

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. PROCORO J. DONATO, IN HIS OFFICIAL CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH XII, MANILA; RODOLFO C. SALAS, ALIAS...

G.R. No. 79269. June 05, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The People of the Philippines, through the Chief State Prosecutor of the Department of Justice, the City Fiscal of Manila and the Judge Advocate General, filed the instant petition for certiorari and prohibition, with a prayer for restraining order/preliminary injunction, to set aside the order of respondent Judge dated July 7, 1987 granting bail to the accused Rodolfo Salas alias "Commander Bilog" in Criminal Case No. 86-48926 for Rebellion,[1] and the subsequent Order dated July 30, 1987 granting the motion for reconsideration of 16 July 1987 by increasing the bail bond from P30,000.00 to P50,000.00 but denying petitioner's supplemental motion for reconsideration of July 17, 1987 which asked the court to allow petitioner to present evidence in support of its prayer for a reconsideration of the order of 7 July 1987.

The pivotal issues presented before Us are whether the right to bail may, under certain circumstances, be denied to a person who is charged with an otherwise bailable offense, and whether such right may be waived.

The following are the antecedents of this petition:

In the original Information[2] filed on 2 October 1986 in Criminal Case No. 86-48926 of the Regional Trial Court of Manila, later amended in an Amended Information[3] which was filed on 24 October 1986, private respondent Rodolfo Salas, alias "Commander Bilog", and his co-accused were charged for the crime of rebellion under Article 134, in relation to Article 135, of the Revised Penal Code allegedly committed as follows:

"That in or about 1968 and for some time before said year and continuously thereafter until the present time, in the City of Manila and elsewhere in the Philippines, the Communist Party of the Philippines, its military arm, the New People's Army, its mass infiltration network, the National Democratic Front with its other subordinate organizations and fronts, have, under the direction and control of said organizations' leaders, among whom are the aforementioned accused, and with the aid, participation or support of members and followers whose whereabouts and identities are still unknown, risen publicly and taken arms throughout the country against the Government of the Republic of the Philippines for the purpose of overthrowing the present Government, the seat of which is in the City of Manila, or of removing from the allegiance to that government and its laws, the country's territory or part of it;

That from 1970 to the present, the above-named accused in their capacities as leaders of the aforementioned organizations, in conspiracy with, and in support of the cause of, the organizations aforementioned, engaged themselves in war against the forces of the government, destroying property or committing serious violence, and other acts in the pursuit of their unlawful purpose, such as x x x."

(then follows the enumeration of specific acts committed before and after February 1986).

At the time the Information was filed the private respondent and his co-accused were in military custody following their arrest on 29 September 1986 at the Philippine General Hospital, Taft Ave., Manila; he had earlier escaped from military detention and a cash reward of P250,000.00 was offered for his capture.[4]

A day after the filing of the original information, or on 3 October 1986, a petition for habeas corpus for private respondent and his co-accused was filed with this Court[5] which, as shall hereafter be discussed in detail, was dismissed in Our resolution of 16 October 1986 on the basis of the agreement of the parties under which herein private respondent "will remain in legal custody and will face trial before the court having custody over his person" and the warrants for the arrest of his co-accused are deemed recalled and they shall be immediately released but shall submit themselves to the court having jurisdiction over their person.

On November 7, 1986, private respondent filed with the court below a Motion to Quash the Information alleging that: (a) the facts alleged do not constitute an offense; (b) the Court has no jurisdiction over the offense charged; (c) the Court has no jurisdiction over the persons of the defendants; and (d) the criminal action or liability has been extinguished,[6] to which petitioner filed an Opposition[7] citing, among other grounds, the fact that in the Joint Manifestation and Motion dated October 14, 1986, in G. R. No. 76009, private respondent categorically conceded that:

x x x

"Par. 2(b) - Petitioner Rodolfo Salas will remain in legal custody and face trial before the court having custody over his person."

In his Order of March 6, 1987,[8] respondent Judge denied the motion to quash.

Instead of asking for a reconsideration of said Order, private respondent filed on 9 May 1987 a petition for bail,[9] which herein petitioner opposed in an Opposition filed on 27 May 1987[10] on the ground that since rebellion became a capital offense under the provisions of P.D. Nos. 1996, 942 and 1834, which amended Article 135 of the Revised Penal Code, by imposing the penalty of reclusion perpetua to death on those who promote, maintain, or head a rebellion, the accused is no longer entitled to bail as evidence of his guilt is strong.

On 5 June 1987 the President issued Executive Order No. 187 repealing, among others, P.D. Nos. 1996, 942 and 1834 and restoring to full force and effect Article 135 of the Revised Penal Code as it existed before the amendatory decrees. Thus, the original penalty for rebellion, prision mayor and a fine not to exceed P20,000.00, was restored.

Executive Order No. 187 was published in the Official Gazette in its June 15, 1987 issue (Vol. 83, No. 24) which was officially released for circulation on June 26, 1987.

In his Order of 7 July 1987,[11] respondent Judge, taking into consideration Executive Order No. 187, granted private respondent's petition for bail, fixed the bail bond at P30,000.00 and imposed upon private respondent the additional condition that he shall report to the court once every two (2) months within the first ten (10) days of every period thereof. In granting the petition respondent Judge stated:

"x x x There is no more debate that with the effectivity of Executive Order No. 187, the offense of rebellion, for which accused Rodolfo Salas is herein charged, is now punishable with the penalty of prision mayor and a fine not exceeding P20,000.00, which makes it now bailable pursuant to Section 13, Article III, 1986 Constitution and Section 3, Rule 114, 1985 Rules of Criminal Procedure. Unlike the old rule, bail is now a matter of right in non-capital offenses before final judgment. This is very evident upon a reading of Section 3, Rule 114, aforementioned, in relation to Section 21, same rule. In view, therefore, of the present circumstances

in this case, said accused-applicant is now entitled to bail as a matter of right inasmuch as the crime of rebellion ceased to be a capital offense."

As to the contention of herein petitioner that it would be dangerous to grant bail to private respondent considering his stature in the CPP-NPA hierarchy, whose ultimate and overriding goal is to wipe out all vestiges of our democracy and to replace it with their ideology, and that his release would allow his return to his organization to direct its armed struggle to topple the government before whose courts he invokes his constitutional right to bail, respondent Judge replied:

"True, there now appears a clash between the accused's constitutional right to bail in a non-capital offense, which right is guaranteed in the Bill of Rights and, to quote again the prosecution, 'the existence of the government that bestows the right, the paramount interest of the state.' Suffice to state that the Bill of Rights, one of which is the right to bail, is a 'declaration of the rights of the individual, civil, political and social and economic, guaranteed by the Constitution against impairment or intrusion by any form of governmental action. Emphasis is placed on the dignity of man and the worth of individual. There is recognition of certain inherent and inalienable rights of the individual, which the government is prohibited from violating' (Quisumbing-Fernando, Philippine Constitutional Law, 1984 Edition, p. 77). To this Court, in case of such conflict as now pictured by the prosecution, the same should be resolved in favor of the individual who, in the eyes of the law, is alone in the assertion of his rights under the Bill of Rights as against the State. Anyway, the government is that powerful and strong, having the resources, manpower and the wherewithals to fight those 'who oppose, threaten (sic) and destroy a just and orderly society and its existing civil and political institutions.' The prosecution's fear may or may not be founded that the accused may later on jump bail and rejoin his comrades in the field to sow further disorders and anarchy against the duly constituted authorities. But, then, such a fear can not be a reason to deny him bail. For the law is very explicit that when it comes to bailable offenses an accused is entitled as a matter of right to bail. *Dura est lex sed lex.*"

In a motion to reconsider^[12] the above order filed on 16 July 1987, petitioner asked the court to increase the bail from P30,000.00 to P100,000.00 alleging therein that per Department of Justice Circular No. 10 dated 3 July 1987, the bail for the provisional release of an accused should be in an amount computed at P10,000.00 per year of imprisonment based on the medium penalty imposable for the offense and explaining that it is, recommending P100,000.00 because the private respondent "had in the past escaped from the custody of the military authorities and the offense for which he is charged is not an ordinary crime, like murder, homicide or robbery, where after the commission, the perpetrator has achieved his end" and that "the rebellious acts are not consummated until the well-organized plan to overthrow the government through armed struggle and replace it with an alien system based on a foreign ideology is attained."

On 17 July 1987, petitioner filed a supplemental motion for reconsideration^[13] indirectly asking the court to deny bail to the private respondent and to allow it to present evidence in support thereof considering the "inevitable probability that the accused will not comply with this main condition of his bail - to appear in court for trial," a conclusion it claims to be buttressed "by the following facts which are widely known by the People of the Philippines and which this Honorable Court may have judicial notice of:

1. The accused has evaded the authorities for thirteen years and was an escapee from detention when arrested;
2. He was not arrested at his residence as he had no known address;
3. He was using the false name "Manuel Mercado Castro" at the time of his arrest and presented a Driver's License to substantiate his false identity;
4. The address he gave "Panamitan, Kawit, Cavite," turned out to be also a false address;
5. He and his companions were on board a private vehicle with a declared owner whose identity and address

were also found to be false;

6. Pursuant to Ministry Order No. 1-A dated 11 January 1982, a reward of P250,000.00 was offered and paid for his arrest,"

which "clearly indicate that the accused does not entertain the slightest intention to appear in court for trial, if released." Petitioner further argues that the accused, who is the Chairman of the Communist Party of the Philippines and head of its military arm, the NPA, together with his followers, are now engaged in an open warfare and rebellion against this government and threatens the existence of this very Court from which he now seeks provisional release," and that while he is entitled to bail as a matter of right in view of Executive Order No. 187 which restored the original penalty for rebellion under Article 135 of the Revised Penal Code, yet, when the interest of the State conflicts with that of an individual, that of the former prevails for "the right of the State of self-preservation is paramount to any of the rights of an individual enshrined in the Bill of Rights of the Constitution." Petitioner further invokes precedents in the United States of America holding "that there is no absolute constitutional barrier to detention of potentially dangerous resident aliens pending deportation proceedings,[14] and that an arrestee may be incarcerated until trial as he presents a risk of flight;[15] and sustaining a detention prior to trial of arrestee charged with serious felonies who are found after an adversary hearing to pose threat to the safety of individuals and to the community which no condition of release can dispel." [16]

On 30 July 1987 respondent Judge handed down the Order[17] adverted to in the introductory portion of this decision the dispositive portion of which reads:

"WHEREFORE, in the light of the foregoing considerations, the Court finds the 'supplemental' motion for reconsideration to be without merit and hereby denies it but finds the first motion for reconsideration to be meritorious only insofar as the amount of bail is concerned and hereby reconsiders its Order of July 7, 1987 only to increase the amount of bail from P30,000.00 to P50,000.00, subject to the approval of this Court, and with the additional condition that accused Rodolfo Salas shall report to the court once every two (2) months within the first ten (10) days of every period thereof (Almendras vs. Villaluz, et al., L-31665, August 6, 1975, 66 SCRA 58)."

In denying the supplemental motion for reconsideration the respondent Judge took into account the "sudden turn-about" on the part of the petitioner in that a day earlier it filed a motion for reconsideration wherein it conceded the right of the private respondent to bail but merely asked to increase the amount of bail; observed that it is only a reiteration of arguments in its opposition to the petition for bail of 25 May 1987; asserted that the American precedents are not applicable since the cases involved deportation of aliens and, moreover, the U.S. Federal Constitution does not contain a proviso on the right of an accused to bail in bailable offenses, but only an injunction against excessive bail; and quoted the concurring opinion of the late Justice Pedro Tuason in the cases of Nava, et al. vs. Gatmaitan, L-4853, Hernandez vs. Montesa, L-4964 and Angeles vs. Abaya, L-5108, October 11, 1951, 90 Phil 172.

Unable to agree with said Order, petitioner commenced this petition submitting therein the following issues:

"THE HONORABLE RESPONDENT JUDGE PROCORO J. DONATO ACTED WITH GRAVE ABUSE OF DISCRETION AND IN EXCESS OF HIS JURISDICTION, AND IN TOTAL DISREGARD OF THE PREVAILING REALITIES, WHEN HE DENIED PETITIONER'S SUPPLEMENTAL MOTION FOR RECONSIDERATION WITH PRAYER TO BE GIVEN THE OPPORTUNITY TO ADDUCE EVIDENCE IN SUPPORT OF ITS OPPOSITION TO THE GRANT OF BAIL TO THE RESPONDENT RODOLFO SALAS.

THE HONORABLE RESPONDENT JUDGE PROCORO J. DONATO ACTED WITH GRAVE ABUSE OF

DISCRETION AND IN EXCESS OF HIS JURISDICTION WHEN HE GRANTED BAIL TO THE RESPONDENT RODOLFO SALAS."

in support of which petitioner argues that private respondent is estopped from invoking his right to bail, having expressly waived it in G. R. No. 76009 when he agreed to "remain in legal custody and face trial before the court having custody of his person" in consideration of the recall of the warrant of arrest for his co-petitioners Josefina Cruz and Jose Concepcion; and the right to bail, even in non-capital offenses, is not absolute when there is prima facie evidence that the accused is a serious threat to the very existence of the State, in which case the prosecution must be allowed to present evidence for the denial of bail. Consequently, respondent Judge acted with grave abuse of discretion when he did not allow petitioner to present all the evidence it may desire to support its prayer for the denial of bail and when he declared that the State has forfeited its right to do so since during all the time that the petition for bail was pending, it never manifested, much less hinted, its intention to adduce such evidence. And that even if release on bail may be allowed, respondent judge, in fixing the amount of bail at P50,000.00 (originally P30,000.00 only), failed to take into account the lengthy record of private respondents' criminal background, the gravity of the pending charge, and the likelihood of flight.[18]

In Our resolution of 11 August 1987[19] We required the respondents to comment on the petition and issued a Temporary Restraining Order ordering respondent Judge to cease and desist from implementing his order of 30 July 1987 granting bail to private respondent in the amount of P50,000.00.

In his Comment filed on 27 August 1987,[20] private respondent asks for the outright dismissal of the petition and immediate lifting of the temporary restraining order on the following grounds:

I.

RESPONDENT SALAS NEVER WAIVED HIS RIGHT TO BAIL; NEITHER IS HE ESTOPPED FROM ASSERTING SAID RIGHT. ON THE CONTRARY IT IS PETITIONER WHO IS ESTOPPED FROM RAISING THE SAID ISSUE FOR THE FIRST TIME ON APPEAL.

II.

RESPONDENT SALAS ENJOYS NOT ONLY THE CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT BUT ALSO THE RIGHT TO BAIL.

III.

RESPONDENT SALAS IS NOT CHARGED WITH A CAPITAL OFFENSE (RECLUSION PERPETUA), HENCE HE HAS THE RIGHT TO BAIL AS MANDATED BY THE CONSTITUTION.

IV.

THE ORDER OF JULY 30, 1987 DENYING PETITIONER OPPORTUNITY TO PRESENT EVIDENCE IS CORRECT. PETITIONER'S ALLEGED RIGHT TO PRESENT EVIDENCE IS NON-EXISTENT AND/OR HAD BEEN WAIVED.

V.

THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER IN THIS CASE VIOLATES NOT ONLY RESPONDENT SALAS' RIGHT TO BAIL BUT ALSO HIS OTHER CONSTITUTIONAL RIGHT TO DUE PROCESS.

We required the petitioner to reply to the comment of private respondent.[21] The reply was filed on 18

September 1987.[22]

In Our resolution of 15 October 1987[23] We gave due course to the petition and required the parties to file simultaneously their memoranda within twenty days from notice.

In their respective manifestations and motions dated 5 November[24] and 23 November 1987[25] petitioner and private respondents asked to be excused from filing their Memoranda and that the petition and reply be considered as the Memorandum for petitioner and the Comment as the Memorandum for private respondent, which We granted in Our resolutions of 19 November 1987[26] and 1 December 1987,[27] respectively.

In Our resolution of 14 September 1989 We required the Solicitor General to express his stand on the issues raised in this petition,[28] which he complied with by filing his Manifestation on 30 May 1990[29] wherein he manifests that he supports the petition and submits that the Order of respondent Judge of July 7, July 17 and July 30, 1987 should be annulled and set aside asserting that private respondent had waived the right to bail in view of the agreement in G. R. No. 76009; that granting bail to him is accepting wide-eyed his undertaking which he is sure to break; in determining bail, the primary consideration is to insure the attendance of the accused at the trial of the case against him, which would be frustrated by the "almost certainty that respondent Salas will jump bail of whatever amount"; and application of the guidelines provided for in Section 10 of Rule 114, 1985 Rules on Criminal Procedure on the amount of bail dictates denial of bail to private respondent. The Solicitor General likewise maintains that the right of the petitioner to hearing on the application of private respondent for bail cannot be denied by respondent Judge.

And now on the issues presented in this case.

I.

Unquestionably, at the time the original and the amended Informations for rebellion and the application for bail were filed before the court below the penalty imposable for the offense for which the private respondent was charged was reclusion perpetua to death. During the pendency of the application for bail Executive Order No. 187 was issued by the President, by virtue of which the penalty for rebellion as originally provided for in Article 135 of the Revised Penal Code was restored. The restored law was the governing law at the time the respondent court resolved the petition for bail.

We agree with the respondent court that bail cannot be denied to the private respondent for he is charged with the crime of rebellion as defined in Article 134 of the Revised Penal Code to which is attached the penalty of prision mayor and a fine not exceeding P20,000.00.[30] It is, therefore, a bailable offense under Section 13 of Article III of the 1987 Constitution which provides thus:

"Sec. 13. All 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 prescribed by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required."

Section 3, Rule 114 of the Rules of Court, as amended, also provides:

"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."

Therefore, before conviction bail is either a matter of right or of discretion. It is a matter of right when the offense

charged is punishable by any penalty lower than reclusion perpetua.[31] To that extent the right is absolute.[32]

And so, in a similar case for rebellion, *People vs. Hernandez, et al.*, 99 Phil 515, despite the fact that the accused was already convicted, although erroneously, by the trial court for the complex crime of rebellion with multiple murders, arsons and robberies, and sentenced to life imprisonment, We granted bail in the amount of P30,000.00 during the pendency of his appeal from such conviction. To the vigorous stand of the People that We must deny bail to the accused because the security of the State so requires, and because the judgment of conviction appealed from indicates that the evidence of guilt of Hernandez is strong, We held:

"x x x Furthermore, individual freedom is too basic, too transcendental and vital in a republican state, like ours, to be derived upon mere general principles and abstract consideration of public safety. Indeed, the preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said section (1) to the protection of several aspects of freedom."

The 1987 Constitution strengthens further the right to bail by explicitly providing that it shall not be impaired even when the privilege of the writ of habeas corpus is suspended. This overturns the Court's ruling in *Garcia-Padilla vs. Enrile et al.*, *supra.*, to wit:

"The suspension of the privilege of the writ of habeas corpus must, indeed, carry with it the suspension of the right to bail, if the government's campaign to suppress the rebellion is to be enhanced and rendered effective. If the right to bail may be demanded during the continuance of the rebellion, and those arrested, captured and detained in the course thereof will be released, they would, without the least doubt, rejoin their comrades in the field thereby jeopardizing the success of government efforts to bring to an end the invasion, rebellion or insurrection."

Upon the other hand, if the offense charged is punishable by reclusion perpetua bail becomes a matter of discretion. It shall be denied if the evidence of guilt is strong. The court's discretion is limited to determining whether or not evidence of guilt is strong.[33] But once it is determined that the evidence of guilt is not strong, bail also becomes a matter of right. In *Teehankee vs. Director of Prisons*, *supra.*, We held:

"The provision on bail in our Constitution is patterned after similar provisions contained in the Constitution of the United States and that of many states of the Union. And it is said that:

"The Constitution of the United States and the constitution of the many states provide, that all persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption of guilt is great, and, under such provisions, bail is a matter of right which no court or judge can properly refuse, in all cases not embraced in the exceptions. Under such provisions bail is a matter of right even in cases of capital offenses, unless the proof of guilt is evident or the presumption thereof is great!"[34]

Accordingly, the prosecution does not have the right to present evidence for the denial of bail in the instances where bail is a matter of right. However, in the cases where the grant of bail is discretionary, due process requires that the prosecution must be given an opportunity to present, within a reasonable time, all the evidence that it may desire to introduce before the court should resolve the motion for bail.[35]

We agree, however, with petitioner that it was error for the respondent court to fix the bond at P30,000.00, then later at P50,000.00 without hearing the prosecution. The guidelines for the fixing of the amount of bail provided for in Section 10 of Rule 114 of the Rules of Court are not matters left entirely to the discretion of the court. As We stated in *People vs. Dacudao, et al.*, 170 SCRA, 489, 495:

"Certain guidelines in the fixing of a bailbond call for the presentation of evidence and reasonable opportunity

for the prosecution to refute it. Among them are the nature and circumstances of the crime, character and reputation of the accused, the weight of the evidence against him, the probability of the accused appearing at the trial, whether or not the accused is a fugitive from justice, and whether or not the accused is under bond in other case x x x."

In the instant case petitioner has sufficiently made out allegations which necessitate a grant of an opportunity to be heard for the purpose of determining the amount of bail, but not for the denial thereof because aforesaid Section 10 of Rule 114 does not authorize any court to deny bail.

II.

It must, however, be stressed that under the present state of the law, rebellion is no longer punishable by prison mayor and fine not exceeding P20,000.00. Republic Act No. 6968 approved on 24 October 1990 and which took effect after publication in at least two newspapers of general circulation, amended, among others, Article 135 of the Revised Penal Code by increasing the penalty for rebellion such that, as amended, it now reads:

"Article 135. Penalty for rebellion, insurrection or coup d'etat. - Any person who promotes, maintains, or heads a rebellion or insurrection shall suffer the penalty of reclusion perpetua.

"Any person merely participating or executing the commands of others in a rebellion or insurrection shall suffer the penalty of reclusion perpetua."

x x x

This amendatory law cannot apply to the private respondent for acts allegedly committed prior to its effectivity. It is not favorable to him. "Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same." [36]

III.

We agree with Petitioner that private respondent has, however, waived his right to bail in G. R. No. 76009.

On 3 October 1986, or the day following the filing of the original information in Criminal Case No. 86-48926 with the trial court, a petition for habeas corpus for herein private respondent, and his co-accused Josefina Cruz and Jose Concepcion, was filed with this Court by Lucia Cruz, Aida Concepcion Paniza and Beatriz Salas against Juan Ponce Enrile, Gen. Fidel Ramos, Brig. Gen. Renato de Villa, Brig. Gen. Ramon Montano, and Col. Saldajeno praying, among others, that the petition be given due course and a writ of habeas corpus be issued requiring respondents to produce the bodies of herein private respondent and his co-accused before the Court and explain by what authority they arrested and detained them. The following proceedings took place thereafter in said case:

1. In a resolution of 7 October 1986 We issued a writ of habeas corpus, required respondents to make a return of the writ on or before the close of office hours on 13 October and set the petition for hearing on 14 October 1986 at 10:00 o'clock in the morning.

2. On 13 October 1986 respondents, through the Office of the Solicitor General, filed a Return To The Writ of Habeas Corpus alleging therein that private respondent and Josefina Cruz alias "Mrs. Mercado", and Jose Milo Concepcion alias "Eugene Zamora" were apprehended by the military on September 29, 1986 in the evening at the Philippines General Hospital Compound at Taft Ave., Manila, being leaders or members of the Communist Party of the Philippines, New People's Army and National Democratic Front, organizations dedicated to the

overthrow of the Government through violent means, and having actually committed acts of rebellion under Article 134 of the Revised Penal Code, as amended. After their arrest they were forthwith charged with rebellion before Branch XII of the Regional Trial Court, National Capital Region in Criminal Case No. 86-48926 and on 3 October warrants for their arrest were issued and respondents continue to detain them because of the warrants of arrest and the pendency of the criminal cases against them. Respondents further allege that, contrary to the allegation in the petition, herein private respondent was not a member of the NDF panel involved in peace negotiations with the Government; neither is he and his companions Cruz and Concepcion covered by any safe conduct pass issued by competent authorities.

3. At the hearing on 14 October 1986 the parties informed the Court of certain agreements reached between them. We issued a resolution reading as follows:

"When this case was called for hearing this morning, Attorneys Romeo Capulong; Arno V. Sanidad, Efren H. Mercado, Edgardo Pamintuan, Casiano Sabile, Ramon Cura, and William Chua appeared for the petitioners with Atty. Capulong arguing for the petitioners. Solicitor General Sedfrey Ordoñez, Assistant Solicitor General Romeo C. de la Cruz and Trial Attorney Josue E. Villanueva appeared for the respondents, with Solicitor General Ordoñez arguing for the respondents.

Petitioners' counsel, Atty. Romeo Capulong, manifested in open Court that in conformity with the agreement reached with the government, the petition for habeas corpus will be withdrawn with detainee Rodolfo Salas to remain under custody, whereas his co-detainees Josefina Cruz and Jose Milo Concepcion will be released immediately.

Solicitor General Sedfrey Ordoñez, also in open Court, confirmed the foregoing statement made by petitioners' counsel regarding the withdrawal of the petition for habeas corpus, declaring that no objection will be interposed to the immediate release of detainees Josefina Cruz and Jose Milo Concepcion, and that no bond will be required of them, but they will continue to face trial with their co-accused, Rodolfo Salas; further, that they will not be rearrested on the basis of the warrants issued by the trial court provided that they manifest in open Court their willingness to subject themselves to the jurisdiction of the Court and to appear in court when their presence is required.

In addition, he stated that he is willing to confer with petitioners' counsel today relative to the compromise agreement that they have previously undertaken to submit.

Upon manifestation of petitioners' counsel, Atty. Romeo Capulong, that on his oath as member of the Bar, the detainees Josefina Cruz and Jose Milo Concepcion have agreed to subject themselves to the jurisdiction of the trial court, the Court ordered their immediate release.

Thereafter, the Court approved the foregoing manifestations and statements and required both parties to SUBMIT to the Court their compromise agreement by 4:00 o'clock this afternoon. Teehankee, C.J., is on official leave."

4. At 3:49 o'clock in the afternoon of 14 October 1986 the parties submitted a Joint Manifestation and Motion duly signed by Atty. Romeo Capulong, counsel for petitioners, and Solicitor General Sedfrey Ordoñez, Assistant Solicitor General Romeo C. de la Cruz and Trial Attorney Josue S. Villanueva, counsel for respondents, which reads as follows:

"COME NOW petitioners and the respondents, assisted by their respective counsel, and to this Honorable Tribunal respectfully manifest:

1. That in the discussion between Romeo Capulong, petitioners' counsel, and Solicitor General Sedfrey A. Ordoñez on October 13, 1986 exploratory talks were conducted to find out how the majesty of the law may be preserved and human considerations may be called into play.

2. That in the conference both counsel agreed to the following terms of agreement:

a. The petition for habeas corpus will be withdrawn by petitioners and Josefina Cruz and Jose Milo Concepcion will be immediately released but shall appear at the trial of the criminal case for rebellion (People v. Rodolfo Salas, et al., Criminal Case No. 4886 [should be 86-48926], Regional Trial Court, National Capital Judicial Region) filed against them under their personal recognizance.

b. Petitioner Rodolfo Salas will remain in legal custody and face trial before the court having custody over his person.

c. The warrant of arrest for the persons of Josefina Cruz and Jose Milo Concepcion is hereby deemed recalled in view of formal manifestation before the Supreme Court that they will submit themselves to the court having jurisdiction over their person.

3. That on October 14, the Solicitor General was able to obtain the conformity of the Government to the foregoing terms which were likewise accepted by petitioner (sic) and their counsel of record.

4. That the two counsel submitted their oral manifestation during the hearing on October 14 and the present manifestation in compliance with the resolution announced in court this morning.

WHEREFORE, it is prayed that the petition for habeas corpus be dismissed."

5. On 16 October 1986 We issued the following resolution:

"G.R. No. 76009 [In the Matter of the Petition for Habeas Corpus of Rodolfo Salas, Josefina Cruz and Jose Milo Concepcion, et al. v. Hon. Juan Ponce Enrile, Gen. Fidel V. Ramos, Brig. Gen. Renato de Villa, Brig. Gen. Ramon Montaño and Col. Virgilio Saldajeno] - Considering the Joint Manifestation and Motion dated October 14, 1986 filed by Attorneys Romeo Capulong, Arno V. Sanidad, Efren H. Mercado and Ricardo Fernandez, Jr. as counsel for petitioners and Solicitor General Sedfrey A. Ordoñez and Assistant Solicitor General Romeo C. de la Cruz and Trial Attorney Josue S. Villanueva as counsel for respondents which states that they have entered into an agreement whereby: [a] the petition for habeas corpus will be withdrawn by petitioners, and Josefina Cruz and Joe Milo Concepcion will be immediately released but shall appear at the trial of the criminal case for rebellion [People vs. Rodolfo Salas, et al., Criminal Case No. 4886, Regional Trial Court, National Capital Judicial Region, Branch XII, Manila], filed against them, on their personal recognizance; [b] petitioner Rodolfo Salas will remain in legal custody and face trial before the court having custody over his person; and [c] the warrant of arrest for the person of Josefina Cruz and Jose Milo Concepcion is hereby deemed recalled in view of the formal manifestation before this Court that they will submit themselves to the court having jurisdiction over their person and in view of the said agreement, the petition for habeas corpus be dismissed, the Court Resolved to DISMISS the petition for habeas corpus but subject to the condition that petitioners' lead counsel, Atty. Capulong, upon his oath as member of the Bar, shall abide by his commitment to ensure the appearance of Josefina Cruz and Jose Milo Concepcion at the trial of the criminal case for rebellion filed against them. Teehankee, C.J., is on official leave."

It is the stand of the petitioner that private respondent, "in agreeing to remain in legal custody even during the pendency of the trial of is criminal case, [he] has expressly waived his right to bail." [37] Upon the other hand, private respondent asserts that this claim is totally devoid of factual and legal basis, for in their petition for habeas corpus they precisely questioned the legality of the arrest and the continued detention of Rodolfo Salas, Josefina Cruz and Jose Milo Concepcion, which was not resolved by this Court or by the compromise agreement of the parties but left open for further determination in another proceeding. Moreover, the matter of the right to bail was neither raised by either party nor resolved by this Court, and the legal steps promptly taken by private respondent after the agreement was reached, like the filing of the motion to quash on 7 November 1986 and the petition for

bail on 14 May 1987, were clear and positive assertions of his statutory and constitutional rights to be granted not only provisional but final and permanent liberty. Finally, private respondent maintains that the term "legal custody" as used in the Joint Manifestation and Motion simply means that private respondent agreed to continue to be in the custody of the law or in custodia legis and nothing else; it is not to be interpreted as waiver.

Interestingly, private respondent admits that:

"'Custody' has been held to mean nothing less than actual imprisonment. It is also defined as the detainer of a person by virtue of a lawful authority, or the 'care and possession of a thing or person.' (Bouviere's Law Dictionary, Third Ed., Vol. I, pp. 741-742 citing *Smith v. Com.* 59 Pa. 320 and *Rolland v. Com.* 82 Pa. 306)"

He further admits that, in the light of Section 1 of Rule 114 of the Rules of Court and settled jurisprudence, the "constitutional right to bail is subject to the limitation that the person applying for admission to bail should be in the custody of the law or otherwise deprived of his liberty." [38]

When the parties in G. R. No. 76009 stipulated that:

"b. Petitioner Rodolfo Salas will remain in legal custody and face trial before the court having custody over his person."

they simply meant that Rodolfo Salas, herein respondent, will remain in actual physical custody of the court, or in actual confinement or detention, as distinguished from the stipulation concerning his co-petitioners, who were to be released in view of the recall of the warrants of arrest against them; they agreed, however, "to submit themselves to the court having jurisdiction over their persons." Note should be made of the deliberate care of the parties in making a fine distinction between legal custody and court having custody over the person in respect to Rodolfo Salas and court having jurisdiction over the persons of his co-accused. Such a fine distinction was precisely intended to emphasize the agreement that Rodolfo Salas will not be released, but should remain in custody. Had the parties intended otherwise, or had this been unclear to private respondent and his counsel, they should have insisted on the use of a clearer language. It must be remembered that at the time the parties orally manifested before this Court on 14 October 1986 the terms and conditions of their agreement and prepared and signed the Joint Manifestation and Motion, a warrant of arrest had already been issued by the trial court against private respondent and his co-accused. The stipulation that only the warrants of arrest for Josefina Cruz and Jose Milo Concepcion shall be recalled and that only they shall be released, further confirmed the agreement that herein petitioner shall remain in custody of the law, or detention or confinement.

In defining bail as:

"x x x the security given for the release of a person in custody of the law, x x x"

Section 1 of Rule 114 of the Revised Rules of Court admits no other meaning or interpretation for the term "in custody of the law" than that as above indicated. The purpose of bail is to relieve an accused from imprisonment until his conviction and yet secure his appearance at the trial. [39] It presupposes that the person applying for it should be in the custody of the law or otherwise deprived of liberty. [40]

Consequently, having agreed in G. R. No. 76009 to remain in legal custody, private respondent had unequivocally waived his right to bail.

But, is such waiver valid?

Article 6 of the Civil Code expressly provides:

"Art. 6. Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law."

Waiver is defined as "a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it." [41]

As to what rights and privileges may be waived, the authority is settled:

"x x x the doctrine of waiver extends to rights and privileges of any character, and, since the word 'waiver' covers every conceivable right, it is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract, conferred with statute, or guaranteed by constitution, provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not forbidden by law, and does not contravene public policy; and the principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large. x x x

Although the general rule is that any right or privilege conferred by statute or guaranteed by constitution may be waived, a waiver in derogation of a statutory right is not favored, and a waiver will be inoperative and void if it infringes on the rights of others, or would be against public policy or morals and the public interest may be waived.

While it has been stated generally that all personal rights conferred by statute and guaranteed by constitution may be waived, it has also been said that constitutional provisions intended to protect property may be waived, and even some of the constitutional rights created to secure personal liberty are subjects of waiver." [42]

In *Commonwealth vs. Petrillo*, [43] it was held:

"Rights guaranteed to one accused of a crime fall naturally into two classes: (a) those in which the state, as well as the accused, is interested; and (b) those which are personal to the accused, which are in the nature of personal privileges. Those of the first class cannot be waived; those of the second may be."

It is "competent for a person to waive a right guaranteed by the Constitution, and to consent to action which would be invalid if taken against his will." [44]

This Court has recognized waivers of constitutional rights such as, for example, the right against unreasonable searches and seizures; [45] the right to counsel and to remain silent; [46] and the right to be heard. [47]

Even the 1987 Constitution expressly recognizes a waiver of rights guaranteed by its Bill of Rights. Section 12(1) of Article III thereof on the right to remain silent and to have a competent and independent counsel, preferably of his own choice states:

"x x x These rights cannot be waived except in writing and in the presence of counsel."

This provision merely particularizes the form and manner of the waiver; it, nevertheless, clearly suggests that the other rights may be waived in some other form or manner provided such waiver will not offend Article 6 of the Civil Code.

We hereby rule that the right to bail is another of the constitutional rights which can be waived. It is a right which is personal to the accused and whose waiver would not be contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.

The respondent Judge then clearly acted with grave abuse of discretion in granting bail to the private respondent.

WHEREFORE, the Orders of respondent Judge of July 7, 1987 and July 30, 1987 in Criminal Case No. 86-48926 entitled *People of the Philippines vs. Rodolfo C. Salas alias Commander Bilog/Henry, Josefina Cruz alias Mrs. Mercado, and Jose Milo Concepcion alias Eugene Zamora*, for Rebellion, are hereby NULLIFIED and SET ASIDE.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Sarmiento, J., no part.

[1] Entitled *People of the Philippines versus Rodolfo C. Salas, alias Commander Bilog, Josefina Cruz, alias Mrs. Mercado, and Jose Concepcion, alias Eugene Zamora*.

[2] Annex "B" of Petition; Rollo, p. 25-27.

[3] Annex "C" of Petition; Id., 28-31.

[4] Petition, 7; Rollo, 7; p. 4 of Order of 6 March 1987 of respondent Judge, Annex "F" of Petition; Rollo, 47.

[5] G. R. No. 76009 entitled *In The Matter of the Petition for Habeas Corpus of Rodolfo Salas, Josefina Cruz and Jose Milo Concepcion, petitioners, versus Hon. Juan Ponce Enrile, et al., respondents*.

[6] Annex "D" of Petition; Rollo, 32-36.

[7] Annex "E" of Petition; Id., 37-43.

[8] Annex "F" of Petition; Id., 44-50.

[9] Annex "G" of Petition; Id., 51-53.

[10] Annex "H" of Petition; Rollo, 54-56.

[11] Annex "J" of Petition; Id., 64-70.

[12] Annex "K" of Petition; Rollo, 71-74.

[13] Annex "L" of Petition; Id., 75-79.

[14] *Carlson vs. Landon*, 342 U.S. 524; 537-542 (1952); *Wong Wing vs. U.S.*, 163 U.S. 228 (1986).

[15] *Bell vs. Wolfish*, 441 U.S. 534.

[16] *U.S. vs. Anthony Salerno and Vincent Cafaro*, No. 86-87, May 26, 1987, decided by the U.S. Court of Appeals for the Second Circuit Court.

[17] Annex "A" of Petition; Rollo, 18-24.

[18] Petition, 11-15.

[19] Rollo, 84.

[20] Id., 89-119.

[21] Resolution of 3 September 1987; Rollo, 122.

[22] Id., 126-135.

[23] Id., 136.

[24] Rollo, 137.

[25] Id., 139-141.

[26] Id., 138-A.

[27] Id., 142.

[28] Id., 163.

[29] Id., 196-206.

[30] Article 135, Revised Penal Code.

[31] See Payao vs. Lesaca, 63 Phil. 210, 213; People vs. Alano, 81 Phil. 19, 21.

[32] Montano vs. Ocampo, L-6352, Resolution of 29 January 1953, 49 O.G. 1855, cited in the dissenting opinion of then Justice Teehankee in Garcia-Padilla vs. Enrile, et al., 121 SCRA 472 (1953).

[33] Herras-Teehankee vs. Director of Prisons, 76 Phil. 756, 770.

[34] Citing 6 C.J., sec. 168, pp. 953, 954; underscoring supplied for emphasis.

[35] People vs. Sandiego, 26 SCRA 522.

[36] Article 22, Revised Penal Code.

[37] Petition, 8.

[38] Comment, 6-8; Rollo, 94-96.

[39] Almeda vs. Villaluz, 66 SCRA 38.

[40] Mendoza vs. Court of First Instance of Quezon, et. al., 51 SCRA 369.

[41] 67 C.J. 291.

[42] 92 C.J.S., 1066-1068; underscoring supplied for emphasis.

[43] 16 A. 2d 50, 57, 340 Pa. 33, cited in note 71 C.J.S., 1068.

[44] TOLENTINO, Civil Code of the Philippines, vol. 1, 1985 ed., pp. 31-32, citing Waxman vs. United States, 12 Fed. 2nd, 775.

[45] People vs. Malasugui, 63 Phil. 221; de Garcia vs. Locsin, et al., 65 Phil. 689.

[46] People vs. Royo, 114 SCRA 304; Morales vs Enrile, 121 SCRA 538; People vs. Colana, 126 SCRA 23; People vs. Galit, 135 SCRA 465; People vs. Sanchez, 132 SCRA 103 and People vs. Quizon, 142 SCRA 362.

[47] Abriol vs. Homeres 84 Phil., 525; People vs. Dichoso, 96 SCRA 957.

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