

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. RENATO C. DACUDAO, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF CEBU, BRANCH XIV, AND REY CHRISTOPHER PACLIBAR, AND NERO DESAMP...**

*G.R. No. 81389. February 21, 1989*

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-81389/>

---

**GUTIERREZ, JR., J.:**

The question presented for resolution of this petition for certiorari and prohibition is whether or not the prosecution was deprived of procedural due process on account of the grant of bail to the accused without any hearing on the motion for bail.

The facts have been summarized as follows:

“1. On August 11, 1987, an Information for Murder with the qualifying circumstances of treachery and evident premeditation was filed before the Regional Trial Court of Cebu, Branch XIV, presided by Judge Renato C. Dacudao, against Rey Christopher Paclibar and Nero Desamparado for the death of Cesarlito Nolasco. The case was docketed as Criminal Case No. CBU-11463. Upon arraignment, accused Rey Christopher Paclibar entered a plea of not ‘not guilty’ to the offense charged.

“2. On September 18, 1987, accused Rey Christopher Paclibar filed a motion for bail, furnishing the Provincial Fiscal of Cebu with a copy thereof.

“3. On September 29, 1987, and without conducting a hearing in the application for bail, respondent Judge summarily issued the following Order:

O R D E R “Considering the motion for bail and the opposition thereto, and, on the basis of the complaint at bar and the sworn statement of Patrolman Elpidio Desquitado, Tadeo Abello and Romeo Torrizo, all of the Integrated National Police, Bantayan (Cebu) Police Station, which constitute the essential evidence (so far) of the prosecution in this case, this Court hereby resolves to grant the motion for bail presented by Atty. Bernardito A. Florido, and to this end hereby fixes the bailbond for the accused Rey Christopher Paclibar at P50,000.00.

“SO ORDERED.

“4. From the foregoing Order, private prosecutor Alex R. Monteclar filed a motion for reconsideration alleging that THE GRANTING OF BAIL TO THE ACCUSED WITHOUT A HEARING IS VIOLATIVE OF PROCEDURAL DUE PROCESS, HENCE, NULL AND VOID and thus praying, as follows:

““WHEREFORE, in the light of the foregoing, it is respectfully prayed of this Court to:

““1. Reconsider its order dated 29th September 1987 granting bail to the accused Rey Christopher Paclibar and set aside for being null and void;

“2. To order the immediate hearing of the Motion to Bail to determine whether the evidence for the prosecution would warrant the denial of bail;

“3. To recommit the accused to jail (CPDRC) immediately until such time the Honorable Court shall have resolved the Motion to Bail.’

“5. Acting on the motion for reconsideration and the opposition thereto filed by accused Rey Christopher Paclibar, respondent judge issued on November 20, 1987 the following order:

“O R D E R

“The Court hereby resolves to hold in abeyance its resolution on the Prosecution’s motion for reconsideration of the Court’s order dated September 19, 1987 granting bail to the accused, pending the presentation by the prosecution of evidence, which it promised to present, in support of its proposition that the evidence of guilt against the accused in this case is strong, and that therefore the accused should not have been admitted to bail. Unless and until the prosecution adduces the requisite evidence, the Court sees no reason to reconsider its order of September 29, 1987 which was predicated upon the postulate that the Prosecution evidence thus far attached to the records does not make out a very strong case for murder, as this evidence consists simply of the sworn statement of Pat. Desquitado, Tadeo Abello and Romeo Torrizo of the INP, Bantayan, Cebu, none of whom, by their own account, witnesses (sic) the slaying of the deceased Lito Nolasco by the accused Rey Christopher Paclibar.

“The Court hereby gives the prosecution five (5) days from receipt of this order within which to submit a pleading or a motion for reconsideration of the ruling of the Court.

“In the meantime reset the continuation of the hearing on December 16, 1987 at 2:30 P. M. Fiscal Napoleon Albuero, Attys. Alex Monteclar and Bernardito Florido, as well as Amado Olis are all notified of this order in open court. The accused is similarly notified. Notify the bondman of the accused.

“SO ORDERED.” (pp. 95-98, Rollo)

The petitioner now advances the following issue: that “Respondent Judge acted without jurisdiction and with grave abuse of discretion in refusing to recommit the accused Rey Christopher Paclibar to jail during the pendency of the hearing of the motion to bail.” (p. 6, Petition)

Before resolving this issue, we must stress that a private prosecutor in a criminal case has no authority to act for the People of the Philippines before this Court. It is the Government counsel, the Solicitor General who appears in criminal cases or their incidents before the Supreme Court. At the very least, the Provincial Fiscal himself, with the conformity of the Solicitor General, should have raised the issue before us, instead of the private prosecutor with conformity of one of the Assistant Provincial Fiscal of Cebu. In the interest of a speedy determination of the case, however, and considering the stand taken by the Office of the Solicitor General whom we asked to comment, we have decided to resolve this petition on its merits, with a warning to the private prosecutor and the Assistant Provincial Fiscal to follow the correct procedure in the future.

The respondent court acted irregularly in granting bail in a murder case without any hearing on the motion asking for it, without bothering to ask the prosecution for its conformity or comment, and, as it turned out later, over its strong objections. The court granted bail on the sole basis of the complaint and the affidavit of the three policemen, not one of them apparently witnessed the killing. Whatever the court possessed at the time it issued the questioned ruling was intended only for prima facie determining whether or not there is sufficient ground to engender a well-founded that the crime was committed and pinpointing the persons who probably committed it. Whether or not the evidence of guilt is strong for each individual accused still has to be established unless the prosecution submits the issue on whatever it has already presented. To appreciate the strength or weakness of the

evidence of guilt, the prosecution must be consulted or heard. It is equally entitled as the accused to due process.

Thus, this Court, in *People v. San Diego* (26 SCRA 522 [1968]), held:

“The question presented before us is, whether the prosecution was deprived of due process. The answer is in the affirmative. We are of the considered opinion that whether the motion for bail of a defendant who is in custody for a capital offense be resolved in a summary proceeding or in the course of regular trial the prosecution must be given an opportunity to present, within reasonable time, all the evidence that it may desire to introduce before the court should resolve the motion for bail. If, as in the criminal case involved in the instant special civil action, the prosecution should be denied such an opportunity, there would be a violation of procedural due process, and the order of the court granting bail should be considered void on that ground. The orders complained of dated October 7, 9 and 12, 1968, having been issued in violation of procedural due process, must be considered null and void.

“The court’s discretion to grant bail in capital offenses must be exercised in the light of the summary of the evidence presented by the prosecution; otherwise, it would 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.” (at p. 524; *Italics supplied*)

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 cases. (Section 6, Rule 144, Rules of Court) It is highly doubtful if the trial court can appreciate these guidelines in an ex-parte determination where the Fiscal is neither present nor heard.

The effort of the court to remedy the situation by conducting the required hearing after ordering the release of the accused may be a face-saving device for the Judge but it cannot serve the purpose of validating the void order granting bail and stamping the an imprimatur of approval on a clearly irregular procedure.

The defense counsel insists that the accused should be entitled to bail considering the abolition of the death penalty in the 1986 Constitution. He advances the argument that due to the abolition of the death penalty, murder is no longer a capital offense being no longer punishable with death. This is erroneous although the Constitution states that the death penalty may not be imposed a law orders its imposition for heinous crime (Constitution, Art. III, Section 19 [1]), it does not follow that all persons accused of any crime whatsoever now have an absolute right to bail. In Art. III, Sec. 13 of the Constitution, “capital offenses” is replaced by the phrase “offenses punishable by reclusion perpetua.”

Bail is not a matter of right as regards persons charged with offenses punishable by reclusion perpetua when the evidence of guilt is strong. Thus, Sec. 5, Art. 114 of the Rules of Criminal Procedure requires a hearing before resolving a motion for bail by persons charged with offenses punishable by reclusion perpetua where the prosecution may discharge its burden of showing that the evidence of guilt is strong. The case at bar, which is murder, is punishable by reclusion perpetua.

In its comment, the defense interposes an objection to the petition on the ground that is premature and therefore, should be dismissed. It contends that certiorari will not lie unless the inferior court has, through a motion for reconsideration, the opportunity to correct the errors imputed to it. The general rule is that a motion for

reconsideration should first be availed of before a petition for certiorari and prohibition is filed. (*Cebu Institute of Technology [CIT] v. Ople*, 156 SCRA 629 [1987]) However, this rule does not apply when special circumstances warrant immediate or more direct action. A motion for reconsideration may be dispensed with in cases like this where the execution has been ordered and the need for relief is extremely urgent (*Phil. British Assurance Co., Inc. v. Intermediate Appellate Court*, 150 SCRA 520 [1987]). In the case at bar, the petitioner is left with no plain, speedy, and adequate remedy in the ordinary course of law considering that the respondent court insists on the continuation of the hearing of the criminal case even while the accused is free to roam around. Moreover, there is an allegation that the accused is harassing, threatening and coercing witnesses who are now afraid to testify. (pp. 87-88, Rollo)

Finally, the defense contends that the Judge did not commit any error because actually the complaint in the Municipal Circuit Trial Court is for homicide only (Annex A, p. 60, Rollo), and the recommended Information was also for homicide (Annex b, p. 61, Rollo). We note, however, that when the same was filed with the Regional Trial Court, it was already an Information for murder.

The amendment or changing of an information prior to the plea of the accused is allowed there being no prejudice to him. Thus, in the case of *Gaspar v. Sandiganbayan* (144 SCRA 415 [1986]), this Court held that, “no actual double jeopardy exists where the petitioner had not yet pleaded guilty to the offense.”

WHEREFORE, the petition is hereby GRANTED. The order granting bail is SET ASIDE and the accused is ordered recommitted to jail pending the hearing on the bail application.

**SO ORDERED.**

Fernan, C. J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.