

POTENCIANO MONTALBO, PETITIONER, VS. F. SANTAMARIA, JUDGE OF FIRST INSTANCE OF MANILA, RESPONDENT.

G. R. No. 34136. October 02, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an original petition for mandamus against the judge of the Court of First Instance of Manila taking cognizance of criminal case No. 40477, People of the Philippine Islands vs. Potenciano Montalbo, requiring him to decide whether or not the proof of guilt is evident or the presumption of guilt is strong, with a view to determining whether or not the offense with which the defendant is charged is bailable.

On August 16, 1930, an assistant prosecuting attorney for the City of Manila filed the following information with the court below:

"The undersigned hereby charges Potenciano Montalbo with the crime of murder, committed as follows:

"That on or about August 14, 1930, in the City of Manila, Philippine Islands, the said defendant, with evident premeditation and treachery, using a prohibited weapon and with murderous intent, did wilfully, unlawfully, and feloniously assault Jose Paras with a double edged dagger-shaped knife, which he had in his possession, inflicting several fatal wounds which resulted in the victim's instant death.

"Contrary to law."

Upon this information the court below issued a warrant for the defendant's arrest, and the defendant has since been detained in Bilibid Prison.

On August 19, 1930, the petitioner moved the court, presided over by the respondent judge, to fix the amount of the bail for the provisional release of the defendant, in accordance with section 63, General Orders, No. 58.

The motion was heard on August 23, 1930, and on the 25th of August, the respondent judge entered the following order:

"Upon hearing granted to respective counsel on the defendant's petition for liberty on bail, the court sustains the theory of the prosecution that section 3 of the Jones Law does not authorize the court to set an accused at liberty on bail when charged, as in the case at bar, with a capital offense,

"And if General Orders, No. 58, series of 1900, did grant judicial discretion in such cases, this court deems such a grant to have been abrogated by said section 3 of the Jones Law.

"Wherefore, defendant's petition for liberty on bail is denied.

"The case shall be heard on Monday, September 1 prox., at 8 a. m.

"So ordered.

"Manila, August 25, 1930.

(Sgd.) "F. SANTAMARIA

"Judge for the 23d District acting in the 9th."

Petitioner contends that by reason of his office, it is the inherent, ministerial and unavoidable duty of the respondent judge to acquaint himself with proofs of the prosecution in accordance with the provisions of section 66 of General Orders, No. 58, for the purpose of determining whether or not such proof of guilt is evident or the presumption of guilt is strong against the accused; that, in declining to proceed with the investigation of these circumstances, the respondent judge has illegally divested himself of the power and jurisdiction conferred upon him by the Jones Law and the Philippine Bill of 1902, to the great prejudice of the constitutional rights of the herein petitioner; and that there is no other plain, speedy, and adequate remedy, in the ordinary course of law, available to the petitioner for the enforcement of this rights under section 63 of General Orders, No. 58 and section 3 of the Jones Law, other than this mandamus proceeding.

The first question of law raised in these proceedings is whether section 3 of the Jones Law repealed section 63 of General Orders, No. 58, as respondent ruled. Section 3 of the Jones Law, reads:

"That all persons shall before conviction be bailable by sufficient sureties, except for capital offences."

Section 63 of General Orders, No. 58, provides:

"All prisoners shall be bailable before conviction, except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong."

From the mere wording of these provisions, it would seem that the Jones Law did really repeal that section of General Orders, No. 58. But such is not the case, as may be seen upon consideration of section 26 of the Jones Law, which among other things, provides:

"That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law."

As is well known, General Orders, No. 58 was promulgated by the United States Military Government in the Philippine Islands on April 23, 1900, and section 63 thereof conferred jurisdiction upon judges to admit persons accused of capital offenses to bail, except when the proof of guilt was evident or the presumption of guilt strong. And the Jones Law, far from revoking this power, expressly recognized it in section 26. This is in effect the ruling of this court in *United States vs. Babasa* (19 Phil., 198), where it was held that Courts of First Instance have jurisdiction and authority to admit defendants to bail in a criminal case before conviction although charged with a capital offense, citing paragraph 4 of section 5, of the Act of Congress of July 1, 1902 and section 63 of General Orders, No. 58.

That was a case of robbery in band with homicide. The information alleged that on July 8, 1902, defendant Pedro "Alvarez (alias Araro) entered the municipality of Liang in the Province of Batangas at the head of a band of robbers, consisting of more than thirty persons, and attacked houses, entering and robbing the same of the property contained therein, using force, violence and intimidation to that end. While the trial was in progress, the accused, in view of the non-appearance of certain of his witnesses, Whom he required for his defense, and the postponement which their absence would entail, made an application to be admitted to bail, alleging, among other things, that to remain in jail was prejudicial to his health. Upon said motion the court, after hearing the attorneys for the applicant, and with the consent of the Attorney-General, admitted the accused to bail in the sum of 10,000 dollars gold, the sureties being Melchor Babasa and Apolonio Belmonte.

The trial of the case was adjourned to the 15th of October following. On said day the accused did not appear, and, notwithstanding the search made by the sureties on his bond as well as by the Constabulary, nothing was seen or

heard of him until the 20th day of December, 1904, when Colonel Baker of the Constabulary telegraphed the governor of Cavite that the accused had been killed in an encounter with the Constabulary. In view of the non-appearance of the accused, the court ordered the bond forfeited and instructed the provincial fiscal to proceed immediately against the sureties for the collection thereof. On the 27th day of January, 1904, the court on motion of the fiscal, issued an execution against the property of the said bondsmen for the purpose of realizing the sum specified in the bond. An appeal was taken by the said sureties from the order referred to, which appeal was later dismissed by the Supreme Court and the cause ordered returned to the Court of First Instance for such proceedings as were by law provided. On the 2d day of August, 1905, Melchor Babasa appeared by his attorney and presented to the court a petition praying that the bond be declared void. After a hearing that motion was denied by the court. The applicant sought to appeal from said order. The court refused to permit such appeal and an action was begun for a writ of mandamus compelling the court to allow it. The Supreme Court decided in favor of the sureties and ordered the court below to allow the appeal.[1] On the 29th day of September, 1906, Melchor Babasa died, and his wife was thereafter appointed administratrix of his estate, and was substituted by an order of this court as party defendant in place of said Melchor Babasa, deceased.

The appellants based their appeal upon two grounds: First, that in view of the provisions of section 5 of the Act of July 1, 1902, and section 63 of the Code of Criminal Procedure, the trial court had no power, authority, or jurisdiction to admit the accused Alvarez to bail, inasmuch as he was charged with a capital offense; that the admission to bail having been without jurisdiction, the bond was void. Second, that inasmuch as it was clearly proved that the accused had been killed prior to judgment on the bond, the sureties were discharged.

The Supreme Court, after citing paragraph 4, section 5 of the Act of July 1, 1902, and section 63 of General Orders, No. 58, disposed of the first ground of the appeal (which is the pertinent part of the question herein involved) ruling: "From these provisions it is clear that even capital offenses are bailable in the discretion of the court before conviction. As a result, the objection of the appellants that the trial court had no power or jurisdiction to admit to bail in the case at bar, must be overruled. Under the facts presented in this case the trial court may have exercised bad judgment in admitting to bail; but he had jurisdiction in the premises. That is the important thing here." (U. S. vs. Babasa, 19 Phil., 198.)

Paragraph 4, section 5 of the Act of Congress of July 1, 1902, then, did not repeal section 63, General Orders, No. 58; but on the contrary, section 9 of said Act recognized in Courts of First Instance the power they had to admit to bail before conviction, even in case of capital offenses, except when the proof of guilt was evident or the presumption of guilt strong. And it need not be stated in so many words that this provision of the Organic Law as literally the same embodied in section 3 of the Jones Law quoted above.

In view of the foregoing, we are of the opinion that the respondent's theory that section 3 of the Jones Law does not authorize the court to admit a defendant, charged with a capital offense to bail, is untenable.

Section 63, General Orders, No. 58, providing that "all prisoners shall be bailable before conviction, except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong," enunciates a principle generally accepted throughout the United States, and section 3 of the Autonomy Act (the Jones Law) so far as it provides that "all persons shall before conviction be bailable by sufficient sureties, except for capital offenses," must be so construed as to be in harmony therewith. These provisions quoted from the Jones Law were intended not to restrict, but to secure, the right to bail. The Jones Law provision is manifestly a more concise statement of section 63, General Orders, No. 58. The exception is thus stated in the latter: "Except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong." "The right to be out on bail therefore depends on the nature of the accusation, with this limitation, that "the proof of guilt is evident or the presumption of guilt is strong." Both under this provision and under the

provisions of the Jones Law quoted above, a judicial investigation is proper, upon application for bail, in order to ascertain if the crime of murder has really been committed, and whether the proof of guilt is evident or the presumption of guilt is strong.

According to section 66, General Orders, No. 58, when admission to bail is a matter of discretion, the court must require that reasonable notice of the hearing of the application for bail be given to the prosecuting attorney. From this and section 63 of said General Orders, No. 58, it follows that the judge must decide whether the proof is evident or the presumption of guilt is strong, for the ruling to be made will depend upon that decision. This is a ministerial duty. It is indisputably his ministerial duty to grant or deny the motion for freedom on bail; he cannot shirk it. Since he must deny or grant it whether the proof is evident or not, or the presumption of guilt be strong or not, he is likewise ministerially bound to decide which circumstance is present. As far as the principles involved are concerned, there is no difference between refusing to admit a defendant to bail in a capital offense without considering or deciding whether the proof be evident or the presumption of guilt strong, and convicting defendant of the crime charged without considering or deciding whether he is guilty or not. The only difference is the degree of freedom of which he is deprived.

In the case at bar, after counsel presented his petition for provisional liberty on bail and the court, after hearing said counsel and the city fiscal denied the petition on the ground that section 3 of the Jones Law does not authorize the Court of First Instance to admit a defendant to bail who is charged with a capital offense. The record shows that at the hearing of this motion the whole discussion turned on whether, under section 3 of the Jones Law, the court could, in the case at bar, admit the defendant to bail, and upon reaching a negative conclusion, the motion was denied. The ruling was based solely upon the belief that the court could not in any ease set defendant at liberty on bail, and n\$ account was taken of whether the proof was evident or the presumption of guilt strong. The court failed to decide whether one or the other of these circumstances was present. Not even the nature of the offense or the result of the investigation made by the city fiscal was considered.

The object of this application is to require the respondent judge to comply with his ministerial duty of considering and deciding whether the proof is evident or the presumption of guilt is strong against the defendant, for the purpose of granting or denying his provisional liberty. Suppliant does not ask that the matter be decided one way or the other, but simply that it be decided. In other words, it is proposed not to interfere with the judicial discretion to grant or deny the motion for provisional liberty, but to enforce the exercise of said discretion according to the judgment and discretion of the respondent. In this case a judge has declined to make a decision which the law enjoins upon him.

In *Huidekoper vs. Hadley* ([1910], 177 Fed., 1), the court said:

"The rule is well settled and fully recognized by us that when discretion is conferred upon public agents or officers their-acts in the lawful exercise of that discretion cannot be controlled by mandamus. The rule is also well settled that, although the exercise of discretion will not be controlled by mandamus, yet the writ will lie to compel the person or the body in whom the discretion is lodged to proceed to its exercise. In view of these rules, we are of opinion that the discretion which cannot be controlled by mandamus is that discretion, and that only, which the law has vested in the person or body to be exercised. If the law has pointed out how or in what way the discretion shall be exercised, it is obviously not the exercise of the discretion imposed by law to proceed in any other way. To so proceed would be contrary to the law and would be the exercise of arbitrary power rather than discretion. To decline or refuse to proceed according to law or in the way pointed out by law is in our opinion equivalent to not proceeding at all. In other words, the discretion which will withstand review by the courts must be exercised under law and not Contrary to law."

And in *Lamb vs. Phipps* (22 Phil., 456), this court, through a majority, laid down the following rules:

"It is essential to the issuance of a writ of mandamus that the plaintiff have a clear legal right to the thing demanded and it must be the imperative duty of the defendant to perform the act required. It never issues in doubtful cases. While it may not be necessary that the duty be absolutely express, it is necessary that it should be clear. The writ of mandamus will not issue to compel an officer to do anything which it is not his duty to do, or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law. The writ of mandamus neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed."

If, as we hold, the petitioner is entitled to ask for provisional liberty on bail, and if the respondent is peremptorily bound to exercise the judicial discretion conferred upon him by law, it is clear that mandamus will lie to enforce said exercise of judicial discretion.

In view of the facts of record and the oral and written argument of both parties, we are of opinion that the writ prayed for should issue. Wherefore, the respondent judge is hereby ordered to determine whether in the case at bar the proof is evident or the presumption of guilt is strong against the defendant, and to exercise judicial discretion in denying or granting the petition for provisional liberty. Without special pronouncement of costs. So ordered.

Avanceña, C. J., Street, Ostrand, and Villa-Real, JJ., concur.

[1] Babasa vs. Linebarger (12 Phil., 766).

CONCURRING AND DISSENTING

JOHNS, J.:

On the fundamental principle involved, the majority opinion is legally sound.

This is an application for a writ of mandamus, and as a condition precedent to the granting of the writ, the petitioner must both allege and prove that he has a clear legal right to the writ, and he has not alleged or proved any fact from which this court could find, as a matter of law, that he should be admitted to bail, and for want of such allegation or proof, the writ should be denied.

Upon that point, I dissent.

DISSENTING

MALCOLM, J:

The question at issue in these proceedings is whether the provision of the Organic Act "That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses," or the provision of the Code of Criminal Procedure that "All prisoners shall be bailable before conviction, except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong," should be given effect. The difference in phraseology between the two quoted portions of the law will not escape attention, the section of the Code of Criminal Procedure being identical with what is found in most of the State constitutions. To my mind, there can be but one answer to the question, and this is that the Organic Act, being organic, is controlling. As announced in a long series of cases, when the subject matter has been covered by Congressional legislation, this operates as a specific limitation on the legislative power. When the Congress announced that persons shall before conviction be not bailable for capital offenses, that was the end of the matter,

whether right or wrong. The decision in the case of *United States vs. Eabasa* ([1911], 19 Phil., 198), contains nothing to the contrary when closely examined, for that was a case involving the forfeiture of a bond, and the point now under observation was not there considered.

It is, however, argued that because the Organic Act granted jurisdiction to the courts by, in effect, providing that the said jurisdiction could be added to but not diminished, thereby the Code of Criminal Procedure was confirmed. The fallacy in this argument is that the granting of jurisdiction was contained in the same Organic Act which prohibited bail for capital offenses. Since the matter was specifically covered by Congress, any general grant of jurisdiction must be understood as limited by the specific legislation. What the Congress meant was that the courts should continue to exercise the jurisdiction theretofore vested in them, but that this jurisdiction should not extend to the allowance of bail for capital offenses.

In my judgment, Judge Santamaria was right when he denied bail on the ground that, because of the Organic Act, he was without discretion to grant bail for a capital offense.

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