

DIRECTOR J. ANTONIO M. CARPIO OF THE NATIONAL BUREAU OF INVESTIGATION AND PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. JUDGE ROMEO G. MAGLALANG OF REGIONAL TRIAL COURT, BRANCH 2 ...*G.R. No. 78162. April 19, 1991*

Ponente: FERNAN, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-78162/>**FERNAN, C.J.:**

In the instant special civil action for certiorari, petitioner Director of the National Bureau of Investigation (NBI) charges respondent judge with grave abuse of discretion for having granted bail to Benjamin S. Escaño, an accused in the ambush-slaying of Mayor Jose C. Payumo, Jr. of Dinalupihan, Bataan and for having taken petitioner to task for his alleged refusal to release said accused to the custody of the Dinalupihan police.

On December 7, 1986, a few months after the ambush of Mayor Payumo on August 20, 1986, Escaño, assisted by citizens attorney Diosdado S. Savellano, executed before supervising NBI agent Bienvenido G. Gonzales and senior agent Celso P. Abesamis a sworn statement admitting that he was one of the seven persons who gunned down Mayor Payumo in barangay San Jose, Dinalupihan, Bataan; identifying some of his companions as Agerico Cayananda, Ernesto Presto and Alex Serrano, and pointing to Mayor Payumo's political rival, Reynaldo Muli, alias Tikboy, as the person who summoned him to his house to discuss the killing of Mayor Payumo and who gave him P500 before the ambush. [1]

On January 8, 1987, an information for murder[2] was filed against Escaño and ten other unidentified persons by the provincial fiscal in the Regional Trial Court of Bataan at Balanga (Criminal Case No. 4014). Four days later, the Acting Executive Judge of said court issued an order of arrest against Escaño recommending no bail for his provisional liberty.[3] In a certification dated January 14, 1987, NBI agent Gonzales stated that Escaño was placed under arrest and detained at the NBI detention cell by virtue of said order of arrest.[4] Two days later, in his return to the warrant of arrest, patrolman Cesar B. Diego of the Balanga police, informed the court that the NBI refused to turn over to the Balanga police the custody of Escaño because, according to agent Gonzales, Escaño was still under investigation.[5]

On January 20, 1987, through counsel Rolando T. Cainoy, Escaño filed in court an urgent ex-parte motion for his commitment at the provincial jail of Bataan on the ground that he wanted to be where his family and counsel could have easy access to him. He alleged therein that his detention at the NBI headquarters in Manila was irregular and in defiance of the warrant of arrest issued by the court.[6]

In its order of January 27, 1987, the court, claiming that it had acquired jurisdiction over Escaño as early as January 12, 1987, ordered the Director of the National Bureau of Investigation to deliver the person of Escaño to the provincial warden of Bataan within five days from notice.[7]

In his ex-parte motion for the reconsideration of said order, Director Carpio admitted that the court had

jurisdiction over Escaño but alleged that “effective dispensation of justice to the victim dictates that the accused be placed under the physical custody of the National Bureau of Investigation in view of the continuing further investigation pursued by the Bureau on the case”; that the NBI needed physical custody of Escaño for the identification of the other accused in the case who were still the objects of a manhunt by NBI agents; that in view of the finding of NBI agents that the other accused and suspects in the case were subversive elements or members of the New People's Army, it was for the best interest of Escaño that he be detained at the NBI lock-up cell where security measures were adequate; and that the NBI would produce the person of Escaño before the court whenever required and every time that there would be a hearing on the case.[8]

Escaño's counsel opposed said motion for reconsideration alleging that the same was contrary to Escaño's desire to be detained at the Bataan provincial jail; that Escaño had time and again maintained that he had nothing to do with the ambush-slaying and that he had been forced to sign the affidavit (before the NBI agents); that the provincial jail at Bataan had adequate security measures being only a few meters away from the Philippine Constabulary headquarters; and that the NBI's undertaking to take Escaño to the court during hearings would entail a lot of expenses on his part.[9]

On March 11, 1987, Escaño, assisted by Atty. Ignacio M. Jungco, executed another sworn statement before NBI agents Doroteo L. Rocha and Celso P. Abesamis, affirming the contents of his December 7, 1986 statement and stating that he preferred detention at the NBI cell because his life would be endangered at the provincial jail in Balanga.[10]

Six days later, Escaño wrote the presiding judge of the Regional Trial Court Branch II at Balanga stating that he had not authorized Atty. Rolando Cainoy or anybody to represent him and to request the court to transfer him to the provincial jail in Bataan, and reiterating that he preferred to stay at the NBI detention cell for his personal safety in view of his confession which implicated “big names in local politics” in the murder of Mayor Payumo.[11]

Before the court could act on Director Carpio's motion for reconsideration of the order requiring him to transfer custody of Escaño to the Balanga police, Escaño's counsel Rolando T. Cainoy filed an application for bail stating that Escaño was arrested by NBI agents on December 7, 1986 without a warrant having been presented to him and that since then he had been detained in the lock-up cell of the NBI; that said agents, also without a warrant, searched his house when he was arrested; that he was subjected to inhuman torture and forced to admit participation in the killing of Mayor Payumo and to implicate other persons, and that during the custodial investigation, he was not represented by counsel.

In opposing said application, the public prosecutor averred that the accused was charged with a capital offense for which no bail may be availed of; that the reasons advanced in said application would be overcome by strong and sufficient evidence; and that during the custodial investigation, he was represented by counsel.

On April 2, 1987, the court granted the application for bail fixing the same at P30,000. The order reads:

"O R D E R

"Accused Benjamin S. Escaño filed on 5 March through counsel an application for admission to bail and, in support thereof, alleges that —

"(a) As early as 7 December 1986, he had been arrested without benefit of any warrant of arrest and has since then been locked up in the lock-up cell of the National Bureau of Investigation in Manila.

"(b) His house was also searched on the occasion of his arrest without any search warrant by agents of said Bureau.

"(c) On the very date of his forcible arrest without any warrant therefor, he was subjected to inhuman tortures and thereafter made to admit participation in the killing of Mayor Jose Payumo and to implicate persons as responsible for said killing despite his being unaware of said killing or the culprits therein.

"(d) During such custodial investigation, Escaño was not represented by counsel, a violation of his constitutional right.

"(e) The evidence of guilt is not strong.

"In opposition to such application, the public prosecutor countered on 6 March 1987 that -

"(1) The accused is charged with capital offense, for which no bail may be availed of.

"(2) The reasons advanced in said application would be overcome by strong and sufficient evidence to be presented by the prosecution.

"(3) Considering the nature of the offense, bail should not be allowed.

"At the hearing set last 10 March 1987 on said application, the Court set the next day, 11 March 1987, for the reception of evidence by the state to show the strength of its evidence on the guilt of the applying accused. However, such hearing was reset, upon motion of the prosecution on grounds of lack of time to notify its witnesses, to 23 and 27 March 1987. It actually continued on 30 March 1987, after the said two days. The state presented four witnesses — one alleged eyewitness to the killing, two investigators and a lawyer who witnessed the taking of the second written statement appearing to have been given by the applying accused.

"It was agreed between the prosecution and the defense that whatever evidence would be presented during the hearing on the application for bail would be considered as part of the evidence in chief to be adduced later during the trial proper by the state. Hence, a full-dress cross-examination of each of the four witnesses presented by the government was afforded the defense counsel.

"It must be pointed out that, with the approval by the Filipino people of the Constitution of 1986 during the plebiscite held last 2 February 1987, all death penalties already imposed have been reduced, by virtue of Section 19 (1) of Article III thereof, to reclusion perpetua and the death penalty may no longer be imposed, unless, for compelling reasons involving heinous crimes, the Congress shall hereafter provide for it. However, since elections for member of that legislative body have yet to be elected (sic) on 11 May 1987, no such legislation has been — and cannot yet — be expected to be enacted as of the present. Consequently, Section 4 of Rule 114 of the 1985 Rules of Criminal Procedure has been impliedly repealed, and the phrase "a capital offense" in Section 3 of the same Rule has been amended to "reclusion perpetua."

"A careful scrutiny of the evidence adduced by the prosecution convinces the Court that the evidence of guilt as against accused Benjamin S. Escaño is not sufficiently strong as to override his constitutional right to be bailable by sufficient sureties. The very state evidence already presented shows very clearly proof of the allegations in the application for bail, except the charge of inhuman tortures.

"WHEREFORE, the Court hereby grants the application for bail filed by accused Benjamin S. Escaño and fixes the amount thereof at Thirty Thousand Pesos (P30,000), to be posted either in cash or by a surety company enjoying good standing in this Branch of the Court in respect to its obligations in other criminal cases.

"SO ORDERED.

"Done this 2[nd] day of April 1987 at Balanga, Bataan.

Sgd.

ROMEO C. MAGLALANG

J u d g e "[12]

It appears that on April 2, 1987, the Court also required Director Carpio to justify in writing why he should not be punished for contempt within three days from notice. The court was apparently acting on a motion dated February 10, 1987 of Escaño's counsel to cite Director Carpio for contempt of court for allegedly defying the order of January 27, 1987.[13] The motion was opposed by Director Carpio.[14]

However, before the court could rule on the motion for contempt, on April 8, 1987, Judge Alicia L. Santos of the Regional Trial Court, Branch LXXIII at Olongapo City, issued an order approving the bail bond of P30,000 for the provisional release of Escaño.[15] Hence, on April 11, 1987, the NBI released Escaño from its custody.[16]

On April 22, 1987, the court issued the following order:

"O R D E R

"Per order dated 2 April 1987, Director J. Antonio M. Carpio of the National Bureau of Investigation was given three days from notice thereof within which to justify in writing why he should not be punished for contempt of court for his continued disregard of the orders of this Court and defiance of its authority. He received copy of such order on 7 April 1987.

"Although the three-day period granted him expired last 10 April 1987, said Director did not make any explanation of any kind.

"On 14 April 1987 — or four (4) days after the expiration of such period granted — a telegram purported to have been sent to him to this Court, which was received last 15 April 1987, reading thus:

'In re your order dated two 'April 87 personally seen by me due to exigencies April ten aye have directed and (sic) inves-tigation as to why incident mentioned therein prejudicial to administration of justice happened hence need at least fifteen days extension within which to give rational comment justification as required written pleading follows'

"It is quite clear that when the telegram was sent there was no more period to extend, the same having expired four days before. But just the same, said official is given an additional period (not an extension) up to 25 April 1987 for the submission of his written justification.

"Whatever investigation said official intends to make on the matter concerns only the internal administration of his bureau, a matter totally apart from his liability to this Court. However, should he intend to shift the liability to one or some of his subordinates, he must identify him or them by full name(s) and position occupied in the bureau so that they may have their respective share of such liability. Failure to make such particular identification would only result in the Director assuming full responsibility for such disregard and defiance — something characterizing the principle of command responsibility.

"The subject Director should also remind himself of his obligation to produce before this Court on 27 April 1987 the person of the accused Benjamin Escaño for his arraignment.

"The Court makes it very emphatic that it will brook no further withholding on said date by said Director of the production of said accused. No self-serving medical certificate of any supposed illness or any equally self-serving spurious letter supposedly signed by the accused — which flimsy attempts have been resorted to before will be entertained.

"Continued defiance to be resorted to by said Director will only exacerbate his liability already incurred.

"The Court is fully aware that, despite the claim of the subject Director that he fears for the life of the subject accused, if detained in the provincial jail of Bataan at Balanga, his agents have on several occasions brought said

accused to Olongapo City, to Dinalupihan, Bataan (where the alleged murder took place) even after 5:00 P.M. to a private residence there. These facts are part of the evidence already adduced by the prosecution. Just last Tuesday of last week, said accused was brought to Balanga. The only place where the subject accused has not been brought is this Court, despite the fact that the Office of the Provincial Fiscal (where he has been brought) is not more than fifty meters from this Court.

"WHEREFORE, Director J. Antonio M. Carpio of the National Bureau of Investigation is required to seriously consider the foregoing facts and circumstances before continuing his serious affront to the dignity of this Court.

"SO ORDERED.

"Done this 20th day of April 1987 at Balanga, Bataan.

Sgd.

ROMEO C. MAGLALANG

J u d g e "[17]

On April 30, 1987, petitioner Carpio, in his capacity as Director of the NBI, filed the instant special civil action for certiorari. Inasmuch as the People of the Philippines might be prejudiced by the admission to bail of Escaño, on June 27, 1987, the Court required that the People be formally impleaded as petitioner and that the Solicitor General, who appears in criminal cases or their incidents before this Court,[18] should represent both petitioners in this case.

As earlier stated, the instant petition has a two-pronged aim: to nullify the order granting bail to Escaño and to divest the trial court of its jurisdiction over Criminal Case No. 4014 including the contempt incident involving petitioner Carpio.

The order granting bail had been rendered moot not only by the fact that he had been released from NBI custody, but also because Escaño jumped bail and did not appear on the date set for his arraignment. Hence, on May 20, 1987, the lower court ordered the arrest of Escaño and the confiscation of his bail bond, directed the surety company to produce Escaño and to justify why the bond should not be forfeited, and reset the arraignment.[19] On June 22, 1987, noting the non-appearance of the accused "for the reason that according to the INP station commander at Subic Zambales, he (was) in the custody of agents of the National Bureau of Investigation," the court postponed indefinitely the arraignment of Escaño.[20] And, after the surety company had failed to comply with the court's order of May 20, 1987, the court ordered the forfeiture of the bail bond in the amount of P30,000.[21] These facts notwithstanding, we shall resolve the issue of the legality of the order granting bail to Escaño.

Although the right to bail is principally for the benefit of the accused, in the judicial determination of the availability of said right, the prosecution should be afforded procedural due process. Thus, in the summary proceeding on a motion praying for admission to bail, the prosecution should be given the opportunity to present evidence and, thereafter, the court should spell out at least a resume of the evidence on which its order granting or denying bail is based. Otherwise, the order is defective and voidable. In the often-cited decision in *People vs. San Diego*, this Court said: [22]

"The court's discretion to grant bail in capital offenses must be exercised in the light of a summary of the evidence presented by the prosecution; otherwise, it could be uncontrolled and might be capricious or whimsical. Hence, the court's order granting or refusing bail must contain a summary of the evidence for the

prosecution followed by its conclusion whether or not the evidence of guilt is strong. The orders of October 7, 9 and 12, 1968, granting bail to the five defendants are defective in form and substance because they do not contain a summary of the evidence presented by the prosecution. They only contain the court's conclusion that the evidence of guilt is not strong. Being thus defective in form and substance, the orders complained of cannot, also on this ground, be allowed to stand."

A reading of the April 2, 1987 order convinces us that the court below was remiss in its duty as enunciated in *People vs. San Diego*. Without summarizing the factual basis of its order granting bail, the court merely stated the number of prosecution witnesses but not their respective testimonies, and concluded that the evidence presented by the prosecution was not "sufficiently strong" to deny bail to Escaño.

On this point alone, the April 2, 1987 order granting bail Escaño should be invalidated. There is, however, another point which has not escaped the Courts scrutiny. Said order appears to be premised on the notion that since the death penalty has been constitutionally abolished and reclusion perpetua has replaced it, bail may be granted to Escaño inasmuch as at that particular point, no legislative enactment had as yet been made restoring the death penalty. This premise is invalid and reflects the lower court's reckless application of the provisions of the Constitution and the Rules of Court.

Under Rule 114, Section 3[23] of the 1985 Rules on Criminal Procedure, persons charged with a capital offense when the evidence of guilt is strong are not entitled to bail. Section 4 of the same Rule defines a capital offense as "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 with death." It should be noted that the crime involved must be punishable by death during two points of time: the time of its commission and the time of the application for bail.[24]

The facts, however, that Mayor Payumo was killed on August 20, 1986 when the 1973 Constitution allowing the death penalty was still in force and that the application for bail was made on March 5, 1987 during the effectivity of the 1987 Constitution which abolished the death penalty, should not have gotten in the way of resolving the application for bail in accordance with the Constitution and procedural rules.

Section 13, Article III of the Constitution explicitly provides that "(a)ll persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law." As the phrase "capital offenses" has been replaced by the phrase "offenses punishable by reclusion perpetua",[25] crimes punishable by reclusion perpetua instead of those punishable by the death penalty, when evidence of guilt is strong, are the exceptions to the rule that the right to bail should be made available to all accused.[26] As the court itself acknowledged in its order of April 2, 1987 that "capital punishment" in Section 4, Rule 114 has been amended to reclusion perpetua, the court should have proceeded accordingly: i.e., resolved the application for bail pursuant to Section 13, Article III of the Constitution. It did not have to invoke the abolition of the death penalty and the lack of legislative enactment restoring it in justifying the grant of bail. All it had to do was to determine whether evidence of guilt is strong in the light of the provision of Section 13, Article III.

Undeniably, the lower court has the discretion in the consideration of the strength of the evidence at hand. However, in the exercise of said discretion, the court is controlled by the following: first, the applicable provisions of the Constitution and the statutes; second, by the rules which this Court may promulgate; and third, by those principles of equity and justice that are deemed to be part of the laws of the land.[27] The lower court not only failed to properly apply the pertinent provisions of the Constitution and the Rules but it also disregarded equity and justice by its failure to take into account the factual milieu surrounding the detention of Escaño.

The NBI, through Director Carpio, wanted to keep Escaño in its custody because he was an asset in their effort to

track down the other suspects in the ambush-slaying of Mayor Payumo. Admittedly, Director Carpio had failed to comply immediately with the lower court's order of January 27, 1987 requiring him to deliver custody of Escaño to the Bataan provincial warden. However, the court should not have precipitately taken it as a brazen defiance as to warrant a strongly worded order merely warning Director Carpio to obey its directives. It should have taken into account certain factors like the distance between the court and the NBI headquarters which appears to have hampered communication between them and that, as a government agency performing a task towards the same goal as the courts, the NBI would perform its functions within the bounds of law.

The court's later insistence in effecting such transfer of custody, notwithstanding the reasons given by Director Carpio in his motion for reconsideration which reasons appear to this Court to be reasonable, constitutes a flagrant attempt to thwart the NBI's efforts to investigate the case and to identify all the suspects in the crime. Considering that both the court and the NBI were working toward the same end, to bring to justice the killers of Mayor Payumo, the court could do no less than give due credit to Director Carpio's allegations if not the respect due a fellow worker for justice.

But as it were, the tug and pull between the lower court and the NBI over the custody of Escaño became a battle of wills with the People as the eventual loser. While the NBI had its own shortcomings by its failure to give immediate attention to the court's orders and even to inform the court that Escaño had been released on bail, which practices this Court cannot condone, the lower court, which is supposed to be beyond reproach, displayed an uncharacteristic propensity to prejudge even before the actual occurrence of facts as demonstrated by its order of April 20, 1987. Indeed, the court might not have in fact cited Director Carpio in contempt of court but the manner by which he took him to task and warned him in said order was totally uncalled for.

WHEREFORE, the orders of April 2, 1987 and April 20, 1987 are hereby declared void for having been issued in grave abuse of discretion. Criminal Case No. 4014 shall be transferred to the Regional Trial Court in Dinalupihan, Bataan pursuant to the resolution dated March 10, 1987 in Administrative Matter No. 87-3-381-RTC.[28] Said court shall immediately issue a warrant for the rearrest of Benjamin S. Escaño and thereafter, proceed with dispatch in the disposition of said case. This decision is immediately executory.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

[1] Rollo, pp. 11-16.

[2] Ibid., p. 8.

[3] Ibid., p. 10.

[4] Ibid., p. 88.

[5] Ibid., p. 87.

[6] Ibid., pp. 89-90.

[7] Ibid., p. 93.

[8] Ibid., pp. 96-97.

[9] Ibid., pp. 100-101.

[10] Ibid., p. 18.

[11] Ibid., p. 23.

[12] Ibid., pp. 20-21.

[13] Ibid. p. 94.

[14] Ibid., p. 98.

[15] Ibid., p. 22.

[16] Ibid., p. 122.

[17] Ibid., pp. 24-25.

[18] See: *People v. Dacudao*, G.R. No. 81389, February 21, 1989, 170 SCRA 487, 493.

[19] *Rollo*, p. 128.

[20] Ibid., p. 130.

[21] Ibid., p. 129.

[22] L-29676, December 24, 1968, 26 SCRA 522,524.

[23] As amended in 1988, Section 3 now reads:

"SEC. 3. Bail, a matter of right; exception. — All persons in custody shall, before final conviction, be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by reclusion perpetua, when evidence of guilt is strong."

[24] This provision is reproduced in the 1988 amendment of Rule 114.

[25] *People v. Dacudao*, *supra*.

[26] In view of the jurisprudence that the capital nature of the offense is determined by the penalty prescribed by law and not the penalty actually imposed on the accused (*Bravo, Jr. vs. Borja*, G.R. No. 65228, February 18, 1985, 134 SCRA 466), it appears that there are now two kinds of reclusion perpetua: that which is prescribed by the Revised Penal Code and that which under the Constitution should be imposed in view of the abolition of the death penalty. To the first kind belong the crimes of simple rape (Art. 335), mutilation (Art. 262) and destructive arson (Art. 320). To the second kind may be categorized the penalty actually imposed for the complex crimes of rape with homicide, rape with the use of a deadly weapon or when committed by two or more persons, attempted or frustrated rape with homicide (Art. 335) and murder (Art. 248).

The basic rule that the right to bail must be made available to "all persons" (*Herras Teehankee vs. Rovira*, 75 Phil. 634) may somehow be further delimited if no distinction be made on the two kinds of reclusion perpetua in relation to said right. However, the discussion on the issue in this case may turn out to be merely academic as the same was not raised in the pleadings.

[27] *Herras Teehankee v. Director of Prisons*, *supra*; *People v. Alano*, 81 Phil. 19.

[28] The resolution places the municipalities of Dinalupihan and Hermosa under the administrative jurisdiction of the Regional Trial Court, Branch 5 at Dinalupihan. It also states that cases which should legally be within said court's jurisdiction but were still under the Balanga courts shall, if trial therein has not yet commenced, be

transferred to the Dinalupihan court.

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