

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE AMALIA RESTERIO-ANDRADE, GARY ARCENIO AND CRUZALDO NICODEMUS, RESPONDENTS.

G.R. No. 79827. July 31, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The issue in the instant petition for certiorari, prohibition and mandamus is whether or not the lower court gravely abused its discretion in reducing from P40,000 to P12,000 the amount of bail imposed on each of the accused in a murder case.

Private respondents Gary Arcenio and Cruzaldo Nicodemus are two of the four persons accused of murder for the killing of Loreto Villanueva on March 5, 1987 in Pusiw, Numancia, Aklan. The information filed against them enumerates conspiracy, treachery, evident premeditation and abuse of superior strength as attendant circumstances in the commission of the crime.¹

The provincial fiscal recommended to the court the issuance of a warrant for the arrest of the accused and the imposition of bail for their provisional liberty in the amount of P40,000 each. Accordingly, on July 13, 1987, the lower court issued an order directing the issuance of a warrant of arrest against the accused and fixing the amount of bail at P40,000 each as recommended by the fiscal.²

The accused having moved for the reduction of the amount of bail to P12,000, on July 31, 1987, the lower court issued the following order:

"A motion to reduce bail bond was filed by counsel for the accused, Gary Arcenio and Cruzaldo Nicodemus, on the ground that the accused are poor and with no properties so do with their parents and that their possible escape would be nil as shown by the fact that instead of being apprehended after the filing of this case, they voluntarily surrendered to the police authorities and for which they are now presently detained.

"The Trial Fiscal, however, interposes objection on the ground that pursuant to an Executive Order from the Office of the President as contained in Department Circular No. 10 of the Department of Justice, the bail bond for all offenses has been increased by ten-folds higher. This Court observed, however, that said Executive Order has not been fully complied with by most courts in the country considering that there is no guidelines (sic) yet issued for its implementation.

"For the reasons aforesated, and furthering (sic) considering the provisions of the New Rules of Court on Criminal Procedure that the Court has the discretion to fix the bail bond of the accused after a consideration of the factors enumerated under Sec. 10 (sic), Rule 114 of the said Rules, the motion filed by the accused, Gary Arcenio and Cruzaldo Nicodemus, to reduce their bail bonds is hereby granted. Thereby, the bail bond of the aforementioned accused, who are presently detained at the Aklan Rehabilitation Center, is hereby fixed at P12,000.00 each.

“SO ORDERED.”³

The provincial fiscal vigorously objected to the reduction of the bail bond and filed a motion for the reconsideration of said order.⁴ On August 6, 1987, the lower court denied the motion in an order which states:

"Acting on the Motion for Reconsi-deration on the Order of this court dated July 31, 1987, filed by the Provincial Fiscal in the above-entitled case, this court, before enumerating the entirety of its observations as basis in granting said motion, wish to mention at this juncture the following. That in the exercise of its functions in the issuance of a warrant of arrest to personally determine probable cause as mandated by our 1987 Constitution, has tried to peruse the evidence presented and attached to the records of this case obviously, the basis for the filing of the information for murder. That notwithstanding the doctrine stressed in the case of Hashim v. Boncan, 71 Phil. 216, which states 'that preliminary investigation is not an occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof', this Court observes, however, that the evidence presented in the instant case were apparently wanting to appropriately designate the offense to be one of murder. Without necessarily prejudging this case, the court noted that no reply affidavits were submitted to belie the contention by the accused that they were just waylaid and a fight ensued resulting in the injury to one of the accused, neither was there any mention as to the would-be motive by the accused in going to the house of their victim on that particular time of the night to kill him. Further, the nature of the wounds sustained by the victim could hardly justify the claim by the witnesses that the accused took turns in stabbing the victim while the latter's both hands were being held up. In effect, the evidence against the accused are not strong for the crime of murder. With these in mind, the Court cannot in conscience fix the bail bond for the accused for the crime of murder notwithstanding its designation in the information.

"Similarly, the line of objection interposed by the Trial Fiscal during the hearing of the motion was only premised upon the increase of bail for all offenses by ten folds higher as mandated by Department Circular No. 10 of the Department of Justice, which application has not yet been accorded full implementation. For these reasons, and further considering the grounds urged by the accused in their motion to reduce bail bond in relation to the guidelines provided for under Section 10 (sic) Rule 114 of the New Rules on Criminal Procedure, the Court in the exercise of its compassionate discretion has finally granted the reduction of the bail bond for the accused Gary Arcenio and Cruzaldo Nicodemus to P12,000.00 each.

"In the same vein, the movant Provincial Fiscal in asking for the increase of the bail bond for the aforementioned accused apparently premised his contentions by claiming that the bail bond fixed for each of the accused is not commensurate from (sic) their designated offense for murder in the information, to which contention, this court begs to disagree.

"In view thereof, and finding no plausible reasons to disturb its previous stand alluded to above, this Court resolved to deny the motion for reconsideration.

"SO ORDERED."⁵

Hence, the instant petition praying that the aforesaid orders of the Regional Trial Court, Branch II at Kalibo, Aklan be set aside; that the respondent judge be enjoined from enforcing said order; and that the respondent judge be ordered to fix the amount of bailbond at P60,000,006

In the absence of proof to the contrary, we presume that in determining the amount of bail, the lower court took into account the following provisions of Section 6 (not Section 10), Rule 114 of the 1985 Rules on Criminal Procedure:

"SEC. 6. Amount of bail; guidelines. - The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to the following guidelines:

- (a) Financial ability of the accused to give bail;
- (b) Nature and circumstances of the offense;
- (c) Penalty of the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) The weight of the evidence against the accused;
- (g) Probability of the accused appearing in trial;
- (h) Forfeiture of other bonds;
- (i) The fact that accused was a fugitive from justice when arrested; and
- (j) The pendency of other cases in which the accused is under bond.

"Excessive bail shall not be required."

These guidelines are culled from the decision in *Villaseñor v. Abaño*[7] wherein Justice Conrado Sanchez succinctly said:

"Expressions in varying language spell out in a general way the principles governing bail fixing. One is that the amount should be high enough to assure the presence of defendant when required but no higher than is reasonably calculated to fulfill this purpose. Another is that 'the good of the public as well as the rights of the accused', and 'the need for a tie to the jurisdiction and the right to freedom from unnecessary restraint before conviction under the circumstances surrounding each particular accused', should all be balanced in one equation.

"We are not to consider solely the inability of a defendant to secure bail in a certain amount. This circumstance by itself does not make the amount excessive. For, when an accused has no means of his own, no one to bail him out, or none to turn to for premium payments, any amount fixed no matter how small would fall into the category of excessive bail; and, he 'would be entitled to be discharged on his own recognizance'." (Underscoring supplied.)

In addition to the above provisions of the Rules of Court and existing jurisprudence, in its determination of the amount of bail, the lower court should have considered Department of Justice Circular No. 10 which states:

"July 3, 1987

DEPARTMENT CIRCULAR NO. 10

To : ALL PROVINCIAL/CITY FISCALS, THEIR ASSISTANTS AND STATE PROSECUTORS

Subject : REVISING THE RULES IN FIXING THE AMOUNT OF BAIL

The proliferation of crimes and the depreciation of the value of the peso through the years have made the Bail Bond Guide of 1981, as provided in Ministry Circular No. 36, series of 1981, and amended by Ministry Circular No. 8, series of 1985, unrealistic and impractical for the purpose of assuring the presence and/or appearance of persons facing charges in court. The amount of bail has become too inadequate that in many instances persons charged in court find it convenient and tempting to ignore court processes and/or to jump bail, resulting to delay in the trial or in the archiving of their cases.

To obviate the foregoing instances and to give more force and meaning to the law on bail, you are hereby directed to recommend bail for the provisional release of the accused in an amount computed at TEN THOUSAND PESOS (P10,000) per year of imprisonment based on the medium penalty imposable for the offense.

In crimes punishable with a penalty of less than one (1) year of imprisonment, the bail shall be computed at ONE THOUSAND PESOS (P1,000) per month of imprisonment based on the medium of the imposable penalty.

For crimes punishable only by fine, the amount of the bail shall be equal to three-eighths (3/8) of the amount of the fine but shall in no case exceed P6,000.

Ministry Circulars No. 36, series of 1981, and No. 8, series of 1985, are hereby modified accordingly.

Compliance herewith is hereby enjoined effective immediately.

(Sgd.)

SEDFREY A. ORDOÑEZ

Secretary of Justice"⁷

The novelty of said circular which was issued barely a month before the lower court reduced the bail bond in Criminal Case No. 2464 might have led it to conclude that it "has not been fully complied with by most courts" in this jurisdiction as no guidelines to implement it had yet been issued. We do not however find this as a valid excuse for totally disregarding said circular.

Although Circular No. 10 is addressed to fiscals and prosecutors, courts must not only be aware but should also consider it due to its significance in the administration of criminal justice. In the above-cited case of *Villaseñor v. Abano*, supra, this Court reiterated its imprimatur on the reasonableness of a similar Circular of the Department of Justice fixing a formula on the amount of bail to be recommended by the fiscal. The rate provided in said Circular No. 47 dated July 5, 1946, reiterated in Circular No. 48 of July 18, 1968, was P2,000.00 per year of imprisonment corresponding to the medium period of the penalty prescribed for the offense charged, unless circumstances warrant a higher penalty. Circular No. 10, the circular under consideration, is apparently an update of Circulars No. 47 and 48 and their subsequent amendments, made necessary by the decline in the peso's purchasing power vis-a-vis the alarming escalation of the crime rate. While technically not binding upon the courts, Circular No. 10 merits attention, being in a sense an expression of policy of the Executive Branch, through the Department of Justice, in the enforcement of criminal laws.

Moreover, as correctly observed by the Solicitor General, no further "guidelines" need be issued by the Department of Justice because the circular is explicit enough to require further delineation.

Hence, by reducing the amount of bail in Criminal Case No. 2464 inspite of its awareness of the ten-fold increase in the amount as decreed by the executive arm of the government, the lower court gravely abused its discretion. Even if we consider, albeit we do not necessarily agree with the lower court in this regard, that the basis of the computation should be the imposable medium penalty of what it considers the correct crime (homicide) as borne out by its preliminary investigation, and not the imposable medium penalty of the crime as charged in the information (murder), still, the P12,000 bailbond is in inordinately low.

Be that as it may, for equitable reasons, the amount of bail should be reinstated to the original amount of P40,000 each.

WHEREFORE, the assailed Orders of July 31, 1987 and August 6, 1987 are hereby set aside and the lower court

is hereby directed to reinstate the amount of bail to FORTY THOUSAND PESOS (P40,000.00) for each of the accused in Criminal Case No. 2464. This decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

1 Criminal Case No. 2464, Rollo, p. 10.

2 Rollo, p. 12.

3 Underscoring supplied; Rollo, p. 14.

4 Rollo, p. 15.

5 Underscoring supplied; Rollo, pp. 17-18.

6 Rollo, p. 8.

6 L-23599, September 29, 1967, 21 SCRA 312, 317.

7 Rollo, p. 19.

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