

JOJO PASTOR BRAVO, JR., ETC., PETITIONER, VS. HON. MELECIO B. BORJA, ET AL., RESPONDENTS.

G.R. No. 65228. February 18, 1985

Ponente: PLANA, J.

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PLANA, J.:

In the Regional Trial Court of Naga City, petitioner Jojo Pastor Bravo, Jr., is charged with murder for the killing of one Ramon Abiog (Criminal Case No. 83-184).

Detained in the city jail of Naga after his arrest, petitioner filed a motion for bail based on two reasons: (a) that the evidence against him is not strong in view of the retraction by Ferdinand del Rosario, one of the prosecution witnesses, of his previous statement naming petitioner as the assailant; and (b) that he is a minor of 16 years, entitled as such to a privileged mitigating circumstance under Article 68 of the Revised Penal Code which would make the murder charge against him non-capital.

After a hearing during which the retracting witness (del Rosario) presented by petitioner made another turn-about and declared against the latter, respondent Judge Melecio B. Borja denied the motion for bail on the finding that the evidence of petitioner's guilt is strong and his minority was not proved. Petitioner then filed a motion for reconsideration stating that his minority had been proved by his birth certificate which was attached to the memorandum in support of his motion for bail, showing that he was born on February 26, 1967, that his minority had never been challenged by the fiscal, and that the offense charged, as regards petitioner, is not capital because even if convicted, he could not be sentenced to death because of his minority. Again, attached to the motion for reconsideration was a duly certified copy of petitioner's birth certificate. The Fiscal opposed the motion on the ground that the evidence of guilt is strong, but did not contest the minority of petitioner.

In his order of September 21, 1983, respondent Judge denied the motion for reconsideration.

Failing in his bid for bail, petitioner then filed a motion with the lower court praying that he be placed in the care and custody of the Ministry of Social Services and Development (MSSD) pursuant to Article 191 of Presidential Decree No. 603 (Child and Youth Welfare Code) which provides:

"Care of Youthful Offender Held for Examination or Trial. - A youthful offender held for physical and mental examination or trial or pending appeal, if unable to furnish bail, shall from time to time (sic) of his arrest be committed to the care of the Department of Social Welfare or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance in court whenever required: Provided, That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court may, in its discretion, upon recommendation of the Department of Social Welfare or other agency or agencies authorized by the Court, release a youthful offender on recognizance, to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required."

On September 22, 1983, respondent judge denied the motion for lack of merit. Explaining the denial later, he said

that the quoted Article 191 is not applicable since it could be invoked only where the minor is charged with a bailable offense, as could be gleaned from the phrase "if unable to furnish bail".

On September 22, 1983, the NBI Regional Office at Naga City submitted its report, copy of which was sent to the City Fiscal of Naga. It found that it was the prosecution witness, Ferdinand del Rosario, and not the petitioner, who killed the deceased Ramon Abiog. When the murder case was next called for hearing on October 19, 1983, the defense unilaterally moved orally that the trial of petitioner be reset in order to give the City Fiscal more time to study the NBI report, but the motion was denied as dilatory. Again, on November 2, 1983, petitioner unilaterally filed with the trial court a formal Motion for Reinvestigation praying "that the proceedings be suspended and that the City Fiscal of Naga be ordered to reinvestigate this case." It does not appear what action, if any, the court has taken on this motion. Neither does it appear that the City Fiscal of Naga has taken any move to reinvestigate the case.

Against this factual backdrop, petitioner has filed the instant petition for certiorari and mandamus, with two supplementary petitions, seeking the release of petitioner on bail or his transfer to the custody of the MSSD pending trial pursuant to Article 191 of PD No. 603. In view of the aforesaid NBI report, the petition also seeks the issuance of a writ of mandamus commanding respondent Judge to remand the case to the City Fiscal of Naga for reinvestigation.

The first question to be resolved is whether petitioner is entitled to bail as a matter of right.

Under the Constitution, "all persons, except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties." (Article IV, Section 18.) Generally, therefore, bail is a matter of right before conviction, unless the accused is charged with a capital offense and the evidence of guilt is strong.

The charge against petitioner is murder qualified by treachery and attended by two aggravating circumstances: evident premeditation and nocturnity. Punishable by reclusion temporal in its maximum period to death, the crime is therefore a capital offense.

The petitioner however submits that even assuming that the evidence of guilt against him is strong, the charge of murder, as to him who is only 16 years old, cannot be capital because the death penalty cannot be imposed on account of his minority which entitles him to a penalty reduction of one degree. In effect, under petitioner's submission, the test to determine whether the offense charged is capital, is the penalty to be actually imposed on him in view of the attendant circumstances.

Petitioner's posture hardly finds support in the law. Under Section 5 of Rule 114 of the Rules of Court, a capital offense is "an offense which, under the law existing at the time of its commission, and at the time of the application to be admitted to bail, may be punished by death." It is clear from this provision that the capital nature of an offense is determined by the penalty prescribed by law, with reference to which it is relatively easy to ascertain whether the evidence of guilt against the accused is strong. Moreover, when the Constitution or the law speaks of evidence of guilt, it evidently refers to a finding of innocence or culpability, regardless of the modifying circumstances.

To allow bail on the basis of the penalty to be actually imposed would require a consideration not only of the evidence of the commission of the crime but also evidence of the aggravating and mitigating circumstances. There would then be a need for a complete trial, after which the judge would be just about ready to render a decision in the case. As perceptively observed by the Solicitor General, such procedure would defeat the purpose of bail, which is to entitle the accused to provisional liberty pending trial.

Nevertheless, where it has been established without objection that the accused is only 16 years old, it follows that, if convicted, he would be given "the penalty next lower than that prescribed by law," which effectively rules out the death penalty.

The Constitution withholds the guaranty of bail from one who is accused of a capital offense where the evidence of guilt is strong. The obvious reason is that one who faces a probable death sentence has a particularly strong temptation to flee. This reason does not hold where the accused has been established without objection to be a minor who by law cannot be sentenced to death.

But respondent judge claims that petitioner has not proved his minority. This is inaccurate. In his motion for bail, petitioner alleged that he was a minor of 16 and this averment was never challenged by the prosecution. Subsequently, in his memorandum in support of the motion for bail, petitioner attached a copy of his birth certificate. And finally, after respondent Judge had denied the motion for bail, petitioner filed a motion for reconsideration, attaching thereto a certified true copy of his birth certificate. Respondent Judge however refused to take cognizance of petitioner's unchallenged minority allegedly because the certificate of birth was not offered in evidence. This was error because evidence of petitioner's minority was already a part of the record of the case. It was properly filed in support of a motion. It would be a needless formality to offer it in evidence. Respondent Judge therefore acted with grave abuse of discretion in disregarding it.

"Evidence on motion. - When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions." (Rules of Court, Rule 133, Section 7.)

It results that petitioner is entitled to bail as a matter of right, which makes it unnecessary to decide whether he, being a minor, is entitled to be placed pending trial in the care and custody of the MSSD pursuant to Article 191 of P.D. No. 603.

Turning to the reinvestigation aspect of the petition, the plea therefor must be addressed to the City Fiscal of Naga, who has direction and control of the criminal prosecution and who is the primary official called upon to evaluate the evidence, ascertain the existence of a prima facie case and determine who should be criminally indicted. In case of unjustified refusal by the City Fiscal to conduct a reinvestigation, the proper recourse is to appeal to the Minister of Justice who exercises control and supervision over fiscals.

WHEREFORE, the orders of respondent Judge denying bail to petitioner are set aside. In the interest of dispatch, bail for petitioner is fixed at P15,000.00 and his release is ordered upon the posting thereof and its approval by the trial judge, unless petitioner is held for some other cause. The petition for mandamus to compel reinvestigation of the case is denied. This decision is immediately executory.

SO ORDERED.

Teehankee, (Chairman), Relova, Gutierrez, Jr., De la Fuente, and Alampay, JJ., concur.
Melencio-Herrera, J., in the result.

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