

MARIANO MARCOS, PIO MARCOS AND QUIRINO LIZARDO, PETITIONERS, VS. ROMAN A. CRUZ, JUDGE OF FIRST INSTANCE OF ILOCOS NORTE, RESPONDENT.

G.R. No. 46490. January 24, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In their petition for certiorari and prohibition the petitioners pray that the order of the respondent judge dated December 29, 1938, denying another motion filed by them to be admitted to bail, be set aside, and by way of affirmative relief ask that they be set at liberty upon giving bail in the amount to be fixed.

On December 7, 1938, the provincial fiscal of Laguna, who was assigned as such in Ilocos Norte, filed the following information:

"The undersigned charges Mariano Marcos, Pio Marcos, Ferdinand Marcos, Quirino Lizardo, and John Doe (whose identity has so far not been established), with the crime of murder, committed as follows:

"That on or about the night of September 20, 1935, in the municipality of Batac, Province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused, armed with firearms, acting upon a common understanding and conspiring with one another, wilfully, unlawfully, and feloniously, with treachery, evident premeditation, and intent to kill, fired at Julio Nalundasan, then representative-elect for the second district of Ilocos Norte, hitting him in the right side, the bullet having entered vital internal organs and injuring them, which wounds cause the instant death of said Julio Nalundasan.

"Contrary to law, with the aggravating circumstances of nocturnity and the perpetration of the crime in the home of the deceased.

"Laoag, Ilocos Norte, December 7, 1938.

(Sgd) "HIGINO B. MACADAEG

"Provincial Fiscal for Laguna

with special designation in the
Province of Ilocos Norte

"Witnesses:

"Dr. Ramon Rabago, c/o Phil, Army
Cotabato, Cotabato

"Dr. Domingo Sahonte, c/o Dept. del Interior
Manila, and others"

The information was submitted to the respondent judge who, after examining prosecution witnesses Calixto Aguinaldo and Valentin Rubio, on that very day issued the warrant for the arrest of the accused, stating that from

the testimony of these witnesses it was evident that the crime charged had been committed and that the accused had probably committed it. Being of the opinion that the crime charged was penalized with a capital punishment, and that the accused were not entitled to bail, the court likewise decreed that the accused remain in detention. At the investigation conducted by the respondent judge, where Calixto Aguinaldo and Valentin Rubio testified, the accused were not present, and the whole proceeding took place in their absence. On December 8, 1938, Mariano Marcos moved to be admitted to bail. The motion was set for hearing that same afternoon, which was orally opposed by the fiscal, and without either party adducing any evidence, the motion was submitted. Pio Marcos, Ferdinand Marcos, and Quirino Lizardo on the 12th also moved to be admitted to bail. This motion was set for hearing on the 20th of December, 1938, but at the request of the accused, who wanted to file a supplementary motion, the hearing was postponed till the following day. On December 21st, the four accused filed the supplementary motion, attaching thereto their sworn statements marked A, B, C and D. Here as in the original motion the accused urgently prayed that they be released on bail, and in their sworn statements Mariano Marcos, Ferdinand Marcos and Quirino Lizardo declared that the testimony of Calixto Aguinaldo and Valentin Rubio accusing them of murder was false, and that they were innocent. On December 21st these motions came up for hearing before the respondent judge, Fiscal Macadaeg appearing for the prosecution, and Attorney Vicente J. Francisco for the defense. The latter asked that the prosecution present its evidence to show that the accused fell within the exception of section 1, paragraph 16, Article III of the Constitution, and section 63 of General Orders, No. 58, that is, that they were accused of a capital offense, that the proof of guilt was evident and the presumption of guilt strong. The fiscal refused to do so and contended that under the law the prosecution was not bound to adduce such evidence, that the judge might take into account that adduced during the investigation he had made, and that at any rate it was the defense that was bound to establish the right of the accused to bail. The respondent judge sustained the fiscal and the hearing came to a close without either party adducing any evidence. The motions having thus been submitted, the respondent judge on December 29, 1938 issued an order denying them and ruling that the accused Mariano Marcos, Quirino Lizardo and Pio Marcos were not entitled to bail because they were charged with a capital offense, the proof against them was evident, and the presumption of guilt strong. Prior to this date they had asked for a preliminary investigation. The motion to that effect was denied on the ground that the investigation conducted by the respondent judge before issuing the warrant of arrest was in the nature of a preliminary investigation. Motion for reconsideration was filed, and on December 27, 1938 this motion was likewise denied, but the judge in the same order admitted Ferdinand Marcos to bail on the ground that he was under 18 when the crime was committed, that he was a remarkably bright student of the College of Law in the University of the Philippines, that he would finish his studies the following March, and that he had given assurances, together with his lawyers, that he would not leave the Philippines.

As may be seen, the question of law raised by this petition is whether the accused Mariano Marcos, Pio Marcos, and Quirino Lizardo are entitled to be admitted to bail at this stage of the criminal proceedings, that is, before conviction. Section 1, paragraph 16, Article III of the Constitution, provides:

"(16) 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 of General Orders, No. 58, provides:

"Sec. 63. 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."

Section 63 of General Orders, No. 58, does not run counter to section 1, paragraph 16, Article III of the Constitution, since in this jurisdiction every accused person is bailable before conviction, unless charged with a capital offense, when proof of guilt is evident and presumption of guilt strong (U. S. vs. Babasa, 19 Phil., 198;

Montalbo vs. Santamaria, 54 Phil., 965). When the crime charged is a capital offense, admission to bail lies within the discretion of the court, and depends upon whether the proof is evident and the presumption of guilt strong (Montalbo vs. Santamaria, *supra*).

When the motions filed by the three accused came up for trial, counsel asked that the prosecution adduce its evidence to show whether they fell within the exception, and whether or not they were entitled to bail; but the court upheld the prosecution and declared that the burden of proof was on the accused to show that they were entitled to bail. The controversy thus gave rise to the legal question as to which side bears the burden of proof in such cases. Section 66 of General Orders, No. 58, provides:

"Sec. 66. 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."

It will be seen that this section provides for a hearing of the application for bail, but it says nothing about the party bound to prove the right to bail. The prosecution contends that the burden of proof lies on the accused because they must prove their affirmative allegation that they are entitled to bail and because the filing of the information sets up the presumption of their guilt. The defense contends that since it is the exception to the rule that the accused are not entitled to bail, it is the prosecution, and not the accused, which is bound to prove it.

In the States of the Union there are two tendencies or theories touching the onus probandi where there is a petition to be admitted to bail before conviction of the accused. In some States it has been held that the burden of proof lies on the accused who asked to be admitted to bail because the filing of the indictment raises the presumption of guilt and that the proof against the accused is evident or clear (8 C. J. S., sec. 34, p. 61; *McAdams vs. State*, 147 N. E., 764; 196 Ind., 184; *Ex parte Cooper*, 45 P. [2nd], 584). In *Shaw vs. State* (47 S. W. [3^d], 92; 164 Tenn., 192), the Supreme Court of Tennessee held that in the absence of proof by the petitioner that he is bailable for a capital offense, the indictment raises the presumption of guilt required by the constitutional provision regarding bail. In *State vs. Kutcher* (129 A., 632; 3 N. J., Misc., 636), the Supreme Court of New Jersey held that although the indictment does not raise the presumption of guilt sufficient for the trial on the merits, it does raise that presumption for all intermediate proceedings, such as a petition to be admitted to bail. In *State vs. Lowe* (86 So., 707; 204 Ala., 288), the Supreme Court of the State held that a person under an indictment for a capital offense is presumed guilty to the extent of not being entitled to release on bail.

In other States it has been held that in petitions for admission to bail the burden of proof to show that the accused is not bailable lies on the prosecution (8 C. J. S., sec. 34, p. 61; 6 Am. Jur., par. 25, p. 59; *Ford vs. Dilley*, 156 N. W., 513; 174 Ia., 243; *Ex parte Johnson*, 280 S. W., 702; *Ex parte Dumas*, 7 S. W. [2^d], 90; 110 Tex. Cr., 1; *Ex parte Fleming*, 261 S. W., 1037; 97 Tex. Cr., 304; *Commonwealth vs. Stahl*, 35 S. W. [2^d], 563; 237 Ky., 388; *Ex parte Readhimer*, 60 S. W. [2^d], 788; 123 Tex. Cr., 635; *Ex parte Martin*, 45 S. W. [2^d], 965; 119 Tex. Cr., 141; *Ex parte Landers*, 9 S. W. [2^d], 1106; 110 Tex. Cr., 604; *Ex parte Crawford*, 265 S. W., 906; 98 Tex. Cr., 289; *Ex parte Townsley*, 220 S. W., 1092; 87 Tex. Cr., 252). In *Ford vs. Dilley*, *supra*, the Supreme Court of Iowa held that at a hearing regarding bail the State must begin to adduce evidence if it denies that the offense is bailable. It was stated that since according to the provisions of law the rule is that the accused is bailable, and the exception is that he cannot be admitted to bail, the burden of proving that a case falls within the exception lies on the prosecution opposing the grant of bail.

As may be seen, the fundamental reason the courts had in holding that the accused must prove his right to bail is the presumption of guilt arising from the filing of the indictment. It has further been said that the filing of the indictment likewise destroys the presumption of innocence in favor of the accused. If this theory has some persuasive force, it is due to the procedural system followed in nearly all the States of the Union for securing the indictment. There the district attorney gathers the evidence for the prosecution and presents it before the Grand

Jury, which, after examining it, deliberates upon whether or not to present the indictment. This indictment is presented only after the jury is morally convinced that the crime has been committed and that the accused is guilty. In this jurisdiction there is no jury, and the evidence for the prosecution is gathered and organized by the fiscal, who later files the information. Undoubtedly the legal requirement that the indictment be presented by the jury aims at surrounding the citizen with greater guarantees before being molested with his arrest, preliminary investigation, trial, and the consequent expenses of his defense. This guarantee in favor of the citizen does not exist in our jurisdiction, because we have no jury, for which reason we incline towards the second theory that the filing of the information does not raise the presumption of guilt or destroy the presumption of the defendant's innocence provided for in section 57 of General Orders, No. 58. We therefore hold that when a person accused of a capital offense asks to be admitted to bail before conviction, the burden of proof lies, not on him, but on the prosecution to show that he is not bailable.

It is argued that the respondent judge, before issuing the warrant for the arrest of the accused, examined the two witnesses for the prosecution presented by the fiscal, and that their testimony raised the presumption of the defendants' guilt and supplied the further requirement that proof of guilt must be evident. We cannot give our assent to this contention. It ought not to be forgotten that such testimony was taken in the absence of the accused, and that the latter had no opportunity to see the witnesses testify or to cross-examine them. We are not unmindful of the fact that in *People vs. Solon* (47 Phil., 443), and in *Payao vs. Lesaca* (63 Phil., 210), we said that when the investigation of a criminal case is conducted by a judge of first instance, it includes both the summary investigation spoken of in Act No. 194, as amended by Acts Nos. 1450 and 1627, and the preliminary investigation referred to in section 13 of General Orders, No. 58; and we are aware of the contention of the prosecution that applying the doctrine laid down in those two cases, the evidence adduced before the respondent judge could be used against the accused and in fact established the presumption of guilt. But it must be borne in mind that the hearing required by section 66 of General Orders, No. 58, is essentially different from the preliminary investigation to which every person is entitled who is accused of a crime triable before the Court of First Instance, and that if the prosecution had intended the summary investigation conducted by the respondent judge to be a preliminary investigation, its duty was to summon the accused and adduce its evidence in their presence. Other reasons preventing the consideration of such evidence against the accused are: that the fiscal did not reproduce or offer it at the hearing of the petitions for bail; and that in the sworn statements which the accused attached to their supplementary motion, they denied the imputation of guilt, and rebutted the testimony of Calixto Aguinaldo and Valentin Rubio, which they described as false and improbable. In these circumstances it was the duty of the respondent judge, to require the fiscal to adduce his evidence in order to show that the crime charged was capital, that the proof was evident, and the presumption of guilt strong.

Although the petition filed is entitled certiorari and prohibition, we consider that the proper relief is only the first, since there is no allegation or ground for invoking the second. Certiorari lies in this case because the respondent judge exceeded, as we have pointed out, the discretion conferred upon him by law (section 217, Code of Civil Procedure; *De Castro and Morales vs. Justice of the Peace of Bocaue*, 33 Phil., 595; *Valdez vs. Querubin*, 37 Phil., 774; *Leung Ben vs. O'Brien*, 38 Phil., 182; *Salvador Campos y Cia. vs. Del Rosario*, 41 Phil., 45; *Larrobis vs. Wislizenus and Smith, Bell & Co.*, 42 Phil., 401; *Encarnacion and Navarro vs. Sheriff of Rizal*, 63 Phil., 467; *Carreon vs. Buyson Lampa*, 63 Phil., 449).

Wherefore, let the writ of certiorari issue and the order of December 29, 1938 denying bail to the accused Mariano Marcos, Pio Marcos, and Quirino Lizardo be set aside. The respondent judge, or whoever acts in his stead, shall set the petitions filed by these three accused regarding bail for hearing, at which the fiscal should prove that they fall within the exception and are therefore not entitled to bail because they are charged with a capital offense, the proof is evident, and the presumption of their guilt is strong. The evidence thus adduced may

be rebutted by the accused with other evidence to show their right. Without special award of costs. So ordered.

Avancena, C. J., Villa-Real, Diaz, Concepcion, and Moran, JJ., concur.

Laurel, J., concur in the result.

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