the Issuance of Subpoena Duces Tecum to produce the records of Dr. Matig-a was filed to determine if the medical findings on private respondent Go were not exaggerated to prevent his arrest.

On December 11, 1997, public respondent Judge Gako, Jr. issued an Order in which he denied the prosecution's Manifestation dated March 21, 1997 on the confinement of private respondent Go, and the Urgent Motion to Enforce the Alias Warrant of Arrest dated September 26, 1997 against private respondent Go.

On January 20, 1998, public respondent Judge Gako, Jr. issued an Order denying the: (1) Motion for Reconsideration of the Order dated November 10, 1997; (2) Motion to Inhibit; and (3) Supplemental Motion to Inhibit the Presiding Judge. The prosecution received this order on February 10, 1998.

On March 20, 1998, private complainant Guadalupe Galan (Galan), the widow of the victim, filed a petition for certiorari under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 471460 before public respondent Court of Appeals. The petition sought to annul or set aside the orders of public respondent Judge Gako, Jr. and then acting Presiding Judge de la Peña, to wit:

"a) Order dated May 23, 1997, which set aside the earlier order of the court that granted the re-raffle of this case to a heinous crime court upon the defense's motion for reconsideration.

b) Order dated November 10, 1997, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the court hereby grants bail to accused Vicente Go which is fixed at P50,000.00, after taking into consideration, and this fact has not been disputed, that said accused is presently confined in the hospital and is suffering from the following ailments:

a) Ischemic Heart Disease, S/P Coronary Angiogram, Single Vessel Disease, LAD, Chronic Stable Angina;

b) Essential Hypertension;

c) NIDDM

d) Hypercholesterolemia; and

e) Respiratory Tract Infection

And, as per clerical summary report of Dr. Generoso Matiga, dated February 4, 1997, the confinement of accused Go in prison will cause his disease to terminate fatally.

x x x

c) Order dated December 11, 1997, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Manifestation dated March 3, 1997 and the Motion to Enforce the Alias Warrant of Arrest are hereby denied for want of merit. Besides the accused was already released on bail and the issue on the enforcement of the Alias Warrants of Arrest is already moot and academic.

d) Order dated January 20, 1998, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Omnibus Motions for Reconsideration on the order of the court granting Bail to accused Vicente Go with Supplemental pleading, xxx and thirdly, to disqualify the herein Presiding Judge, are hereby denied for lack of merit. xxx"[3]

The petition was signed by the counsel of private complainant, Atty. Antonio Guerrero with the conformity of

Vidal Gella, Prosecutor I of the Office of the City Prosecutor of Cebu City.

On March 26, 1998, public respondent Court of Appeals (Special Third Division) issued a Resolution dismissing the said petition on these grounds: (1) that the petition was not filed by the Solicitor General in behalf of the People of the Philippines; and (2) that the certification on non-forum shopping was signed by counsel for petitioner Galan, not by petitioner herself.[4]

On April 14, 1998, private complainant Galan, through counsel, filed a Motion for Reconsideration of said Resolution indicating that petitioner OSG was going to adopt her petition. On the same date, petitioner OSG manifested before public respondent Court of Appeals that it was joining private complainant Galan in her petition and was adopting her petition as its own.

On June 18, 1998, the Court of Appeals issued a resolution that denied said motion for reconsideration of private complainant Galan on the ground that the certification on non-forum shopping was not signed by therein petitioner Galan. The Court of Appeals also reasoned that "the fact that the OSG joined petitioner Galan in her petition did not cure the above deficiency".[5] Petitioner OSG received copy of the resolution on June 29, 1998.

On August 3, 1998 petitioner OSG filed a petition for certiorari under Rule 65 of the Rules of Court with the Court of Appeals docketed as CA-G.R. SP No. 47142.

On August 12, 1998, said petition of petitioner OSG was dismissed by public respondent Court of Appeals, the pertinent portions of the resolution read:

"The Court notes that said petition is practically a reproduction of the petition earlier filed by complainant Guadalupe Galan, which was dismissed on March 26, 1998. The dismissal was reaffirmed by the Court in its resolution dated June 18, 1998, copy of which was received by the OSG on June 29, 1998.

Instead of seeking, on time, the amendment of the first petition or a review of the resolution dismissing it, the OSG has come to this Court through the instant petition which not only raises the same matters ventilated in the same petition but also was filed beyond the 60-day period prescribed in Section 4, Rule 65 of the 1997 Rules of Civil Procedure.

WHEREFORE, premises considered, the Petition dated July 17, 1998, is hereby DISMISSED.

SO ORDERED."[6]

In seeking the allowance of this instant petition, petitioner OSG relies upon the following grounds:

- PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO THE SPECIAL CIVIL ACTION OF (sic) CERTIORARI FILED BY PETITIONER DOCKETED AS CA-G.R. SP NO. 47142.
- PUBLIC RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT SAID SPECIAL CIVIL ACTION WAS FILED BEYOND THE SIXTY-DAY PERIOD PRESCRIBED IN SECTION 4, RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE.
- PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT TOUCHING ON THE MERITS OF THE SAID PETITION.[7]

Public respondent Court of Appeals correctly ruled that there was sufficient ground to dismiss the petition filed by private complainant Galan since it was her counsel who signed the certificate on non-forum shopping and not private complainant herself. The petition clearly failed to comply with the requirement imposed by Section 1, Rule 65[8], in relation to Section 3, Rule 46[9] of the 1997 Rules of Court. We also agree with the Court of Appeals, that the mere fact that petitioner OSG manifested that it was adopting the petition of therein petitioner

Galan did not cure the defective petition considering that the certificate on non-forum shopping was still not signed by petitioner Galan but by her counsel. The manifestation of petitioner OSG also did not contain a certification on non-forum shopping. By the time that petitioner OSG filed its petition for certiorari in behalf of the People of the Philippines on August 3, 1998, the dismissal of the petition of private complainant Galan had already been reaffirmed and the 60-day period for petitioner OSG to file its petition had already lapsed.

In dismissing the petition of petitioner OSG, public respondent Court of Appeals pointed out that private complainant Galan had no legal standing to file the petition before it because "only the Solicitor General can represent the People before this Court (Court of Appeals) and the Supreme Court".[10] On this point, we differ.

In the recent case of *Narciso vs. Romana-Cruz*[11], we reiterated the doctrine enunciated in *People vs. Calo*[12] that:

"While the rule is, as held by the Court of Appeals, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or the State in criminal proceeding pending in this Court and the Court of Appeals (*Republic vs. Partisala*, 118 SCRA 320 [1982]), the ends of substantial justice would be better served, and the issues in this action could be determined in a more just, speedy and inexpensive manner, by entertaining the petition at bar. As an offended party in a criminal case, private petitioner has sufficient personality and a valid grievance against Judge Adao's order granting bail to the alleged murderers of his (private petitioner's) father.

In *Paredes vs. Gopengco*, 29 SCRA 688 (1969), this Court ruled that the offended parties in criminal cases have sufficient interest and personality as "person(s) aggrieved" to file the special civil action of prohibition and certiorari under Sections 1 and 2 of Rule 65 in line with the underlying spirit of the liberal construction of the Rules of Court in order to promote their object, thus:

"Furthermore, as offended parties in the pending criminal case before petitioner judge, it cannot be gainsaid that respondents have sufficient interest and personality as 'person(s) aggrieved' by petitioner judge's ruling on his non-disqualification to file the special civil action under sections 1 and 2 of Rule 65. Recently in line with the underlying spirit of a liberal construction of the Rules of Court in order to promote their object, as against the literal application of Rule 110, section 2, we held, overruling the implication of an earlier case, that a widow possesses the right as an offended party to file a criminal complaint for the murder of her deceased husband.' (*Id.*, p. 699)"[13]

Hence, private complainant Galan had sufficient interest and personality as the aggrieved party[14] in a criminal case to file the special civil action for certiorari before public respondent Court of Appeals. The proper ground therefore for dismissing her petition is the fact that it was her counsel who signed the certificate on non-forum shopping and not herself as petitioner.

Petitioner OSG submits that assuming that the petition for certiorari it filed with public respondent Court of Appeals was filed out of time, nonetheless the following issues raised in said petition warranted resolution:

- WHETHER OR NOT THE ORDER DATED NOVEMBER 10, 1997 GRANTING BAIL IS PROPER WITHOUT EXPRESSING THE COURT'S FINDING THAT THE EVIDENCE OF GUILT OF THE ACCUSED IS NOT STRONG.
- WHETHER OR NOT PRIVATE RESPONDENT VICENTE GO IS CONSIDERED UNDER LEGAL CUSTODY AS OF NOVEMBER 20, 1992 UNTIL THE PRESENT BECAUSE OF HIS HOSPITAL CONFINEMENT BY ORDER OF THE COURT DATED AUGUST 6, 1991.
- WHETHER OR NOT IT IS NECESSARY THAT CRIMINAL CASE NO. CBU-22474 SHOULD BE TRIED BY THE SPECIAL HEINOUS CRIMES COURT NOTWITHSTANDING THAT THE MURDER WAS COMMITTED IN 1991 BEFORE THE PASSAGE OF THE LAW CREATING THESE SPECIAL

COURTS.

This instant petition also seeks to set aside the following orders: (1) Order dated May 23, 1997 which set aside the earlier order of the trial court that granted the re-raffle of this case to a heinous crime court upon the motion for reconsideration of the defense; (2) Order dated November 10, 1997 that granted the bail of accused Go in the amount of P 50,000.00; (3) Order dated December 11, 1997 denying the Motion to Enforce the Alias Warrants of arrest; and (4) Order dated January 20, 1998 denying the Omnibus Motions for Reconsideration of the order of the court granting bail to accused Go and ruling against the disqualification of respondent Judge Gako, Jr.

While the petition of private complainant Galan was indeed defective in form and the petition of petitioner OSG was demonstrably filed beyond the 60-day period, we however resolve to grant this petition in part in view of the primordial interest of substantial justice.

The just cited issues in the petition before public respondent Court of Appeals presented extenuating circumstances that should have compelled the latter to pass upon the merits of said petition. In a number of cases,[15] we have set aside the strict application of procedural technicalities in the higher interest of justice. As we shall show hereunder, the issues raised by petitioner OSG deserve disposition to avoid a miscarriage of justice and to end the streaks of delay which have saddled the criminal case subject of this petition.

First, the assailed Order dated November 10, 1997 granting bail is legally infirm for failing to conform with the requirement that in cases when the granting of bail is not a matter of right, a hearing for that purpose must first be conducted. Section 13, Article III of the Constitution provides the instances when bail is a matter of right or discretionary, to wit:

"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."

Section 7, Article 114 of the Rules of Court, as amended, reiterates that:

"No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, when evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal prosecution."

Based on the foregoing, bail is not a matter of right with respect to persons charged with a crime the penalty for which is reclusion perpetua, life imprisonment, or death, when the evidence of guilt is strong. Private respondent Go, accused in the criminal case, was charged with murder in 1991, before the passage of RA 7659, the law that re-imposed the death penalty. Murder then was a crime punishable by reclusion perpetua. Thus, accused Go's right to bail is merely discretionary.

We have consistently held that when bail is discretionary, a hearing, whether summary or otherwise in the discretion of the court, should first be conducted to determine the existence of strong evidence or lack of it, against the accused to enable the judge to make an intelligent assessment of the evidence presented by the parties.[16] A summary hearing is defined as "such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of hearing which is merely to determine the weight of evidence for the 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. The course of 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 examination and cross examination".[17]

It is inconceivable how Judge Gako, Jr. could have appreciated the strength or weakness of the evidence of guilt of the accused when he did not even bother to hear the prosecution. The reliance of Judge Gako, Jr. on the "voluminous records" of the case simply does not suffice. As judge, he was mandated to conduct a hearing on the petition for bail of the accused since he knew that the crime charged is one that carries a penalty of reclusion perpetua, and in that hearing, the prosecution is entitled to present its evidence. It is worth stressing that the prosecution is equally entitled to due process.[18]

Another compelling reason why a hearing of a petition for bail is necessary is to determine the amount of bail based on the guidelines set forth in Section 6, Rule 114 of the Rules of Court.[19] Without the required hearing, the bail granted to accused Go in the amount of P 50,000.00 is undoubtedly arbitrary and without basis.

Second, the order granting bail issued by Judge Gako, Jr. merely made a conclusion without a summary of the evidence, a substantive and formal defect that voids the grant of bail. Well settled is the rule that after the hearing, whether the bail is granted or denied, the presiding judge is mandated to prepare a summary of the evidence for the prosecution. A summary is defined as "a comprehensive and usually brief abstract or digest of a text or statement".[20] Based on the summary of evidence, the judge formulates his own conclusion on whether such evidence is strong enough to indicate the guilt of the accused. The importance of a summary cannot be downplayed, it is considered an aspect of procedural due process for both the prosecution and the defense; its absence will invalidate the grant or denial of bail.[21]

Thus, we laid down the duties of a judge in case an application for bail is filed, viz:

- "(1) Notify the prosecutor of the hearing for bail or require him to submit his recommendation;
- (2) Conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its discretion;
- (3) Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution; (*Italics supplied*)
- (4) If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond. Otherwise, petition should be denied."[22]

In dispensing with the required hearing for bail, Judge Gako, Jr. pointed out in the assailed order that the accused was confined in the hospital, was suffering from a number of ailments and that the eventual confinement of accused Go in prison will allegedly "cause his disease to terminate fatally".[23] The irregularity in the grant of bail however is not attenuated since respondent judge's findings were based on the summary clinical report of Dr. Matiga dated February 4, 1997 while the order granting bail was issued on November 10, 1997. It could not therefore be reasonably assumed that the actual state of health of accused Go could still be accurately reflected by the said medical report when nine months had already passed from the time that said medical report was prepared. It was therefore clear error for Judge Gako, Jr. to depend solely on the dated medical report in granting bail when the defense failed to present a more recent one that would convincingly raise strong grounds to apprehend that the imprisonment of the accused would endanger his life.

Petitioner OSG advances the theory that the accused, private respondent Go, is not entitled to bail because he was allegedly not under the custody of the law at the time that he applied for bail. Petitioner OSG anchors this theory on the following arguments: that the August 6, 1991 order commanding the confinement of accused Go in the hospital was void because the prosecution was not able to cross-examine the doctor who prepared the medical

report pertaining to the accused' illnesses; that when the Information in this case was ordered dismissed with prejudice on November 20, 1992 by then presiding Judge Agana, accused Go was bodily released from his confinement; that at that point, the trial court had lost its jurisdiction over the person of the accused; that before the dismissal with prejudice was voided by the Court of Appeals, accused traveled extensively abroad; that when the case was re-raffled and finally presided by Judge Gako, Jr. accused continued to be confined in the hospital on the strength of the allegedly void order of confinement dated August 6, 1991; that Judge Gako, Jr. refused to enforce the alias warrant of arrest on the ground that the order of confinement was still in effect; and that accused Go voluntarily admitted himself to the hospital, hence was not yet deprived of his liberty at the time that he applied for bail.

We must first correct the perception that the trial court was ousted of its jurisdiction over the person of accused Go after Judge Agana erroneously dismissed the case and upon the refusal of Judge Gako, Jr. to enforce the alias warrant of arrest during the re-trial of the case. Applicable to this issue is the basic principle that the jurisdiction of a court, whether in criminal or civil cases, once it attaches cannot be ousted by subsequent happenings or events although of a character which would have prevented jurisdiction from attaching in the first instance; and it retains jurisdiction until it finally disposes of the case.[24]

Prior to the dismissal of the case by Judge Agana, the court had already acquired its jurisdiction over accused Go when he was duly arraigned on December 11, 1991.[25] The fact that this Court affirmed the decision of the Court of Appeals that voided the order dismissing the criminal case with prejudice is a clear declaration that the jurisdiction of the trial court over the criminal case and over the person of the accused continued to subsist. With the nullification of the dismissal of the case, it then became explicit that the court should have tried the case to its end. The case was ordered remanded and re-raffled because the inhibition of then presiding Judge Agana was granted, in no way was the jurisdiction of the trial court over the case and over the person of the accused ever placed in doubt.

We now discuss the theory of petitioner OSG that the right of accused Go to bail did not accrue because he was not under the custody of the law or deprived of his liberty. Petitioner OSG rests this claim on the allegations that accused Go voluntarily admitted himself to the hospital during the re-trial of the case and that Judge Gako, Jr. refused to enforce the alias warrant of arrest as evidenced by the questioned Order dated December 11, 1997.

By the very definition of bail in Section 1, Rule 114 of the Rules of Court[26], the person applying for bail must be in the custody of the law. A person is considered to be in the custody of the law (a) when he is arrested either by virtue of a warrant of arrest issued pursuant to Section 6, Rule 112, or even without a warrant under Section 5, Rule 113 in relation to Section 7, Rule 112 of the Revised Rules of Court, or (b) when he has voluntarily submitted himself to the jurisdiction of the court by surrendering to the proper authorities.[27]

We do not agree with petitioner OSG that accused Go was not in custody of the law at the time that he applied for bail. In the same assailed order, Judge Gako, Jr. explained his refusal to enforce the alias warrant of arrest in this manner:

"Secondly, the movant wanted this court to order the arrest of the accused in view of the Alias Warrant of Arrest issued by Acting Judge Andres Garalza, Jr. on October 28, 1996. For the information of the movant, there is another Alias Warrant of Arrest issued by Judge Jose Burgos on May 27, 1996 after he denied the Investigation Report submitted by the Office of the Cebu City Prosecutor which recommended the dismissal of the case against Vicente Go.

The court believes honestly that these two (2) Alias Warrants of Arrest were improvidently issued because at that time the Warrant of Arrest issued by then Judge Godardo Jacinto on July 9, 1991 was still valid and subsisting. In fact it was this latter Warrant of Arrest that handed to this court jurisdiction over the person of

the accused Go.

The Alias Warrant of Arrest issued by Judge Burgos has no legal basis not only because the Warrant of Arrest issued by Judge Jacinto is still valid and subsisting but also for the fact that it was issued as an aftermath of the court's denial of the Reinvestigation Report of the Office of the Cebu City Prosecutor which recommended the dismissal of Go's case. Under Section 6, Rule 112 of the 1985 Rules of Criminal Procedure, as amended, the Regional Trial Court may issue a warrant of arrest after a preliminary investigation, not after reinvestigation when one was already was (sic) issued.

Likewise, the Alias Warrant of Arrest issued by Judge Garalza, which came about five months (5) later, had no legal basis, firstly, because there was already an Alias Warrant of Arrest issued by Judge Burgos on May 27, 1996, secondly, the Warrant of Arrest issued by Judge Jacinto on July 9, 1991 is still valid and subsisting. But what appears more funny is the Alias Warrant of Arrest issued by Judge Garalza against accused Go who was at that time lawfully confined in the hospital pursuant to an Order of the court, dated August 6, 1991. When Judge Garalza issued said alias (sic) Warrant of Arrest, there was no showing that accused Go had escaped, or refused to obey a lawful Order of the court.

WHEREFORE, in view of the foregoing, the Manifestation, dated March 21, 1997, and the Motion to Enforce the Alias Warrant of Arrest are hereby denied for want of merit. Besides, the accused was already released on bail and the issue on the enforcement of the Alias Warrants of Arrest is already moot and academic."^[28]

As pointed out by Judge Gako, Jr., accused Go had already been arrested on the basis of a warrant of arrest issued by Judge Jacinto on July 9, 1991 which gave the trial court jurisdiction over the accused. As mentioned earlier, accused Go was duly arraigned before the case was erroneously dismissed. From the time that accused Go was arrested, he was already deprived of his liberty and was in the custody of the law. At the re-trial of the case, accused Go's confinement in the hospital was by virtue of a court order dated August 6, 1991; the restraint on the freedom of accused Go is evident. There was therefore no more need to enforce the alias warrant of arrest since accused Go was still under the custody of the law, and there being no evidence that accused Go had escaped or refused to obey a lawful order of the court. At this point, the setting aside of the questioned order dated December 11, 1997 that denied the enforcement of the alias warrant of arrest against accused Go has become moot and academic with the provisional freedom of accused Go after his bail was erroneously granted by Judge Gako, Jr.

We however find merit in the argument of petitioner OSG that the order dated August 6, 1991 authorizing the confinement of accused Go in the hospital was, in the words of petitioner OSG, a "continuing one and built-in license for the accused to automatically confine himself as many times as he likes". It may be true that said order subsisted for it was never quashed, but at the re-trial of the case, the prosecution through its motion to enforce the alias warrant of arrest dated September 26, 1997 had already put in issue the health of the accused. Yet, Judge Gako, Jr. in an Order dated December 11, 1997 justified the confinement of accused Go in the hospital on the basis of the August 6, 1991 order of confinement.

The prosecution vigorously objected to the confinement of accused Go in the hospital, questioning the alleged ill health of the accused. Judge Gako, Jr. was called upon to rule on this matter and instead of ascertaining the true state of health of said accused, Judge Gako, Jr. instead inexplicably relied on a court order authorizing the confinement of accused Go in the hospital, an order that was issued six years ago. The proper course of action in this case should have been to recall the order of confinement and to order the detention of accused Go until the defense could prove through competent evidence that the imprisonment of said accused would imperil his health. The order to arrest accused Go in such case would be the consequence of the recall of the order of confinement, not for the purpose of placing him under the custody of the law since to repeat, he already was under the custody of the law.

As discussed earlier, accused Go is currently already out on bail,[29] the granting of which is void for want of a hearing and summary of evidence. In cases when the grant of bail is void, this Court will not hesitate to set aside the order granting bail and order that the accused be recommitted to jail pending his application for bail,[30] as this Court now holds in the case at bar.

As to the issue of whether or not public respondent Judge Gako, Jr. should be inhibited on the ground of partiality, the relevant provision to consider is Section 1, Rule 137 of the Rules of Court, it provides:

"SECTION 1. Disqualification of judges.--No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the records.

A judge, may in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

The ground of partiality is not one of the grounds enumerated in the first paragraph of the just quoted provision that would per se disqualify a judge from sitting in a case. Jurisprudence is clear that partiality is a recognized ground for the voluntary inhibition of the judge under the second paragraph of Section 1, Rule 137.[31] In this case, Judge Gako, Jr. has already ruled in the assailed Order dated January 20, 1998 that he will not inhibit himself.

To overturn the ruling of Judge Gako, Jr. and rule for his disqualification, there must be clear and convincing evidence to prove the charge of partiality. Material to this issue are the following parameters we have set in disqualifying a judge: mere suspicion that a judge was partial to a party is not enough; that there should be adequate evidence to prove the charge; that there must be showing that the judge had an interest, personal or otherwise, in the prosecution of the case at bar; and that to be disqualifying, the bias and prejudice must be shown to have stemmed from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.[32]

Petitioner OSG accuses Judge Gako, Jr. of partiality supposedly shown by the grant of bail without a hearing and the alleged suppression of the hearing on the Clinical Summary Report of the accused. Again, to successfully disqualify a judge on the ground of bias or partiality, there must be concrete proof that a judge has a personal interest in the case and his bias is shown to have stemmed from an extra-judicial source. This precept springs from the presumption that a judge shall decide on the merits of a case with an unclouded vision of its facts.[33] Thus, we have held that an erroneous ruling on the grant of bail alone does not constitute evidence of bias.[34] Likewise, respondent judge's reliance on the order of confinement even if erroneous is not sufficient to point to a conclusion that he was manifestly partial to the defense. To allow the disqualification of a judge on the mere allegation of partiality with nothing more would open the floodgates to forum shopping.[35]

Corollary to the foregoing, we do not find well taken the recommendation of petitioner OSG that the criminal case be raffled to a Special Heinous Crimes Court. Even petitioner OSG concededly recognizes that Supreme Court Administrative Order No. 51-96 dated May 3, 1996 creating the Special Heinous Crimes Court provides that: "All cases covered by this order where trial has already been commenced shall continue to be heard by the branches to which these were originally assigned". Supreme Court Administrative Order No. 104-96 dated October 21, 1996 which amended Supreme Court Administrative Order No. 51-96, also contains a similar provision, to wit: "Where trial has already begun, the same shall continue to be heard by the respective branches to which they have been originally assigned. For purposes hereof, a criminal case is considered begun when the accused or any of them has

already been arraigned; in a civil case, it is when pre-trial has already been conducted and a pre-trial order issued."

We thus see no cogent reason to set aside the order dated May 23, 1997 that denied the transfer of Criminal Case No. CBU-22474 to a Special Heinous Crimes Court when the trial of the case has already begun and when the crime for which the accused is being charged with occurred prior to the creation of the Special Heinous Crimes Court. Furthermore, there are no extraordinary circumstances that would compel this Court to exercise its power under the Constitution to order a change of venue or place of trial.

WHEREFORE, in view of the foregoing, the assailed resolution of public respondent Court of Appeals dated August 12, 1998 is SET ASIDE. The order dated November 10, 1997 of the trial court in Criminal Case No. CBU-22474 is SET ASIDE for being void in so far as it grants bail to the accused and the accused is ordered recommitted to jail pending the hearing on the bail application. The order dated May 23, 1997 denying the re-raffle of Criminal Case No. CBU-22474 to a Special Heinous Crimes Court and the resolution dated January 20, 1997 ruling against the inhibition of presiding Judge Ireneo Gako, Jr. are hereby AFFIRMED. The court a quo is ordered to proceed with dispatch in the disposition of this case.

SO ORDERED.

Melo, (Chairman), Vitug, and Panganiban, JJ., concur.

[1] Per Associate Justice Artemio G. Tuquero, concurred in by Associate Justices Jorge S. Imperial and Portia A. Hermachuelos, Former Special Third Division.

[2] Now Justice of the Court of Appeals.

[3] Rollo, pp. 20-22.

[4] Records, p.119.

[5] Ibid., 156.

[6] Rollo, p. 45.

[7] Ibid., p.11.

[8] "When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46."

[9] "xxxThe petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency. He undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

xxx

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition."

[10] Records, p. 119.

[11] G.R. No. 134504, March 17, 2000.

[12] 186 SCRA 620 (1990).

[13] Narciso vs. Sta. Romana-Cruz, *supra*.

[14] Section 1, Rule 65 (Certiorari) provides: "When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.xxx"

[15] Santo Tomas University Hospital vs. Surla, 294 SCRA 382 (1998); Fortich vs. Corona, 289 SCRA 624 (1998); BF Corporation vs. Court of Appeals, 288 SCRA 267 (1998); Piczon vs. Court of Appeals, 190 SCRA 31 (1990).

[16] Basco vs. Rapatalo, 269 SCRA 220 (1997), p. 233.

[17] *Ibid.*, pp. 226-227.

[18] People vs. Dacudao, 170 SCRA 489 (1989), p. 494.

[19] Basco, *supra*, p. 237.

[20] People vs. Cabral, 303 SCRA 361 (1999), p. 378.

[21] Narciso vs. Sta. Romana-Cruz, *supra*.

[22] People vs. Cabral, *supra*, p. 378.

[23] Rollo, p. 95.

[24] FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM, VOL. I, SIXTH REV. ED., p. 10,

[25] Records, p. 38.

[26] Rule 114, Section 1. Bail defined.--Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance.

[27] Dinapol vs. Baldado, 225 SCRA 110 (1993), pp. 116-117.

[28] Rollo, p. 131.

[29] Records, p. 110.

[30] See People vs. Cabral, *supra* and People vs. Dacudao, *supra*.

[31] People vs. Maceda, 188 SCRA 532 (1990); People vs. Court of Appeals, 309 SCRA 705 (1999).

[32] People vs. CA, *supra*, p. 710.

[33] *Ibid.*, p. 711.

[34] *Ibid.*, p. 710.

[35] *Ibid.*, p. 711.

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