

**GENEVIEVE C. POBRE, PETITIONER, VS. COURT OF APPEALS,
REGIONAL TRIAL COURT, BRANCH 45, SAN JOSE, OCCIDENTAL
MINDORO, PEOPLE OF THE PHILIPPINES AND ANDREW OVALLES,
RESPONDENTS.**

G.R. No. 141805. July 08, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

In an Information dated May 8, 1998, private respondent Andrew Ovalles was charged before the Regional Trial Court of San Jose (Branch 46), Occidental Mindoro, with the crime of Parricide, committed as follows:

That on or about the 18th day of October, 1997, at around 1:46 o'clock in the morning, in Barangay Pag-asa, San Jose, Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously with intent to kill and with abuse of superior strength and in the course of their quarrel, did then and there pushed Alma Casaclang-Ovalles, his legitimate spouse, causing her to fall, her head hitting the hard floor and thereby inflicting upon her fatal injury, rendering her unconscious which caused her death shortly thereafter.

CONTRARY TO LAW.[1]

Assistant Prosecutor Levitico F. Salcedo recommended bail in the amount of P200,000.00, but a copy of the Information attached to the records of this case shows a cancellation of the amount and the words "no bail" were annotated therein.[2] Judge Ernesto F. Pagayatan issued an order of arrest on May 15, 1998, with the recommended bail of P200,000.00 likewise canceled and "no bail" written thereon.[3] When the warrant was returned unserved, Judge Pagayatan issued an alias order of arrest on June 3, 1998.[4] Private respondent was arrested in Quezon City on June 8, 1998, and committed to the Municipal Jail of San Jose, Occidental Mindoro on the same day.[5]

Private respondent filed a Motion to Quash the Information,[6] and a Manifestation and Motion praying that in the event the Motion to Quash is denied, the same be treated as a motion to admit bail.[7] Hearing on the motions was scheduled on June 26, 1998.[8] On the day of the scheduled hearing, Atty. Mario G. Aglipay filed his entry of appearance for private complainant Genevieve C. Pobre, the victim's sister (herein petitioner). Atty. Aglipay prayed that he be given ten days within which to file his opposition to the motions, and that the hearing be re-set to July 10, 1998. Judge Pagayatan, however, pushed through with the hearing on June 26, 1998 and treated private respondent's motions as one to fix bail. During the hearing, Fiscal Salcedo informed the court that Atty. Aglipay was not able to come to the hearing because he was left by the boat going to Mindoro, and that Atty. Aglipay was asking that the hearing be re-set to Friday. Counsel for the defense, however, stated that it is the government prosecutor who controls the prosecution of the case. Judge Pagayatan then asked Fiscal Salcedo if he was willing to submit the motions for resolution, to which the latter acceded. The motions were then considered submitted for resolution. On the same day, private respondent posted a property bond.

It was on June 29, 1998, that Judge Pagayatan issued an order granting private respondent's motion to fix bail, with the amount fixed at P40,000.00.[9] Judge Pagayatan also issued an order on the same day approving private respondent's property bond.[10]

On July 10, 1998, private respondent was arraigned and pleaded not guilty to the offense charged.[11]

Atty. Aglipay filed an Omnibus Motion on July 30, 1998, contesting the Order dated June 29, 1998 granting bail, which Order was received by Atty. Aglipay on July 17, 1998.[12] Atty. Aglipay prayed for the inhibition of both Judge Pagayatan and Fiscal Salcedo from the case; that the case be re-raffled to another sala and prosecuted by another public prosecutor; and that the Information be amended.[13] According to the private prosecutor, there is a need to amend the Information to read, as follows:

That on or about the 17th day of October, 1997, at around 11 o'clock on the evening, or thereabouts, in Barangay Pag-asa, San Jose, Occidental, Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously assaulted with intent to kill and inflicted fatal head and brain injury upon her legitimate spouse, Alma Casaclang-Ovalles, causing her death shortly thereafter on October 18 1997 at around 1:46 o'clock in the morning or thereabout.

CONTRARY TO LAW.[14]

Petitioner contends that the previous Information, which states in part:

... with intent to kill and with abuse of superior strength and in the course of their quarrel, did then and there pushed Alma Casaclang-Ovalles, his legitimate spouse, causing her to fall, her head hitting the hard floor and thereby inflicting upon her fatal injury, rendering her unconscious which caused her death shortly thereafter.

limits the prosecution in presenting evidence that will prove that private respondent had intent to kill his wife by pushing her.

Hearing on the motion was held on August 28, 1998.

On September 28, 1998, Judge Pagayatan issued an order granting the motion to inhibit and ordering the raffle of the case to the other sala of the court, but the motion to set aside the Order dated June 29, 1998 was denied.[15] Consequently, the case was raffled to Branch 45 of the Regional Trial Court of San Jose, Occidental Mindoro. However, during the hearing on November 26, 1998, proceedings were temporarily deferred due to the impending retirement of the judge assigned to Branch 45 in January 1999, to be resumed only after the designation of a new judge.[16]

On December 11, 1998, herein petitioner filed a special civil action for certiorari with the Court of Appeals (CA), docketed as CA-G.R. SP No. 49878, questioning the Order dated June 29, 1998, issued by Judge Pagayatan. The CA[17] dismissed the petition per its Resolution dated December 22, 1998, to wit:

Petition for review[18] having been filed late, the appeal is deemed ABANDONED and hereby ordered DISMISSED.[19]

A motion for reconsideration was filed but the CA[20] denied it in its Resolution dated February 7, 2000 for the reason that the petition was filed 83 days late.[21]

Thereafter, petitioner filed the present petition for certiorari, arguing that:

I

THE DISMISSAL OF THE PETITION SEEKING THE ANNULMENT OF THE ORDER ADMITTING THE ACCUSED ON BAIL IS A LEGAL ERROR IN THAT THE PETITION IS NOT SUBJECT TO THE

APPLICABLE REGLAMENTARY (sic) PERIOD CONSIDERING THAT THE ACCUSED IS NOT ENTITLED TO BAIL "REGARDLESS OF THE STAGE OF THE CRIMINAL PROSECUTION."

II

THE ENTIRE RECORD SHOWS THAT THERE IS A GREAT PRESUMPTION THAT THE ACCUSED IS GUILTY OF THE CRIME OF PARRICIDE.

III

THERE IS A NEED TO AMEND THE INFORMATION.

IV

THERE WAS MANIFEST PARTIALITY IN THE ACCUSED'S FAVOR RENDERING ALL THE PROCEEDINGS BEFORE THE PUBLIC PROSECUTOR AND THE TRIAL COURT NULL AND VOID AB INITIO.[22]

The Court gave due course to the petition and required the parties to submit their respective memoranda. Accordingly, petitioner filed her Memorandum. The Office of the Solicitor General, in behalf of the People of the Philippines, filed its Memorandum. However, private respondent, despite several extensions granted by the Court, failed to file his memorandum.

In a Resolution dated April 25, 2005, the Court declared private respondent's counsel guilty of contempt of court under Rule 71, Section 3 (b) of the Rules of Court, as amended, and his arrest and detention were ordered until he complies and pays the fine of P4,000.00.[23] In a Return of Order of Arrest dated May 25, 2005, the National Bureau of Investigation (NBI) Calapan District Office informed the Court that private respondent's counsel, Atty. Crispin P. Perez, voluntarily surrendered at the NBI Calapan District Office on May 24, 2005. Atty. Perez likewise filed a Memorandum for private respondent via courier on May 27, 2005, together with a postal money order for P4,000.00, representing the fine imposed on him.

Initially, the Court recognizes the legal standing of herein petitioner as she is the victim's sister. In *Narcisco vs. Romana-Cruz*,[24] involving the crime of parricide, the Court sustained the legal standing of the sister of the deceased to file a petition for certiorari as she is a party-litigant who is akin to the "offended party," she being a close relative of the deceased.

The Court also notes that petitioner filed a special civil action for certiorari under Rule 65 of the Rules of Court, instead of a petition for review under Rule 45. A petition for review under Rule 45 is the proper remedy in assailing the CA Resolutions dated December 22, 1998 and dated September 7, 2000, considering that these are final dispositions of the case before it. In any case, the Court may disregard petitioner's lapse and treat the present petition as one for review under Rule 45. This is in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, especially (1) if the petition was filed within the reglementary period for filing a petition for review; (2) errors of judgment are averred; and (3) there is sufficient reason to justify the relaxation of the rules.[25] The petition in this case actually asserts errors of judgment committed by the CA, which are proper in a petition for review,[26] and it is settled that it is the allegations in the complaint or petition and the character of the relief sought that determine the nature of an action.[27]

Petitioner argues that the CA erred in dismissing her petition for certiorari on the ground that it was filed out of time. She believes that the filing thereof is not subject to the period prescribed by Rule 65 of the Rules of Court because of Rule 114, Sec. 7 thereof, which states: "(N)o person charged with the capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when the evidence of guilt is

strong, regardless of the stage of the criminal prosecution." According to petitioner, a null and void order granting bail cannot reach finality any time during the stage of the criminal prosecution and may be questioned on appeal or petition for review even if filed beyond the reglementary period.[28]

The Court cannot sustain petitioner's argument. It is true that under Rule 114, Sec. 7 of the Rules of Court, an accused charged with a capital offense is not entitled to bail at any time during trial when the evidence of guilt is strong. It does not mean however that since the accused is not entitled to bail at any stage of the trial, a grant thereof can be questioned any time and without regard to the period of filing provided by the Rules of Court.

An order granting bail is an interlocutory order. The word interlocutory refers to something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy.[29] In that sense, it does not attain finality since there leaves something else to be done by the trial court with respect to the merits of the case. If and when the trial court issued such interlocutory order without or in excess of jurisdiction or with grave abuse of discretion and when the assailed interlocutory order is patently erroneous, then a special civil action for certiorari under Rule 65 of the Rules of Court, as amended, can be considered an appropriate remedy to assail the same.[30]

However, Rule 65, Section 4 of the Rules of Court, as amended, prescribes a period of 60 days within which to file a special civil action for certiorari. The 60-day period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case.[31] Such right to a speedy disposition of the case pertains not only to a private complainant in a criminal case,[32] but to an accused as well.[33] While the periods set by law are technical rules of procedure, these are not designed to frustrate the ends of justice. These are provided to effect the proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets.[34] Rules of procedure, especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions.[35]

It is noted that the petition was filed late by 13 days, not 83 days as computed by the CA. Petitioner received the Order dated June 29, 1998 on July 17, 1998, and a motion contesting, among others, the grant of bail, was filed by her on July 30, 1998. During this period, 13 days had already passed. Given that petitioner received a copy of the Order dated September 28, 1998 denying her motion for reconsideration on October 12, 1998, she had 47 days therefrom, or until November 28, 1998 within which to file the petition. Since the petition was filed with the CA only on December 11, 1998, 13 days had lapsed.

Thus, strictly speaking, the CA did not err in dismissing the special civil action for certiorari for having been filed out of time. At the time the CA dismissed the petition filed before it on December 22, 1998, Section 4, Rule 65, of the Rules of Court, as amended by Circular No. 39-98, provides that the 60-day period for filing a petition for certiorari shall be interrupted by the filing of a motion for reconsideration or new trial. In the event that the motion is denied, the petitioner had only the remaining period within which to file the petition.

However, with the issuance of A.M. No. 00-2-03-SC on September 1, 2000, amending Rule 65 of the Rules of Court, to wit:

SEC. 4. When and where petition filed. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a

corporation, board or officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

the petition filed before the CA should now be considered as timely filed. In *PCI Leasing and Finance, Inc. vs. Emily Rose Go Ko*,^[36] the Court, citing *Narzoles vs. NLRC*,^[37] ruled that A.M. No. 00-2-03-SC, being a curative statute should be retroactively applied.

The Omnibus Motion filed by Atty. Aglipay contesting the grant of bail, is, in effect, a motion for reconsideration of the June 29, 1998 order of Judge Pagayatan. This was denied by the trial court per Order dated September 28, 1998. Petitioner received a copy thereof on October 12, 1998. Taking into account A.M. No. 00-2-03-SC, the petition filed on December 11, 1998, or on the 60th day should then be considered filed on time.

There is a need, therefore, to remand the case to the CA for disposition of the issues raised by petitioner, which were not resolved by it, namely: the propriety of the grant of bail; the propriety of amending the Information; and the alleged nullity of the proceedings before the trial court due to the "manifest partiality" in favor of private respondent.^[38]

WHEREFORE, the Resolutions of the Court of Appeals dated December 22, 1998 and February 7, 2000 in CA-G.R. SP No. 49878 are hereby SET ASIDE. The case is REMANDED to the Court of Appeals for further proceedings on matters indicated in the text of this decision.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Records, p. 1.

[2] *Id.*, p. 2.

[3] *Id.*, p. 21.

[4] *Id.*, p. 25.

[5] *Id.*, p. 26.

[6] *Id.*, p. 27.

[7] *Id.*, pp. 37-40.

[8] *Id.*, p. 43.

[9] *Id.*, pp. 55-58.

[10] *Id.*, p. 59.

[11] *Id.*, p. 71.

[12] *Id.*, p. 74.

- [13] Id., pp. 74-88.
- [14] Rollo, p. 24.
- [15] Id., p. 116.
- [16] Id., p. 103.
- [17] Per Associate Justice Jesus M. Elbinias, with Associate Justices Eugenio S. Labitoria and Marina L. Buzon, concurring.
- [18] Should be petition for certiorari.
- [19] CA Rollo, p. 76.
- [20] Per Associate Justice Eugenio S. Labitoria, with Associate Justices Marina L. Buzon and Candido V. Rivera, concurring.
- [21] Id., pp. 132-133.
- [22] Rollo, pp. 16-17.
- [23] Id., pp. 215-218.
- [24] Narcisco vs. Sta. Romana-Cruz, G.R. No. 134504, March 17, 2000, 328 SCRA 505.
- [25] Oaminal vs. Castillo, G.R. No. 152776, October 8, 2003, 413 SCRA 189, 200.
- [26] Eternal Gardens Memorial Park Corp. vs. Court of Appeals, G.R. No. 124554, December 9, 1997, 282 SCRA 553, 572.
- [27] Supra., Oaminal case.
- [28] Rollo, p. 17.
- [29] Ramiscal, Jr. vs. Sandiganbayan, G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166, 177.
- [30] Heirs of Hinog vs. Melicor, G.R. No. 140954, April 12, 2005.
- [31] Yutingco vs. Court of Appeals, G.R. No. 137264, August 1, 2002, 386 SCRA 85, 92.
- [32] Article III, Section 16 of the 1987 Constitution.
- [33] Article III, Section 14 (2) of the 1987 Constitution.
- [34] Santos vs. Court of Appeals, G.R. No. 141947, July 5, 2001, 360 SCRA 521, 528.
- [35] Lazaro vs. Court of Appeals, G.R. No. 137761, April 6, 2000, 330 SCRA 208, 214.
- [36] G.R. No. 148641, March 31, 2005.
- [37] G.R. No. 141959, September 29, 2000, 341 SCRA 533.
- [38] CA Rollo, pp. 11-18.

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