

**PEOPLE OF THE PHILIPPINES AND HEIRS OF ESTEBAN LIM JR.,
PETITIONERS, VS. THE HONORABLE PRESIDING JUDGE OF THE
REGIONAL TRIAL COURT OF MUNTINLUPA CITY (BRANCH 276) AND
RICARDO TO...**

G.R. No. 151005. June 08, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

An order granting bail in a capital offense must contain a summary showing the strength or the weakness of the prosecution evidence, as well as the trial judge's assessment thereof. Absent such summary and assessment, the order would not stand appellate scrutiny and must be struck down.

The Case

Before us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court, seeking to annul the September 26, 2001 Order,[2] the September 27, 2001 Order of Release,[3] and the November 7, 2001 Order[4] issued by the Regional Trial Court (RTC) of Muntinlupa City (Branch 276) in Criminal Case No. 1605. The assailed September 26, 2001 Order reads as follows:

“This is a PETITION FOR BAIL.

“After the Court evaluated the evidence and the testimony of the prosecution witnesses, it was shown that the victim was gunned down admittedly by Accused during a quarrel, or immediately soon after, with the quarrel still continuing.

“The Petition for Bail is therefore granted and the same is set at FIFTY THOUSAND PESOS (P50,000.00).

“The records show that Accused [Ricardo Tobias] was sentenced for possession of a low powered firearm for which he was meted a penalty of life imprisonment. However, with the amendment of the law on Illegal Possession of Firearms, this Court granted Accused a reduction of the penalty in a Petition for Writ of Habeas Corpus to only 6 years imprisonment because [a] 9MM caliber firearm is considered a low caliber firearm, as provided by RA 8294. Accused has been in jail for eight (8) years, eleven (11) months and fifteen (15) days already and has completed the service of his sentence. He may now post bail for this pending offense, in light of the evidence adduced by the [p]rosecution.”[5]

The assailed September 27, 2001 Order directed the release from detention of herein private respondent. On the other hand, the November 7, 2001 Order denied the prosecution's Motion for Reconsideration of the two earlier rulings.

The Facts

This case is intimately connected with the Decision of this Court in GR No. 114185 penned by then Justice, now Chief Justice, Hilario G. Davide Jr. In that earlier proceeding before the RTC of Santiago, Isabela (Branch 21), herein private respondent was charged on January 10, 1991, with “qualified illegal possession of firearm used in

murder.” The accusatory portion of the Information was worded as follows:

“That on or about the 5[th] day of October, 1990, in the [M]unicipality of Santiago, [P]rovince of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being allowed or authorized by law to keep, possess and carry firearms, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) Browning pistol, Caliber 9MM with Serial No. RPT 3221943 without first having obtained the necessary permit and/or license therefor and on the occasion of such possession, the said accused, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and shoot with the said illegally possessed firearm one Esteban Lim, Jr. alias Jojo, inflicting upon him gunshot wounds on the different parts of his body which directly caused his death due to severe hemorrhage.”[6]

On January 11, 1994, the RTC rendered its Decision finding private respondent guilty as charged and sentencing him to life imprisonment.[7]

On appeal, this Court affirmed on January 30, 1997, the lower court’s Decision, with modifications consisting mainly of a change in the penalty from life imprisonment to *reclusión perpetua*. It also directed the provincial prosecutor of Isabela to institute a criminal action for murder against private respondent.

Without the knowledge of this Court, it turned out that as early as October 15, 1993, private respondent had already been charged with murder before the RTC of Santiago, Isabela.[8] We quote the Information therein as follows:

“The undersigned Third Assistant Provincial Prosecutor of Isabela accuses [RICARDO] TOBIAS @ DING TOBIAS of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

“That on or about October 5, 1990, in the [M]unicipality of Santiago, [P]rovince of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with Browning Pistol Cal. .9MM bearing No. RPT-3221943, through treachery, did then and there willfully, unlawfully and feloniously sho[o]t Esteban Lim, Jr., with the use of said firearm inflicting upon the said Esteban Lim, Jr., several gunshot wounds which directly cause[d] his death.””

He was arraigned, however, only on November 23, 1998.[9]

In the meantime, Republic Act (RA) No. 8294 was approved on June 6, 1997. It amended Presidential Decree (PD) No. 1866, for violation of which he had been convicted earlier. Relying upon RA 8294, private respondent filed a Petition for Habeas Corpus before the RTC of Muntinlupa City.[10]

On September 21, 2000, the trial court issued an Order declaring private respondent’s Petition moot and academic on the ground that he was being validly detained for murder -- a non-bailable offense -- and no longer for illegal possession of firearms. Nonetheless, on the basis of the retroactive effect of the provisions of RA 8294 that were beneficial to the accused, the RTC reduced the penalty for illegal possession of firearms from *reclusion perpetua* to *prisión correccional*. Having already served the reduced penalty, he should have been freed from detention were it not for the murder charge.

On January 26, 2001, the murder trial commenced.

On August 9, 2001, private respondent filed a Petition for Bail on the ground that evident premeditation had not been proven. Moreover, no ballistic report was submitted by the prosecution. Despite opposition to the Petition, the trial court granted bail at P50,000 on September 26, 2001.

Ruling of the Trial Court

The trial court opined that private respondent had already completed the service of his sentence in the previous case for illegal possession of a low-powered firearm. After evaluating the evidence and the testimony of the prosecution witnesses in the pending murder case, it ruled that he could post bail therein.

Thus, it ordered his release^[11] from custody after he had posted the required bail bond^[12] through the Wellington Insurance Company, Inc.^[13]

Hence, this Petition.^[14]

Issues

Petitioners aver that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted bail to the accused.^[15] On the other hand, private respondent counters that he cannot be tried anew for a crime for which he has already been convicted.^[16]

Simply stated, the issues are as follows: first, whether bail was validly granted; and second, whether the accused may still be prosecuted for a crime for which he has already been convicted.

The Court's Ruling

The Petition is meritorious.

First Issue:

Propriety of Bail

As a general rule, a person "in custody shall, before final conviction, be entitled to bail as a matter of right."^[17] Bail is a security given for the release of a person under custody of the law, as a guarantee for his or her appearance before any court as required under specified conditions.^[18] The right to bail flows from the presumption of innocence.^[19] In the present case, private respondent is undergoing trial for murder. Is he entitled to bail?

His case falls within the exception to the aforesaid general rule on bail: When evidence of guilt is strong, a person shall not be admitted to bail^[20] if charged with a capital offense; or with an offense that -- under the law -- is punishable with reclusion perpetua at the time of its commission and at the time of the application for bail.^[21]

At the time private respondent allegedly committed the felony in 1990, "[m]urder x x x was a crime punishable by reclusion perpetua."^[22] With the passage of RA 7659, murder is now punishable with reclusion perpetua to death. Consequently, depending on the strength of the evidence of the prosecution, bail is merely discretionary, not a matter of right. In *People v. Hon. Cabral*^[23] the Court explained:

"The grant or denial of an application for bail is, therefore, dependent on whether the evidence of guilt is strong which the lower court should determine in a hearing called for the purpose. The determination of whether the evidence of guilt is strong, in this regard, is a matter of judicial discretion. While the lower court would never be deprived of its mandated prerogative to exercise judicial discretion, this Court would unhesitatingly reverse the trial court's findings if found to be laced with grave abuse of discretion.

Judicial discretion in granting bail may indeed be exercised only after the evidence of guilt is submitted to the court during the bail hearing.^[24] In the present case, no separate bail hearing was conducted. The Petition for Bail was filed on August 9, 2001. After the prosecution filed its Opposition, private respondent submitted a Reply. After the former had presented all its witnesses in the regular course of trial, but before it had rested its case, the Petition for Bail was deemed submitted for resolution. On the same day, the assailed September 26, 2001 Order was issued.

On its face, the one-page Order demonstrates grave abuse of discretion. “We have repeatedly stressed that the order granting or refusing the bail must contain a summary of the evidence presented by the prosecution.”[25] The Court, as it had done many times, patiently discussed the reasons for this requirement, thus:

“There are two corollary reasons for the summary. First, the summary of the evidence in the order is an extension of the hearing proper, thus, a part of procedural due process wherein the evidence presented during the prior hearing is formally recognized as having been presented and most importantly, considered. The failure to include every piece of evidence in the summary presented by the prosecution in their favor during the prior hearing would be tantamount to not giving them the opportunity to be heard in said hearing, for the inference would be that they were not considered at all in weighing the evidence of guilt. Such would be a denial of due process, for due process means not only giving every contending party the opportunity to be heard but also for the Court to consider every piece of evidence presented in their favor. Second, the summary of the evidence in the order is the basis for the judge's exercising his judicial discretion. Only after weighing the pieces of evidence as contained in the summary will the judge formulate his own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion. x x x.

“Based on the above-stated reasons, the summary should necessarily be a complete compilation or restatement of all the pieces of evidence presented during the hearing proper.”[26]

The assailed September 26, 2001 Order was sorely defective in both form and substance. It had no summary of the evidence, but merely a curt one-sentence description of the evidence for the prosecution. Neither did the Order have a conclusion on whether the evidence of guilt was strong. Without such conclusion, there was no basis for granting bail. Thus, the Order cannot be sustained, allowed to stand, or given any semblance of validity.[27] It was patently a product of whim, caprice, and outright arbitrariness.[28] For the same reasons, we cannot also sustain the September 27, 2001 and the November 7, 2001 Orders, which are rooted in the invalid September 26, 2001 Order.

The arbitrariness of the trial judge is compounded by her failure to take into account this Court’s Decision in GR No. 114185, which found the presence of treachery and directed the filing of an information for murder, as follows:

“Treachery is present in this case, as there was a sudden attack against an unarmed victim. That the attack was preceded by a scuffle, as pointed out by the accused, is of no moment, since treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. In the case at bench, the scuffle between Jojo Lim and the accused had already ended; Jojo Lim was chasing Giron, his attention was turned towards the latter, and his back was against the accused. Thus, the accused’s shots were a complete surprise to Jojo Lim, and he could neither defend himself nor retaliate against the assault.

x x x x x x x x

“WHEREFORE, x x x

“The Provincial Prosecutor for Isabela is hereby directed to institute against the accused a criminal action for the crime of murder, if none has yet been made; x x x.”[29]

Aside from being un rebutted by the accused, the above-quoted ruling is reinforced by the clear and convincing proof adduced by the prosecution through Eyewitnesses Pacita Recto and Clarita Lim, who both affirmed that private respondent had killed Esteban “Jojo” Lim Jr. Clearly then, the evidence of private respondent’s guilt was strong; hence, bail should not have been allowed.

Private respondent makes a mountain out of the absence of a ballistic report, but thereby fails to make even a molehill of an argument. The presentation of such a report would have been a superfluity in the determination of

whether the evidence of guilt was strong. Furthermore, contrary to his contention, there is absolutely no need to adduce evidence to prove evident premeditation. Since this circumstance was not alleged in the Information, any offer of proof thereof would neither qualify nor aggravate the offense under the present Rules of Procedure.[30]

Second Issue:

Trial Valid for Another Crime

The crime for which private respondent was convicted by the RTC was committed on October 5, 1990. The applicable law at the time was PD 1866,[31] which prescribed the death penalty if homicide or murder was committed with the use of an unlicensed firearm. The death penalty was, however, suspended by the 1987 Constitution.[32] Thus, the penalty next lower in degree -- *reclusión perpetua*[33] -- was imposed by this Court in GR No. 114185, when it affirmed private respondent's conviction for violation of Section 1 of PD 1866.[34]

Under previous rulings of this Court, "one who kills another with the use of an unlicensed firearm commits two separate offenses of (1) x x x murder under the [Revised Penal Code], and (2) aggravated illegal possession of firearm under the [second] paragraph of Section 1 of [PD] 1866 x x x." [35] In the present case, the filing of an Information for murder, after conviction for violation of Section 1 of PD 1866 -- a special law -- was in order. There was no violation of the constitutional rule proscribing double jeopardy.[36]

When RA 8294 took effect on July 6, 1997[37] -- nearly six months after the affirmation of private respondent's conviction under PD 1866 -- the use of an unlicensed firearm was considered merely an aggravating circumstance,[38] if murder or homicide or any other crime was committed with it.[39] Hence, the use of an unlicensed firearm in killing a person "may no longer be the source of a separate conviction for the crime of illegal possession of a deadly weapon." [40] Only one felony may be charged -- murder in this instance.[41]

Private respondent was convicted of qualified illegal possession of firearms used in murder under PD 1866, not of murder under the Revised Penal Code. To repeat, under RA 8294, the use of an unlicensed firearm is a mere aggravating circumstance in a charge for murder. In the prosecution thereof, the illegal possession of firearms has been explicitly decriminalized.[42] *Nullum crimen, nulla poena sine lege*. [43]

True, private respondent has been convicted of illegal possession of firearm. But his sentence has been effectively cancelled when the trial court reduced the penalty therefor.[44] Hence, he was effectively given the benefit of the new law which decriminalized his offense.

However, private respondent may still be prosecuted for murder -- a crime that has not been decriminalized and is completely different from that for which he was convicted earlier. Evidently, the requisites[45] of double jeopardy, which are (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have terminated; (3) the second jeopardy must be for the same offense as that in the first, are not present here.

In the interest of substantial justice and a speedy disposition of this case, we now cancel his bail bond and direct the proper authorities to effect his arrest as soon as possible, so that he may continue to stand trial for the crime charged.[46]

WHEREFORE, the Petition is GRANTED. The challenged Orders are ANNULLED, and the bail bond of private respondent is CANCELLED.

Let copies of this Decision be furnished the director of the National Bureau of Investigation and the director-general of the Philippine National Police. Both are hereby DIRECTED to cause the immediate arrest of Ricardo Tobias and to inform this Court of their compliance within ten (10) days from notice. The trial judge is likewise DIRECTED to issue such other and further orders to take the accused into custody and to hasten the proceedings in the criminal prosecution for murder. This Decision shall be immediately executory. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 3-13.

[2] Id., p. 24.

[3] Id., p. 25.

[4] Id., p. 29. All Orders penned by Judge Norma C. Perello.

[5] Id., p. 24.

[6] Id., p. 885.

[7] Id., p. 892.

[8] Records, p. 1.

[9] Id., pp. 507-513.

[10] On January 18, 1999, this Court resolved to transfer the venue of the murder trial from the RTC of Santiago, Isabela to the RTC of Muntinlupa City. See January 18, 1999 Resolution; id., pp. 618-619.

[11] Id., p. 801.

[12] Id., p. 792.

[13] See Order of Release dated September 27, 2001; rollo, p. 25.

[14] The case was deemed submitted for decision on July 12, 2002, upon receipt by this Court of private petitioner's Memorandum, which was signed by Atty. Ester S. Dalisay. Respondents' Memorandum, signed by Atty. Isidro T. Hildawa, was filed on July 11, 2002.

[15] Petitioners' Memorandum, p. 7; rollo, p. 63.

[16] Respondents' Memorandum, p. 7; id., p. 48.

[17] Santos v. Judge Ofilada, 315 Phil. 11, 17, June 16, 1995, per Regalado, J.

[18] §1 of Rule 114 of the Revised Rules of Criminal Procedure.

[19] Herrera, Remedial Law, Vol. IV (2001 ed.), p. 364.

[20] §§4, 6 and 7 of Rule 114 of the Revised Rules of Criminal Procedure. See Ocampo v. Judge Bernabe, 77 Phil. 55, 58, August 20, 1946.

[21] §13 of Article III of the 1987 Constitution.

[22] People v. Gako, 348 SCRA 334, 350, December 15, 2000, per Gonzaga-Reyes, J.

[23] 362 Phil. 697, 709, February 18, 1999, per Romero, J.

[24] Herrera, supra, p. 390.

[25] Santos v. Judge Ofilada, 315 Phil. 11, 20, June 16, 1995, per Regalado, J.

[26] *People v. Hon. Cabral*, 716-717, *supra*, per Romero, J. Italics in the original.

[27] *Borinaga v. Tamin*, 226 SCRA 206, 217-218, September 10, 1993; *Carpio v. Maglalang*, 196 SCRA 41, 50, April 19, 1991; and *People v. Hon. San Diego*, 135 Phil. 514, 516, December 24, 1968.

[28] *Basco v. Judge Rapatalo*, 336 Phil. 214, 220-231, March 5, 1997; and *Guillermo v. Judge Reyes*, 310 Phil. 176, 182, January 18, 1995.

[29] *People v. Tobias*, 334 Phil. 881, 909-911, January 30, 1997.

[30] §8 of Rule 110 of the Rules of Court.

[31] This was signed into law on June 29, 1983.

[32] §19(1) of Article III of the 1987 Constitution.

[33] Article 25 of the Revised Penal Code.

[34] Besides, RA 7659 did not categorically reimpose the death penalty in PD 1866. Without such reimposition, the penalty remained suspended under the Constitution. See *People v. Arondain*, 418 Phil. 354, 370-371, September 27, 2001; and *People v. Valdez*, 347 SCRA 594, 609-610, December 11, 2000. Both cited *People v. Nepomuceno Jr.*, 368 Phil. 783, 790, June 29, 1999.

[35] *People v. Quijada*, 328 Phil. 505, 533, July 24, 1996, per Davide Jr., CJ.

See also *People v. Somooc*, 314 Phil. 741, 754, June 2, 1995; *People v. Fernandez*, 239 SCRA 174, 187, December 13, 1994; *People v. Tiongco*, 236 SCRA 458, 468, September 14, 1994; *People v. Jumamoy*, 221 SCRA 333, 347, April 7, 1993; *People v. Caling*, 208 SCRA 821, 826-827, May 8, 1992; *People v. Tiozon*, 198 SCRA 368, 379, June 19, 1991; and *People v. Tac-an*, 182 SCRA 601, 615-616, February 26, 1990.

[36] “[T]he constitutional right against double jeopardy protects one against a second or later prosecution for the same offense and that when the subsequent information charges another and different offense, although arising from the same act or set of acts, there is no double jeopardy.” *People v. Deunida*, 231 SCRA 520, 530, March 28, 1994, per Davide Jr., J. (now CJ).

[37] *People v. Valdez*, *supra*, pp. 608-609.

[38] *People v. Patoc*, GR No. 140217, February 21, 2003, pp. 17-18. See *People v. Delim*, GR No. 142773, January 28, 2003, p. 44; and *People v. Ave*, 391 SCRA 225, 247, October 18, 2002.

[39] 3rd par. of §1 of said law.

What RA 8294 did was simply to excuse the accused from prosecution for the crime of illegal possession of firearms, if another crime was committed. *Margarejo v. Hon. Escoses*, 417 Phil. 506, 512, September 13, 2001.

[40] *People v. Marquez*, 417 Phil. 516, 535, September 13, 2001, per Panganiban, J.

See also *People v. Macoy Jr.*, 338 SCRA 217, 229-230, August 16, 2000; *People v. Narvasa*, 359 Phil. 168, 186, November 16, 1998; *People v. Feloteo*, 356 Phil. 923, 935, September 17, 1998; and *People v. Molina*, 354 Phil. 746, 786-789, July 22, 1998.

[41] “x x x [I]f an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the ‘other crime’ is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense.” *People v. Walpan Ladjaalam*, 340 SCRA 617, 648-649, September 19, 2000, per Panganiban, J.

[42] “x x x [I]f an unlicensed firearm is used in the commission of any other crime, there can be no separate offense of simple illegal possession of firearms.” *People v. Hamton*, 395 SCRA 156, 193, January 14, 2003, per curiam; citing *People v. Garcia*, 373 SCRA 134, 159-160, January 15, 2002; and *Evangelista v. Hon. Sistoza*, 414 Phil. 874, 881, August 9, 2001.

RA 8294 merely considers now “the use of an unlicensed firearm as an aggravating circumstance in murder or homicide and not as a separate offense.” *People v. Panabang*, 373 SCRA 560, 576-577, January 16, 2002, per Vitug, J.; citing *People v. Mendoza*, 361 Phil. 44, 60, January 18, 1999, per Melo, J.

See also *People v. Reyes*, 420 Phil. 343, 354, October 25, 2001; *People v. Abriol*, 419 Phil. 609, 638, October 17, 2001; *People v. Pablo*, 415 Phil. 242, 257, August 15, 2001; *People v. Cabilto*, 414 Phil. 615, 626, August 8, 2001; *People v. Montinola*, 413 Phil. 176, 189-190, July 9, 2001; *People v. Nuñez*, 353 SCRA 285, 294, March 1, 2001; *People v. Tio*, 352 SCRA 295, 304-305, February 20, 2001; *People v. Avecilla*, 351 SCRA 635, 639-640, February 15, 2001; *People v. Navarro*, 351 SCRA 462, 483, February 12, 2001; *People v. Anivado*, 348 SCRA 74, 92, December 14, 2000; *People v. Sabadao*, 344 SCRA 432, 448, October 30, 2000; *People v. Taguba*, 342 SCRA 199, 209-210, October 6, 2000; *People v. Samonte*, 341 SCRA 342, 348-350, September 29, 2000; *People v. Langit*, 337 SCRA 323, 341, August 4, 2000; *People v. Castillo*, 325 SCRA 613, 619, February 15, 2000; *People v. Ricafranca*, 323 SCRA 652, 664, January 28, 2000; *People v. Lumilan*, *supra*; pp. 182-183; *People v. Ringor Jr.*, 378 Phil. 78, 92-93, December 9, 1999; *People v. Lazaro*, 375 Phil. 871, 885-889, October 26, 1999; *People v. Nepomuceno Jr.*, 368 Phil. 783, 788-790, June 29, 1999; *People v. De Vera Sr.*, 367 Phil. 344, 369, June 9, 1999; *People v. Navarro*, 357 Phil. 1010, 1034, October 7, 1998; and *People v. Bergante*, 286 SCRA 629, 644, February 27, 1998.

[43] There is no crime where there is no law punishing it. *Reyes*, *The Revised Penal Code*, Book I (1981 ed.), p. 34.

[44] In fact, there are reasons to believe that the trial court should not have imposed any penalty at all, but should have completely obliterated the charge.

[45] *People v. Nitafan*, 302 SCRA 424, February 1, 1999; *People v. Tampal*, 244 SCRA, 203, May 22, 1995.

[46] *People v. Nang*, 351 Phil. 944, 960, April 15, 1998. See *People v. Pareja*, 333 Phil. 261, 276, December 9, 1996; and *People v. Luayon*, 329 Phil. 560, 581, August 22, 1996.

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