

REGINO SY CATIIS, PETITIONER, VS. COURT OF APPEALS (17TH DIVISION), REYNALDO A. PATACSI, ENRICO D. LOPEZ, LUZVIMINDA A. PORTUGUEZ AND THE BUREAU OF JAIL MANAGEMENT AND PENOLOGY...

G.R. NO. 153979. February 09, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari filed by Regino Sy Catiis (petitioner) seeking to nullify the Decision[1] dated June 14, 2002 of the Court of Appeals (CA) which sustained the Order dated December 18, 2001 of the Regional Trial Court, Branch 96, Quezon City,[2] allowing private respondents to post bail and the Order dated December 21, 2001 of the Executive Judge of the same court[3] approving the surety bond posted by respondents and their release.

Petitioner filed a letter-complaint dated May 28, 2001 against private respondents Reynaldo A. Patacsil, Enrico D. Lopez, Luzviminda A. Portuguez and a certain Margielyn Tafalla before the Office of the City Prosecutor of Quezon City, for violation of Art. 315, No. 2(a) of the Revised Penal Code in relation to Presidential Decree No. 1689 (syndicated estafa) and other related offenses. The complaint was docketed as I.S. No. 01-10686. Private respondents, except for Tafalla, filed their joint counter-affidavits denying the charges against them.

On October 10, 2001, Assistant City Prosecutor Alessandro D. Jurado issued a Resolution[4] finding the existence of a probable cause for syndicated Estafa against private respondents and Tafalla with no bail recommended. The Resolution was approved by City Prosecutor Claro A. Arellano.

An Information was filed on the same day by Prosecutor Jurado against private respondents and Tafalla before the Regional Trial Court of Quezon City and raffled off to Branch 96, which reads:

The undersigned accuses REYNALDO A. PATACSI, ENRICO D. LOPEZ, LUZVIMINDA A. PORTUGUEZ and MARGIELYN TAFALLA, of the crime of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code in relation to P.D. 1689, committed as follows:

That on or about the 3rd week of January 2000 or subsequent thereto in Quezon City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another in a syndicated manner consisting of five (5) or more persons through corporations registered with the Securities and Exchange Commission (SEC) and/or unregistered foreign entities with intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, with intent to gain and by means of fraud and deceit, did then and there willfully, unlawfully and feloniously defraud REGINO SY CATIIS and several other persons in the following manner, to wit: by falsely or fraudulently pretending or representing, in a transaction or series of transactions, which they made with the Complainant and the public in general to the effect that they were in a legitimate business of foreign exchange trading successively or simultaneously operating under the following name and style of Asia Profits Philippines, Incorporation, Winggold Management Philippines Incorporated, Belkin Management

Consultancy, Inc. and/or Belkin Profits Limited or other unregistered foreign entities induced and succeeded in inducing complainant and several other persons to give and deliver and in fact, the latter and said persons gave and delivered to said accused the amount of at least US\$ 123,461.14 or its equivalent in Philippine Pesos on the strength of said manifestations and representations, the accused knowing fully well that the above-named corporations registered with the SEC and/or those unregistered foreign entities are not licensed nor authorized to engage in foreign exchange trading corporations and that such manifestations and representations to transact in foreign exchange were false and fraudulent that resulted to the damage and prejudice of the complainant and other persons and that the defraudation pertains to funds solicited from the public in general by such corporations/associations.[5]

On November 7, 2001, Judge Lucas P. Bersamin issued an Order finding probable cause against all the accused and approved the recommendation of the City Prosecutor that the charge be non-bailable. The corresponding warrants of arrest were issued.[6]

A return[7] on the warrant of arrest was made by PO3 Joselito M. Coronel, PNP Criminal Investigation and Detection Group, Camp Crame, Quezon City, with the information that except for Margielyn Tafalla, who remained at large, all other accused were already detained at the Makati City Jail.

On November 12, 2001, a notice of hearing was issued by Judge Bersamin setting the case for arraignment on November 20, 2001. Private respondents on the same day filed an urgent motion to fix bail.

On November 20, 2001, private respondents, when arraigned, entered pleas of not guilty. The Prosecution was required to file their comment/opposition on private respondents' motion to fix bail which they did through the Private Prosecutor with the conformity of Assistant City Prosecutor Arthur O. Malabaguio.[8]

On December 18, 2001, Judge Bersamin issued an Order reconsidering his earlier Order of November 7, 2001 by declaring that the offense charged is bailable. In finding that the accused are entitled to bail, Judge Bersamin made the following disquisitions:

x x x

In order to impose the penalty of life imprisonment to death under Sec. 1, P.D. No. 1689, the estafa or swindling must be committed by a syndicate. The law plainly states that a syndicate consists of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise, or scheme, and the defraudation results in the misappropriation of money or of funds solicited by corporations/associations from the general public.

Herein, only four persons are actually charged. Consequently, the estafa charged has no relation to the crime punished with life imprisonment to death under Sec. 1, Presidential Decree No. 1689.

The allegation of the information that the accused conspired with each other "in a syndicated manner consisting of five (5) or more persons through corporations registered with the Securities and Exchange Commission (SEC) and/or unregistered foreign entities with intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme" cannot change the juridical nature of the offense charged. If the Government has chosen to indict only four persons, without more, the obvious reason is that only the persons actually charged were involved in the commission of the offense. As such, there was no syndicate.

In all likelihood, the allegation of "in a syndicated manner consisting of five (5) or more persons" is made herein solely for having bail denied. Whether that is true or not is beside the point, but the Court cannot now lend itself to such a likelihood which, according to the foregoing disquisition, lacks legal basis. For that matter, the Court must recant its approval of the recommendation to deny bail.

The Prosecution represents that the Supreme Court has affirmed in *People vs. Romero* a conviction under

Presidential Decree No.1689 "even if the accused charged is only less than five (5) accused."

Such representation is grossly misleading. Far to the contrary, in *People v. Romero*, where two accused were actually charged but only one was ultimately penalized due to the death of the other accused during the pendency of the case, the Supreme Court did not impose the higher penalty of life imprisonment to death because the Prosecution "failed to clearly establish that the corporation was a syndicate, as defined under the law," holding, instead, that, since the crime was not committed by a syndicate, the proper penalty is that provided in the second paragraph of Sec.1, P.D. No. 1689, to wit:

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to reclusion perpetua if the amount of the fraud exceeds 100,000.00 pesos.

Yet, one should ask: Where, as here, the amount alleged in the information clearly "exceeds 100,000.00 pesos" such that the second paragraph of Sec. 1, P.D. No. 1689, is applicable, is the offense still bailable considering that the range of the imposable penalty is from reclusion temporal to reclusion perpetua?

The answer is in the affirmative.

Under Rule 110, 2000 Rules of Criminal Procedure, the Information should aver, among others, the qualifying and aggravating circumstances of the offense "in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstance and for the court to pronounce judgment."

A perusal of the information discloses that no aggravating circumstance has been alleged in the information. The omission consequently precludes the State from proving any aggravating circumstance which will raise the penalty to its maximum period of reclusion perpetua. The Court itself is also prohibited from imposing reclusion perpetua, since the requirement of complete allegations of the particulars in the indictment is based on the right of the accused to be fully informed of the nature of the charges against him so that he may adequately prepare for his defense pursuant to the due process clause of the Constitution.

As stated in *People v. Romero*, supra, the penalty under the second paragraph of Sec.1, P.D. No. 1689, when there is neither mitigating or aggravating circumstance attendant, is the medium period of reclusion temporal, that is from sixteen (16) years and one (1) day to twenty (20) years.

Hence, the offense charged is unquestionably bailable.[9]

On December 26, 2001, petitioner filed with the CA a petition for certiorari with prayer for temporary restraining order and/or writ of preliminary injunction[10] assailing the Order of Judge Bersamin allowing private respondents to post bail.

On the same day, then Associate Justice Romeo J. Callejo Sr.,[11] Justice on Duty Per Office Memorandum of Presiding Justice, issued a Resolution[12] granting petitioner's prayer for the issuance of a temporary restraining order, thus, private respondents and all those acting for and in their behalf were temporarily restrained from enforcing and implementing the Order of Judge Bersamin and from further proceeding in Criminal Case No. 01-105430.

However, unknown to petitioner, private respondents had already filed or posted their surety bonds on December 21, 2001 with the Office of Executive Judge Monina A. Zenarosa[13]who approved the same on the same day and ordered the immediate release of private respondents unless held for other lawful cause.[14] Petitioner filed a supplemental petition with the CA on January 14, 2002 assailing the jurisdiction of Judge Zenarosa in issuing the Order dated December 21, 2001.

On June 14, 2002, the CA issued its assailed decision denying due course to the petition and dismissed the same after it found no grave abuse of discretion committed by Judge Bersamin and Judge Zenarosa in issuing the assailed orders.

Hence, the instant petition filed by petitioner raising the following issues, to wit:

A

Whether or not the issuance of the questioned Decision promulgated June 14, 2002 by the 17[th] Division of the Court of Appeals sustaining the validity of the 1[st] assailed Order dated December 18, 2001 of Hon. Presiding Judge Lucas P. Bersamin of Branch 96 of the Regional Trial Court of Quezon City ruling that there should be at least five (5) persons that must be charged under Section 1, Presidential Decree No. 1689 is not in accordance with law or with applicable decisions of this Honorable Supreme Court.

B

Whether or not the questioned Decision sanctioning the grant of bail in the 1[st] assailed Order dated December 18, 2001 of Hon. Presiding Judge Lucas P. Bersamin of Branch 96 of the Regional Trial Court of Quezon City violated Section 7, Rule 114 of the Revised Rules of Criminal Procedure and actually departed from the accepted and usual course in the determination of bailability of criminal offenses.

C

Whether or not the questioned Decision sustaining the order of release in the 2[nd] assailed Order dated December 21 of Hon. Executive Judge Monina A. Zenarosa of the Regional Trial Court of Quezon City violated Section 17, Rule 114 of the Revised Rules of Criminal Procedure[15]

Anent the first issue, petitioner contends that under Section 1 of P.D. No. 1689, the term "any person" must be understood and read in its singular meaning so that even only one person can be indicted for committing "estafa or other forms of swindling" in relation to P.D. No. 1689 citing the case of *People v. Romero*; that Judge Bersamin erred when he already computed the possible penalty in case of private respondents' conviction; that the capital nature of an offense for the purpose of bailability is determined by the penalty prescribed by law, not by penalty which may actually be imposed since the latter requires a consideration of the evidence on trial; that since no evidence had yet been presented by both prosecution and defense, Judge Bersamin has again shown bias by already computing the imposable penalty just to stretch the application of the law and questionably grant bail in favor of private respondents.

We are not persuaded.

The CA found that the assailed order of Judge Bersamin cannot be characterized as one issued with grave abuse of discretion for he correctly determined that the Information did not charge a syndicated Estafa; that with only four charged in the information, it could not be considered as committed by a syndicate which must consist of five or more persons and he cannot be faulted for that.

Section 1 of P.D. No. 1689, increasing the penalty for certain forms of swindling or estafa, provides:

SECTION 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks cooperatives, "samahang nayon(s)," or farmers' associations, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to

reclusion perpetua if the amount of the fraud exceeds 100,000 pesos.

Clearly, P.D. No. 1689 penalizes offenders with life imprisonment to death regardless of the amount involved, provided that a syndicate committed the crime. A syndicate is defined in the same law as "consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme." Under the second paragraph, it is provided that if the offenders are not members of a syndicate, they shall nevertheless be held liable for the acts prohibited by the law but they shall be penalized by reclusion temporal to reclusion perpetua if the amount of the fraud is more than P100,000.00.

Petitioner's interpretation that the term "any person" in the first paragraph of section 1 could mean that even one person can be indicted for syndicated estafa is contrary to the provision of the law. It bears stressing that the law must be considered as a whole, just as it is necessary to consider a sentence in its entirety in order to grasp its true meaning.[16] It is a dangerous practice to base construction upon only a part of a section since one portion may be qualified by the other portion.[17] In fact, there is no need for any construction or interpretation of P. D. No. 1689 since the law is clear and free from any doubt or ambiguity. Section 1 of P.D. No. 1689 has defined what constitutes a syndicate and such definition is controlling. Where a requirement is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed.[18]

In this case, the Information specifically charged only four persons without specifying any other person who had participated in the commission of the crime charged, thus, based on the definition of syndicate under the law, the crime charged was not committed by a syndicate. We find no reversible error committed by the CA when it upheld the ruling of Judge Bersamin that with only four persons actually charged, the estafa charged has no relation to the crime punished with life imprisonment to death under section 1 of P. D. No. 1689.

The wordings in the information that the accused conspired with each other "in a syndicated manner consisting of five (5) or more persons through corporations registered with the Securities and Exchange Commission (SEC) and/or unregistered foreign entities with intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme" is not sufficient compliance with the requirements of the law on what constitute a syndicate. It bears stressing that the first paragraph of the accusatory portion of the Information charges only four persons. To repeat, P.D. No. 1689 has provided for the definition of a syndicate and it is controlling. As correctly found by the trial court, if the government has chosen to indict only four persons, without more, the obvious reason is that only the persons actually charged were involved in the commission of the offense, thus, there was no syndicate.

Petitioner's reliance in *People v. Romero* to support his argument is misleading. First, the issue of whether only one person can be indicted for syndicated estafa was not an issue in the *Romero* case. Secondly, the Court did not impose the penalty of life imprisonment to death on the accused since the prosecution failed to clearly establish that the corporation was a syndicate as defined under the law. There is no other way of establishing a syndicate under P.D. No. 1689 than by the adherence to the definition provided by law.

Since the crime charged was not committed by a syndicate as defined under the law, the penalty of life imprisonment to death cannot be imposed on private respondents. Judge Bersamin is correct when he ruled that private respondents could only be punished with reclusion temporal to reclusion perpetua in case of conviction since the amount of the fraud exceeds P100,000.00. The next question is, whether Judge Bersamin is correct in finding that the crime charged is bailable despite that the imposable penalty ranges from reclusion temporal to reclusion perpetua?

The Court answers in the affirmative.

Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure, which took effect on December 1,

2000, provide:

Sec. 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusations. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Clearly, it is now a requirement that the aggravating as well as the qualifying circumstances be expressly and specifically alleged in the complaint or information. Otherwise, they cannot be considered by the trial court in their judgment, even, if they are subsequently proved during trial.[19] A reading of the Information shows that there was no allegation of any aggravating circumstance, thus Judge Bersamin is correct when he found that the lesser penalty, i.e., reclusion temporal, is imposable in case of conviction.

Section 13, Article III of the Constitution provides that all persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties or be released on recognizance as may be provided by law. In pursuance thereof, Section 4 of Rule 114, as amended, now provides that all persons in custody shall, before conviction by a regional trial court of an offense not punishable by death, reclusion perpetua or life imprisonment, be admitted to bail as a matter of right. Since the imposable penalty on private respondents, in case of conviction, is reclusion temporal, they are entitled to bail as a matter of right. Notably, Judge Bersamin issued his Order finding the crime charge bailable and fixed the amount of P150,000.00 each for the provisional liberty of private respondents only after petitioner had submitted their comment/opposition to petitioner's motion to fix bail.

Petitioner claims that the Order of Judge Bersamin allowing private respondents to post bail already prejudged the case; that he summarily decided the eventual and imminent dismissal of the criminal case without even the reception of evidence; that such prejudgment came from a ruling on a mere issue of bail.

Such argument is baseless. The Order was issued on the basis that the allegations in the Information do not establish that the crime charged was committed by a syndicate as defined under the law where the penalty of life imprisonment to death could be imposed. Nowhere in the Order did Judge Bersamin state that the act complained of is not punishable at all.

Petitioner next contends that private respondents' filing of bail with Executive Judge Monina Zenarosa, other than Branch 96 where the case is pending, is questionable and not in accordance with Section 17, Rule 114[20] of the Revised Rules on Criminal Procedure; that the records show that when private respondents filed their bail with Judge Zenarosa, Branch 96 was open and available as private respondents through their representative were able to pay for the issuance of the certifications on the Information and the Order dated December 18, 2001; that petitioner's counsel and the Assistant City Prosecutor Arthur Malabaguio had personally received their respective copies of the Order dated December 18, 2001 inside the staff room of Branch 96 and they even attested that Judge Bersamin was physically present on December 21, 2002, the day private respondents filed their bail bond with Judge Zenarosa; that despite these circumstances, Judge Zenarosa still exercised jurisdiction over the bail filed by private respondents and issued the Order dated December 21, 2001 approving the surety bonds and ordering the release of private respondents; that the CA's justification that Judge Zenarosa accepted the bail bond due to the fact that Judge Bersamin was momentarily out of his office or premises at the time of posting of the bond was not

borne by the records.

We are not persuaded.

Section 17, Rule 114 of the Revised Rules on Criminal Procedure provides that bail in the amount fixed may be filed with the court where the case is pending, or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. While Branch 96 is open and available on the day private respondents posted their bail with Judge Zenarosa, it does not necessarily follow that Judge Bersamin was available at that precise moment. Although it is alleged in the supplemental petition prepared by petitioner's counsel, Atty. Rodeo Nuñez, with the conformity of Prosecutor Malabaguio filed before the CA that both of them saw Judge Bersamin discharging his function on that day, it is not under oath. Moreover, it is not specifically stated in the supplemental petition that at the exact time Judge Zenarosa approved the bail, Judge Bersamin was available. Thus, petitioner failed to rebut the presumption that official duty had been regularly performed[21] by Judge Zenarosa under the rules.

WHEREFORE, the petition for review on certiorari is DENIED. The assailed decision of the Court of Appeals dated June 14, 2002 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynarez-Santiago and Chico-Nazario, JJ., concur.

Callejo, Sr., J., no part.

[1] Penned by Justice Roberto A. Barrios, concurred in by Justices Bienvenido L. Reyes and Edgardo F. Sundiam.

[2] Penned by Judge Lucas P. Bersamin (now Associate Justice of the Court of Appeals); Docketed as Criminal Case No. Q-01-105430.

[3] Per Judge Monina A. Zenarosa.

[4] Rollo, pp. 89-94.

[5] Id., at p. 87.

[6] Id., at p. 98.

[7] Id., at p. 100.

[8] Id., at pp. 110-118.

[9] Id., at pp. 54-57

[10] Docketed as CA G.R. SP No. 68287.

[11] Now a Member of this Court.

[12] Rollo, p. 166.

[13] Now Associate Justice of the Court of Appeals.

[14] Rollo, p. 58.

[15] Id., at p. 19.

[16] Judge Noli C. Diaz, Statutory Construction, 2001 edition, p. 35.

[17] Id.

[18] Luzon Surety Co., Inc. v. De Garcia, 140 Phil. 509, 514 (1969).

[19] *People v. Casitas, Jr.*, 445 Phil. 407, 427 (2003); *People v. Bragat*, 416 Phil. 829, 844 (2001).

[20] SECTION 17. Bail, where filed. — (a) Bail in the amount fixed may be filed with the court where the case is pending, or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may be filed also with any regional trial court of said place, or, if no judge thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein.

[21] Rules of Court, Rule 131, Section 3(m).

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