

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. VICTOR KEITH FITZGERALD, RESPONDENT.

G.R. NO. 149723. October 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed by way of Petition for Review on Certiorari under Rule 45 of the Rules of Court is the August 31, 2001 Resolution[1] of the Court of Appeals (CA) in CA-G.R. CR No. 20431 which granted the Motion for Bail[2] of accused-appellant, herein respondent Victor Keith Fitzgerald, (Fitzgerald).

The facts are of record.

An Information filed with the Regional Trial Court (RTC), Branch 75, Olongapo City and docketed as Criminal Case No. 422-94, charged Fitzgerald, an Australian citizen, with Violation of Art. III, Section 5, paragraph (a), subparagraph (5) of Republic Act (R.A.) No. 7610,[3] allegedly committed as follows:

That sometime in the month of September 1993, in the City of Olongapo, Zambales, Philippines and within the jurisdiction of this Honorable Court, said accused VICTOR KEITH FITZGERALD, actuated by lust, and by the use of laced drugs ("vitamins") willfully, unlawfully and feloniously induced complainant "AAA,"[4] a minor, 13 years of age, to engage in prostitution by then and there showering said "AAA" with gifts, clothes and food and thereafter having carnal knowledge of her in violation of the aforesaid law and to her damage and prejudice.[5]

After trial and hearing, the RTC rendered a Decision dated May 7, 1996, the decretal portion of which reads:

WHEREFORE, finding the accused Victor Keith Fitzgerald GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Paragraph (a) sub-paragraph 5 of Republic Act No. 7610, he is hereby sentenced to suffer an indeterminate prison term of eight (8) years and one (1) day of prison mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum, with all the accessory penalties attached therewith; and to indemnify the private complainant "AAA" the amounts of P30,000.00 as moral damages and P20,000.00 as exemplary damages.

The Lingap Center of the Department of Social Welfare and Development (DSWD) in Olongapo City shall hold in trust the said awards and dispose the same solely for the rehabilitation and education of "AAA", to the exclusion of her mother and her other relatives.

The accused under Article 29 of the Revised Penal Code shall be credited in full of his preventive imprisonment if he has agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise to only 4/5 thereof.

Upon completion of the service of his sentence, the accused shall be deported immediately and forever barred from entry to the Philippines.

In Criminal Case No. 419-94 for Rape, the accused is acquitted.

SO ORDERED.[6]

Fitzgerald applied for bail which the RTC denied in an Order dated August 1, 1996, which reads:

x x x x

In fine, on the basis of the evidence adduced by the Prosecution during the hearing on the bail petition, the Court is of the considered view that the circumstances of the accused indicate probability of flight and that there is undue risk that the accused may commit a similar offense, if released on bail pending appeal.

WHEREFORE, and viewed from the foregoing considerations, the Petition for Bail pending appeal is DENIED.

SO ORDERED.[7]

Fitzgerald appealed to the CA which, in a Decision[8] dated September 27, 1999, affirmed the RTC Decision, thus:

IN VIEW WHEREOF, with the modification that the penalty imposed on the accused-appellant is imprisonment of Fourteen (14) years, Eight (8) months and One (1) day of Reclusion Temporal to Twenty (20) years and One (1) day of Reclusion Perpetua, the decision of the court a quo is hereby AFFIRMED.

SO ORDERED.[9]

Fitzgerald filed a Motion for New Trial[10] and a Supplemental to Accused's Motion for New Trial[11] on the ground that new and material evidence not previously available had surfaced. The CA granted the Motion for New Trial in a Resolution dated August 25, 2000, to wit:

WHEREFORE, the appellant's Motion for New Trial dated October 14, 1999 is GRANTED. The original records of this case is hereby REMANDED to the Presiding Judge of the Regional Trial Court of Olongapo City Branch 75 who is DIRECTED to receive the new evidence material to appellant's defense within sixty days from receipt and thereafter to submit to this Court the said evidence together with the transcript of stenographic notes together with the records of the case within ten (10) days after the reception of evidence. The Motion to Transfer appellant to the National Penitentiary is DENIED.[12] (Emphasis ours)

The People (petitioner) filed a Motion for Reconsideration[13] from the August 25, 2000 CA Resolution while Fitzgerald filed a Motion to Fix Bail with Manifestation.[14] Both Motions were denied by the CA in its November 13, 2000 Resolution.[15] In denying Fitzgerald's bail application, the CA held:

[T]his Court hereby RESOLVES to:

x x x x

- DENY accused-appellant's Motion to Fix Bail with Manifestation, pursuant to the provisions of Section 7, Rule 114 of the Rules of Court which provides:

"Sec. 7. - Capital Offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. - 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."

In the case at bar, the maximum imposable penalty in accordance with Republic Act 7610 otherwise known as the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act is reclusion perpetua. As it is, the evidence of guilt is strong, hence, We hold that his motion for bail cannot be granted at this point.

With regard to his alleged physical condition, let it be stressed that accused-appellant is not precluded from seeking medical attention if the need arises provided the necessary representations with the proper authorities are

made.

SO ORDERED.[16] (Emphasis ours)

The People filed with this Court a Petition for Review on Certiorari[17] docketed as G.R. No. 146008 questioning the August 25, 2000 and November 13, 2000 CA Resolutions. The petition was dismissed in a Resolution[18] dated January 15, 2001, which became final and executory on May 2, 2001.[19]

Meanwhile, on December 3, 2000, Fitzgerald filed with the CA a Motion for Early Transmittal of the Records and for the Re-Examination of the Penalty Imposed, and a Motion for Bail.[20] The People filed its Comment[21] to both Motions.

On August 31, 2001, the CA issued the herein assailed Resolution[22] granting Fitzgerald's bail application, thus:

X X X X

Be that as it may, while We maintain that, as it is, the evidence of guilt is strong, We have taken a second look at appellant's plea for temporary liberty considering primarily the fact that appellant is already of old age[23] and is not in the best of health. Thus, it is this Court's view that appellant be GRANTED temporary liberty premised not on the grounds stated in his Motion for Bail but in the higher interest of substantial justice and considering the new trial granted in this case. Accordingly, appellant is hereby DIRECTED to post a bail bond in the amount of P100,000.00 for his temporary liberty provided he will appear in any court and submit himself to the orders and processes thereof if and when required to do so. The appellant is likewise refrained from leaving the country now or in the future until this case is terminated. Accordingly, the Bureau of Immigration and Deportation is ORDERED to include appellant in its hold departure list xxx.

X X X X

SO ORDERED.[24] (Emphasis ours)

Thereafter, the RTC ordered Fitzgerald's temporary release on September 4, 2001 upon his filing a cash bond in the amount of P100,000.00.[25]

Hence, the People filed this Petition to have the August 31, 2001 CA Resolution annulled and set aside. Petitioner argues that the CA erred in granting respondent Fitzgerald's Motion for Bail despite the fact that the latter was charged with a crime punishable by reclusion perpetua and the evidence of his guilt is strong.[26] It also questions the jurisdiction of the CA to act on said Motion, considering that the case had been remanded to the RTC for new trial.[27]

In his Comment and Memorandum, respondent counters that the grant of new trial negated the previous findings of the existence of strong evidence of his guilt;[28] and justifies his provisional release on humanitarian grounds, citing as an extraordinary circumstance his advanced age and deteriorating health.[29]

The petition is meritorious.

We resolve first the preliminary question of whether the CA, after issuing its August 25, 2000 Resolution granting a new trial, still had jurisdiction to act on respondent's Motion to Post Bail. Our ruling on this matter, however, shall be limited to the effect of the August 25, 2000 CA Resolution on the latter's jurisdiction; it shall have no bearing on the merits of said Resolution as this has been decided with finality in G.R. No. 146008.

According to petitioner, considering that the August 25, 2000 CA Resolution, referring the case to the RTC for new trial, had become final and executory on May 2, 2001 when this Court denied its petition for review in G.R. No. 146008, then, when the CA issued the August 31, 2001 Resolution granting respondent bail, it had been

stripped of jurisdiction over the case.[30]

Petitioner is mistaken.

When this Court grants a new trial, it vacates both the judgment of the trial court convicting the accused[31] and the judgment of the CA affirming it,[32] and remands the case to the trial court for reception of newly-discovered evidence and promulgation of a new judgment,[33] at times with instruction to the trial court to promptly report the outcome.[34] The Court itself does not conduct the new trial for it is no trier of facts.[35]

However, when the CA grants a new trial, its disposition of the case may differ, notwithstanding Sec. 1,[36] Rule 125 of the 2000 Rules on Criminal Procedure which provides for uniformity in appellate criminal procedure between this Court and the CA. Unlike this Court, the CA may decide questions of fact and mixed questions of fact and law.[37] Thus, when it grants a new trial under Sec. 14, Rule 124, it may either (a) directly receive the purported newly-discovered evidence under Sec. 12,[38] or (b) refer the case to the court of origin for reception of such evidence under Sec. 15.[39] In either case, it does not relinquish to the trial court jurisdiction over the case; it retains sufficient authority to resolve incidents in the case and decide its merits.

Now then, the CA, in its August 25, 2000 Resolution, ordered: first, the remand of the original records of the case to the RTC; second, that the RTC receive the new evidence material to appellant's defense within 60 days from receipt of the original records; and third, that the RTC submit to it the said evidence together with the transcript of the case within 10 days after reception of evidence.[40] From the foregoing disposition, it is evident that the CA retained appellate jurisdiction over the case, even as it delegated to the RTC the function of receiving the respondent's newly-discovered evidence. The CA therefore retained its authority to act on respondent's bail application. Moreso that the original records of the case had yet to be transmitted to the RTC when respondent filed his bail application and the CA acted on it.

With that procedural matter out of the way, we now focus on the substantive issue of whether the CA erred when it allowed respondent to bail.

The right to bail emanates from the right to be presumed innocent. It is accorded to a person in the custody of the law who may, by reason of the presumption of innocence he enjoys,[41] be allowed provisional liberty upon filing of a security to guarantee his appearance before any court, as required under specified conditions.[42]

Implementing Sec. 13,[43] Article III of the 1987 Constitution, Sections 4[44] and 5, Rule 114 of the 2000 Rules of Criminal Procedure set forth substantive and procedural rules on the disposition of bail applications. Sec. 4 provides that bail is a matter of right to an accused person in custody for an offense not punishable by death, reclusion perpetua or life imprisonment,[45] but a matter of discretion on the part of the court, concerning one facing an accusation for an offense punishable by death, reclusion perpetua or life imprisonment when the evidence of his guilt is strong.[46] As for an accused already convicted and sentenced to imprisonment term exceeding six years, bail may be denied or revoked based on prosecution evidence as to the existence of any of the circumstances under Sec. 5, paragraphs (a) to (e), to wit:

Sec. 5. Bail, when discretionary - Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances: (a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration; (b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification; (c) That he committed the offense while under probation, parole, or conditional pardon; (d) That the circumstances of his case indicate the probability of flight if released on bail; or (e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (Emphasis supplied)

It will be recalled that herein respondent was charged with violation of Section 5, par. (a), sub-paragraph (5), Article III of R.A. No. 7610, a crime which carries the maximum penalty of reclusion perpetua. He was later convicted by the RTC for a lesser crime which carried a sentence of imprisonment for an indeterminate term of eight (8) years and one (1) day of prison mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum.

These circumstances are not altered when the CA granted a new trial.[47] As already discussed, the CA retained appellate jurisdiction over the case even as it ordered the remand of the original records thereof to the RTC for reception of evidence. In retaining appellate jurisdiction, it set aside only its own September 27, 1999 Decision but left unaltered the May 7, 1996 RTC Decision. In fact, in its August 31, 2001 Resolution, the CA emphasized:

As we have pointed out earlier, the propriety of appellant's conviction of the offense charged as well as the penalty imposed thereto should be resolved during the appreciation of the new trial after considering the new evidence which appellant insist would prove his innocence.[48]

The May 7, 1996 RTC Decision, therefore, remained operative. And under said Decision, respondent stood sentenced to an imprisonment term exceeding six years.

Moreover, both the RTC and CA were unanimous in their findings of the existence of strong evidence of the guilt of respondent.[49] These findings were not overturned when the CA granted a new trial. Under Section 6 (b), Rule 121, the grant of a new trial allows for reception of newly-discovered evidence but maintains evidence already presented or on record. And if there has been a finding that evidence is strong and sufficient to bar bail, that too subsists unless, upon another motion and hearing, the prosecution fails to prove that the evidence against the accused has remained strong.[50] In the present case, no new evidence had since been introduced, nor hearing conducted as would diminish the earlier findings of the RTC and CA on the existence of strong evidenc against respondent.

In sum, the circumstances of the case are such, that for respondent, bail was not a matter of right but a mere privilege subject to the discretion of the CA to be exercised in accordance with the stringent requirements of Sec. 5, Rule 114. And Sec. 5 directs the denial or revocation of bail upon evidence of the existence of any of the circumstances enumerated therein [51] such as those indicating probability of flight if released on bail or undue risk that the accused may commit another crime during the pendency of the appeal.

As it is, however, the CA, in its August 31, 2001 Resolution, admitted respondent to bail based, "xxx not on the grounds stated in his Motion for Bail xxx," but "xxx primarily [on] the fact that [he] is already of old age and is not in the best of health xxx," and notwithstanding its finding that "xxx as it is, the evidence of guilt is strong xxx." [52] The Resolution disregarded substantive and procedural requirements on bail.

It is bad enough that the CA granted bail on grounds other than those stated in the Motion filed by respondent; it

is worse that it granted bail on the mere claim of the latter's illness. Bail is not a sick pass for an ailing or aged detainee or prisoner needing medical care outside the prison facility. A mere claim of illness is not a ground for bail.[53] It may be that the trend now is for courts to permit bail for prisoners who are seriously sick.[54] There may also be an existing proposition for the "selective decarceration of older prisoners" based on findings that recidivism rates decrease as age increases.[55] But, in this particular case, the CA made no specific finding that respondent suffers from an ailment of such gravity that his continued confinement during trial will permanently impair his health or put his life in danger. It merely declared respondent not in the best of health even when the only evidence on record as to the latter's state of health is an unverified medical certificate stating that, as of August 30, 2000, respondent's condition required him to "xxx be confined in a more sterile area xxx." [56] That medical recommendation was even rebuffed by the CA itself when, in its November 13, 2000 Resolution, it held that the physical condition of respondent does not prevent him from seeking medical attention while confined in prison.[57]

Moreover, there is a finding of record on the potential risk of respondent committing a similar offense. In its August 1, 1996 Order, the RTC noted that the circumstances of respondent indicate an undue risk that he would commit a similar offense, if released on bail pending appeal.[58] The RTC explained its findings thus:

Dr. Aida Muncada, a highly competent Psychiatrist, testified that phedophilia is a state of sexual disorder and sexual dysfunction. It is intense and recurrent. The possibility of the commission of a similar offense for which the accused was convicted is great if the accused will be exposed to "stress" and if an opportunity to commit it lurks.[59]

The foregoing finding was not traversed or overturned by the CA in its questioned Resolution. Such finding, therefore, remains controlling. It warranted the outright denial of respondent's bail application. The CA, therefore, erred when it granted respondent's Motion for Bail.

WHEREFORE, the petition is GRANTED and the August 31, 2001 CA Resolution ANNULLED and SET ASIDE. The bail bond posted by respondent is CANCELLED. Let an ORDER OF ARREST ISSUE against the person of the accused, Victor Keith Fitzgerald.

No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eubulo G. Verzola with Associate Justices Teodoro P. Regino, Bienvenido L. Reyes, and Juan Q. Enriquez, Jr., concurring and Associate Justice Marina L. Buzon, dissenting.

[2]Rollo, pp. 31-33.

[3] Sec. 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

x x x x

(5) Giving monetary consideration, goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.

[4] Per *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006 and Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC.

[5] Records I, pp. 1-2.

[6] *Id.* at 603-604.

[7] *Id.* at 692.

[8] Penned by Associate Justice Eubolo G. Verzola with Associate Justices Artemio G. Tuquero and Elvi John S. Asuncion, concurring.

[9] Records II, p. 806.

[10] Rollo, p. 85.

[11] *Id.* at 89.

[12] *Id.* at 111.

[13] *Id.* at 112.

[14] *Id.* at 119.

[15] *Id.* at 129.

[16] *Id.* at 130-131.

[17] *Id.* at 246.

[18] *Id.* at 264.

[19] *Id.* at 268.

[20] *Id.* at 134.

[21] *Id.* at 139.

[22] See note 2.

[23] 70 years old, per Medical Certificate dated August 30, 2000, rollo, p. 124.

[24] *Id.* at 32-33.

[25] *Id.* at 144.

[26] *Id.* at 16-24.

[27] *Id.* at 25.

[28] *Id.* at 152-153; 230-233.

[29] *Id.* at 234-235.

[30] *Id.* at 16-25.

[31] Callagan v. People of the Philippines, G.R. No. 153414, June 27, 2006.

[32] Reyes v. Court of Appeals, 335 Phil. 206 (1997).

[33] People of the Philippines v. Almendras; 449 Phil. 587, 611 (2003); People of the Philippines v. Del Mundo, 330 Phil. 824 (1996).

[34] People of the Philippines v. Datu, 445 Phil. 754, 769 (2003).

[35] Ruiz v. People of the Philippines, G.R. No. 160893, November 18, 2005, 475 SCRA 476, 484.

[36] Sec. 1. Uniform procedure. - Unless otherwise provided by the Constitution and by law, the procedure in the Supreme Court in original and in appealed cases shall be the same as in the Court of Appeals.

[37] Suarez v. Judge Martin S. Villarama, Jr., G.R. No. 124512, June 27, 2006.

[38] Sec. 12. Power to receive evidence. - The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases (a) falling within its original jurisdiction; (b) involving claims for damages arising from provisional remedies, or (c) where the court grants a new trial only on the ground of newly-discovered evidence.

[39] Sec. 15. Where new trial conducted. - When a new trial is granted, the Court of Appeals may conduct the hearing and receive evidence as provided in Section 12 of this Rules or refer the trial to the court of origin.

[40] Supra note 12.

[41] THOMAS COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS, 643- 644 (1927).

[42] Obosa v. Court of Appeals, 334 Phil. 254, 269 (1997); People of the Philippines v. Presiding Judge, RTC of Muntinlupa City (Branch 276), G.R. No. 151005, June 8, 2004, 431 SCRA 319, 324.

[43] 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.

[44] Sec. 4. Bail, a matter of right; exception. - All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or 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.

[45] Catiis v. Court of Appeals, G.R. No. 153979, February 9, 2006, 482 SCRA 71, 84; People of the Philippines v. Presiding Judge, RTC of Muntinlupa City (Branch 276), supra note 42.

[46] Section 13, Article III, 1987 Constitution; Sec. 7, Rule 114.

[47] People of the Philippines v. Bocar, 97 Phil. 398 (1955).

[48] See note 2.

[49] See notes 3, 7 and 16.

[50] Obosa v. Court of Appeals, supra note 42, at 268, citing Dela Camara v. Enage, 148-B Phil. 502, 506-507 (1971).

[51] *Alva v. Court of Appeals*, G.R. No. 157331, April 12, 2006, 487 SCRA 146, 161-162.

[52] See note 2.

[53] *Re: Release of accused by Judge Muro, in a Non-Bailable Offense*, 419 Phil. 567, 581 (2001); *People of the Philippines v. Hon. Ireneo Gako*, 401 Phil. 514, 541 (2000).

[54] Ernesto Pineda, *The Revised Rules on Criminal Procedure*, p. 193 (2003), citing *Dela Rama v. People's Court*, 77 Phil. 461, 465 (1946); *Archer's case*, 6 Gratt 705; and *Ex parte Smith*, 2 Okla. Crim. Rep. 24, 99 Pfc. 893.

[55] Max Rothman, Burton Dunlop and Pamela Entzel, *Elders, Crime and the Criminal Justice System*, pp. 233-234 (2000).

[56] *Records II*, p. 897.

[57] See note 15.

[58] See note 7.

[59] *Id.*

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