

GREGORIA PAYAO, PETITIONER, VS. JUAN G. LESACA, VACATION JUDGE, COURT OF FIRST INSTANCE OF MASBATE, FIFTEENTH JUDICIAL DISTRICT, RESPONDENT.*G. R. No. 45176. July 22, 1936*

Ponente: LAUREL, J.

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This is a petition filed by the accused in criminal case No. 2418 of the Court of First Instance of Masbate entitled "The People of the Philippine Islands vs. Gregoria Payao", praying for the issuance of a writ of mandamus to compel the respondent Juan G. Lesaca, Vacation Judge of the Court of First Instance of Masbate, to decide whether or not the proof of guilt is evident or the presumption of guilt is strong against the accused, with a view to determining whether the offense with which she is charged is bailable.

It appears from the pleadings that on March 23, 1936, an information charging the petitioner with murder was filed in the justice of the peace court of San Jacinto, Province of Masbate. The justice of the peace, upon motion of the accused, ordered her provisional release upon her filing a bond in the sum of P20,000, and bound the case over to the Court of First Instance of Masbate. On April 6, 1936, the provincial fiscal filed an information accusing the petitioner of the crime of murder committed with the aggravating circumstances of premeditation and treachery, and simultaneously moved for the cancellation of the bond filed with and approved by the justice of the peace of San Jacinto, on the ground that the admission of the accused to bail is contrary to law because it was demonstrated during the preliminary investigation before said justice of the peace that proof of guilt was strong against the accused, and because said provincial fiscal was neither heard nor notified of the hearing of the application for bail. The petitioner filed a written opposition to the motion of the provincial fiscal on April 29, 1936. On May 2, 1936, the respondent judge after hearing the parties,—the petitioner then being represented by Attorney Adolfo Grafilo—granted the motion of the provincial fiscal for the cancellation of the bond filed for the provisional release of the petitioner, and directed her confinement in the provincial jail of Masbate. On May 9, 1936, the petitioner moved for a reconsideration of the foregoing order, praying in the alternative that the court fix anew the amount of the bond for her provisional release. On May 16, 1936, the respondent judge denied the motion for reconsideration and reiterated his previous order for the confinement of the petitioner in jail during the pendency of the case against her.

The petitioner now comes before this court and prays (a) that an order issue directing the respondent judge or any other judge of the Fifteenth Judicial District for the Province of Masbate, who might take cognizance of the criminal case No. 2418 of the Court of First Instance of Masbate, entitled "The People of the Philippine Islands vs. Gregoria Payao", to pass upon the question of whether or not the proof of guilt is evident or the presumption of guilt is strong in said criminal case against the petitioner with a view to ascertaining whether the offense charged against the petitioner is bailable in accordance with existing law and procedure; (6) that in the meantime and before the final determination of this petition for a writ of mandamus, the clerk of the Court of First Instance of Masbate be ordered to refrain from placing the petitioner in jail in compliance with the order of the respondent

dated May 16, 1936, and (c) to grant the petitioner such other relief and remedies which she may be entitled to in the premises.

At the same time that the present petition was filed, the petitioner presented a motion ex-parte for the issuance of a writ of preliminary injunction to restrain the clerk of the Court of First Instance of Masbate from complying with the order of May 16, 1936, pending the final determination of this proceeding. By an order dated May 21, 1936, the Associate Justice acting in vacation denied the issuance of the preliminary writ of injunction prayed for both in the original petition and in the motion ex-parte.

Article III, section 1, paragraph 16, of the Constitution of the Philippines provides:

"All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required"

Section 63, General Orders, No. 58, also provides as follows :

"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."

It is evident from the foregoing that the accused in a criminal case is entitled to bail as a matter of right before conviction except in capital offenses when the evidence of guilt is strong. Where the granting of bail is a matter of judicial discretion, section 66 of General Orders, No. 58 outlines the procedure to be followed in this wise:

"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 promoter fiscal."

In the case at bar, bond for the provisional release of the accused was allowed and approved by the committing magistrate. When the case was elevated to the Court of First Instance which had jurisdiction over the crime charged, the provincial fiscal moved for the cancellation of the bond and put at issue the right of the accused to be admitted to bail. The parties were heard but no evidence was presented or offered by the accused to prove her right to bail upon the facts submitted and under the law applicable thereto. The petitioner, in her petition for bail presented as an alternative to her motion for reconsideration of the order of the respondent judge decreeing the cancellation of the bond previously filed for her provisional release, again failed to make an offer of proof or to introduce evidence at the hearing thereof.

Relying upon the case of *Montalbo vs. Santamaria* ([1930], 54 Phil., 955), petitioner now comes to this court and contends that the respondent should have conducted a judicial investigation to determine whether the evidence of guilt is strong against the accused. Undoubtedly, on proper application, the judge is under a legal obligation to receive evidence with a view to determining whether the evidence of guilt is so strong as, to warrant denial of bond. But where, as in this case, the petitioner neither presented nor offered any evidence when the motion of the provincial fiscal for the cancellation of the bond was heard on May 2, 1936, the judge was justified in exercising his discretion upon the facts available and properly brought to his attention. In such a case, the judicial investigation may consist in the examination of the evidence introduced during the preliminary investigation leading to the filing of the information charging the accused with the commission of a crime. It may also consist in the examination of the evidence in the hands of the prosecuting officer. The explanation offered by counsel for the petitioner in the oral argument regarding the failure of the petitioner to present witnesses was that said witnesses were at the time in Masbate and they were not available in Legaspi, Albay, where the motion for the cancellation of the bond was being heard. The record does not show, however, that the petitioner asked for an opportunity to present witnesses and that such petition was ever denied by the court.

In the case at bar, upon the showing of the provincial fiscal that the result of the preliminary investigation as well

as the evidence in his possession indicated strong evidence of guilt, and in the absence of any proffer of evidence on the part of the accused, the respondent judge did form his conclusion as to whether the offense charged was bailable or not. The respondent in his answer-sets forth at length the reasons why he believed the evidence of guilt to be strong against the accused. In thus cancelling the bond filed by the petitioner for her provisional release and in refusing to grant her bail, the respondent has merely exercised his discretionary authority under the law. (U. S. vs. Babasa [1911], 19 Phil., 198.) It is elementary law that mandamus will not lie to control discretionary action.

The petition is hereby denied with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Recto, JJ., concur.

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