

FELIPE B. PAREJA, PETITIONER, VS. THE HON. AMADOR E. GOMEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G. R. No. 18733. July 31, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an original action for certiorari to annul certain orders of the Court of First Instance of Cebu and secure an order for the release of petitioner Felipe B. Pareja.

The essential facts are not disputed. Petitioner Pareja is accused in the Court of First Instance of Cebu, together with Cesario Orongan, Avelino Monzolin, and Gaspar Mesa, of the crime of murder. In the information, dated July 24, 1961, it is alleged:

"That on or about the 3rd day of July, 1961, at about 6:30 in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the accused, conspiring, confederating with and mutually helping one another, with intent to kill one Attorney Antonio Abad Tormis, did then and there willfully, feloniously and criminally shoot Antonio Abad Tormis suddenly and unexpectedly three times with a .32 caliber revolver, thus causing the following injuries:

- Wound, gunshot, penetrating skin, subcutaneous tissue, pectoralis major and minor muscles, external and internal intercostal muscles of the 3rd right intercostal space, at an area 5 cms. from the right border of the anterior median line, upper lobe of the right lung, pericardium, proximal portion of the ascending aorta, left ventricle of the heart, to the 5th left rib with comminuted fracture, to the muscles of the left side of the chest and up to the subcutaneous tissue. There was no point of exit. Diameter of the wound of the muscle of the left ventricle was 1.2 cms.
- Wound, gunshot, penetrating skin, subcutaneous tissue, muscles of the middle third, right arm, with comminuted fracture of the right humerus.
- Wound, gunshot, penetrating skin, muscle of the posterior aspect of the chest, with comminuted fracture of the 7th rib, middle lobe of the right lung, thoracic aorta, diaphragm, stomach, lower lobe of the left lung, internal and external intercostal muscle of the left 8th intercostal space, muscles and subcutaneous tissue. There was no point of exit;

as a result of which injuries, Antonio Abad Tormis died almost instantaneously; with the attendant qualifying circumstance of treachery, and the aggravating circumstances of: (1) evident premeditation; (2) nocturnity; (3) taking advantage of superior strength or employing means to weaken the defense; (4) with the aid of armed men or persons who insured or effort impunity; and (5) in consideration of a prize reward, or promise.

"Contrary to Art. 248, par. 1 in relation to Art. 14 pars. 6, 8, 11, 13, and 15 of the Revised Penal Code.

Cebu City, Philippines, July 24, 1961.

NO BAIL RECOMMENDED.

(Sgd.) JESUS V. ABELEDA

Acting City Fiscal"

Upon his arrest and detention, counsel for Pareja moved that he be provisionally released on bail. The prosecution objected thereto, alleging that petitioner is charged with a capital offense and that the evidence of his guilt is strong. Thereupon, it introduced evidence establishing the following facts:

Tormis died in Cebu City on July 3, 1961, in consequence of three (3) gunshot wounds then inflicted upon him. The three (3) slugs found in his body were fired from a colt revolver, marked Exhibit B, which was found in one of the safes of petitioner as City Treasurer of Cebu City, where his office as such was searched by peace officers on July 11-12, 1961, upon the authority of a search warrant duly secured therefor, on the basis of information furnished by Caspar Mesa, Cesario Orongan and Avelino Monzolin, to the effect that Orongan had killed Tormis upon the request of Monzolin, acting on behalf of Pareja, who supplied said Exhibit B.

Respondent Judge held that, unimpeached, these facts would warrant a conviction, in view of which the application for bail was denied. A motion of reconsideration of the order to this effect, likewise, failed. Hence, the present action for certiorari.

Petitioner maintains that in not permitting him to be released on bail, respondent Judge had acted with grave abuse of discretion mainly upon the following grounds, namely: (a) that the evidence against him (excluding the admissions allegedly made by Mesa, Orongan and Monzolin, which—insofar as the incident under consideration is concerned—were disregarded by respondent Judge) is purely circumstantial and does not satisfy the requirements of section 98 of Rule 123 of the Rules of Court; (b) that petitioner could not, in all probability, be sentenced to the extreme penalty, for he had voluntarily surrendered himself to the authorities, and even the self-confessed triggerman had been sentenced to life imprisonment; and (c) that petitioner's conduct, social standing and other personal circumstances indicate non-probability of flight.

Despite the well written petition and memorandum filed by counsel for the petitioner, whose actuations in the lower court merited the well earned commendation of no less than respondent Judge, we cannot see our way clear to granting the writ prayed for. Although relevant to the issue whether the evidence on record is strong or not, the aforementioned provision of the Rules of Court, reading:

"SEC. 98. Circumstantial evidence, when sufficient.—Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstances;

(b) The facts from which the inferences are derived are proven;

and

(c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt." is not decisive in the case at bar. This section governs the quantum of evidence essential "for conviction," for which guilt must be established "beyond reasonable doubt", whereas to forfeit the constitutional right to bail in capital offenses, it is enough that the evidence of guilt be "strong."

Besides, the alleged voluntary surrender on the part of petitioner is not necessarily, not even, generally, sufficient to offset the five (5) aggravating circumstances alleged in the information. The penalty meted out to Cesario Orongan is understandable, in view of the fact that two (2) mitigating circumstances, one of which was his plea of guilty, were considered in his favor. It is not claimed that petitioner has entered or will enter such plea.

Moreover, the scant data on record permits the Court to do no more than speculate on the probability or non-probability of flight on the part of petitioner herein.

Again, the case of *Montano vs. Ocampo*, G. R. No. L6352 (January 29, 1953) 49 Off. Gaz. 1855; relied upon by petitioner herein is not in point. To begin with, the evidence available in said case is not comparable to that introduced by the prosecution in the case at bar. Secondly, there were in the *Montano* case strong indications that certain proceedings therein took place under circumstances amounting to a denial of due process, and even suggesting bias or prejudice against the accused, if not persecution for political reasons. Upon the other hand, in the present case, the record abundantly shows the fairness and impartiality of respondent Judge, aside from the ample opportunity by him given to both parties for the proper elucidation of the issue raised by petitioner.

In any event, the facts and circumstances obtaining in this case are such that reasonable men may honestly disagree on the question whether petitioner should be released or not on bail. As a consequence, it cannot be said that respondent Judge had abused his discretion much less gravely, in issuing the orders complained of.

Wherefore, the writ prayed for is denied and the petition herein dismissed, with costs against petitioner.

It is so ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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