

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JOSE BURGOS,  
AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF CEBU,  
BRANCH 17, SIEGFRED DEDURO Y DELFIN ALIAS &#8220;RAUL  
DELFIN Y ZER...**

*G.R. No. 92739. August 02, 1991*

Ponente: FELICIANO, J.

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**FELICIANO, J.:**

On 2 September 1989, an information for violation of Republic Act No. 1700, as amended[1] was filed against the nine (9) private respondents by the Office of the City Prosecutor of Cebu. The information recommended no bail on the ground that the offense charged in said information was non-bailable, the respondents allegedly being leaders of the Communist Party of the Philippines.

After arraignment, private respondents filed petitions for their temporary liberty on bail pending trial of the criminal case. There being no opposition from the prosecution to the petition for bail of private respondent Catalina Peras, who was then in her eighth month of pregnancy, respondent Judge fixed bail for her at P10,000.00. In respect of the other private respondents, their petitions for bail were opposed by the prosecution.

While the prosecution was still presenting its evidence in support of its opposition to the petitions for bail, respondent Judge issued an Order dated 5 April 1990 fixing bail at P30,000.00 each for the temporary liberty of five (5) of the remaining eight (8) private respondents, namely: Cynthia Aguirre, Thelma Guanzon, Edwin Lopez, Abundio Amante and Fr. Leonardo Sison. The applications for bail of the three (3) other private respondents (Siegfred Deduro, Auxilium Toting Olayer and Federico Guanzon) were denied on the ground that insofar as these particular respondents were concerned, the evidence of guilt was strong.

The prosecution opposed the 5 April 1990 Order upon the ground that issuance thereof was premature, considering that the prosecution was then still in the process of presenting its evidence in support of its opposition to the applications for bail. Respondent Judge, rather than ruling outright on petitioner's opposition, ordered it to file a motion for reconsideration in writing. In the same proceeding, respondent Judge disallowed petitioner's request for its witness, Eulogio Llego, a computer programmer, to print out in open court the material encoded in certain diskettes seized from private respondents by virtue of a search warrant.

Instead of filing a written motion for reconsideration, petitioner filed the present Petition for Certiorari questioning: (1) the Order dated 5 April 1990 granting bail; and (2) the oral order of respondent Judge given in open court during the hearing on the same date preventing the prosecution from holding an actual demonstration in court by printing out data from the seized diskettes.

Deliberating on the instant Petition for Certiorari, the Court considers that respondent Judge has committed grave abuse of discretion in issuing his Order dated 5 April 1990.

It was grave abuse on the part of respondent Judge to issue the 5 April 1990 Order. That order, which was issued

while the prosecution was still in the process of presenting other evidence, was clearly premature and deprived the People of its right to present its evidence relating to the applications for bail. In *People v. Dacudao*,<sup>[2]</sup> this Court, citing *People v. San Diego*,<sup>[3]</sup> held:

"The question presented before us is, whether the prosecution was deprived of procedural 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 a regular trial, 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. 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. x x x" (Underscoring supplied).

Moreover, the Order of 5 April 1990 failed to comply with the following requirement set forth in the above-cited case:

"The court's discretion to grant bail in capital offenses must be exercised in the light of a summary of the evidence for 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." (Underscoring supplied)

In the present case, the Order dated 5 April 1990 only sets out a conclusion that the evidence of guilt is strong but does not contain a summary of the evidence presented and considered. The Order states:

"After due consideration of the testimonial and documentary evidence presented by the prosecution thru its witnesses x x x, this Court finds reasonable ground to believe that so far, strong evidence exists as against the three accused Siegfred Deduro alias 'Vic,' alias 'Tomas Magtanggol,' alias 'Raul Delfin,' Auxilium Toling Olayer, alias 'Maria Consuelo Valente,' alias 'Choy,' alias 'Choling' and Federico Guanzon.

IN VIEW THEREOF, the petitions for bail are DENIED with respect to the above-named accused. The rest of the accused are granted bail which is hereby fixed at P30,000.00 each for their provisional release x x x."

Being prematurely issued and having failed to include a summary of the evidence presented at the hearing on the motion for bail, the 5 April 1990 Order must be set aside.

Petitioners also question the order also dated 5 April 1990 given in open court by respondent Judge. Said order disallowed a prosecution witness from holding an actual demonstration in court by printing out the contents of the seized diskettes using the very same computer seized from the accused on the ground that they could be "manipulated." The Order stated:

"COURT:

It has been a common knowledge of both prosecution and defense that these diskettes have been in possession of the prosecution since the start and anything may happen while they are in their possession, so much so that the witness admitted that the diskettes can be manipulated or altered.

FISCAL MARCOS:

Since they are the exhibits for the prosecution, naturally they are in our possession, just like the exhibits for the defense. They are in their possession.

COURT:

To let this witness operate the computer is very dangerous, because the witness said that these diskettes can be manipulated. So the motion of the prosecution to let this witness have an actual demonstration before the court on the computer is denied."

In his Comment, respondent Judge reiterated that he did not allow the printing out of the contents of the seized diskettes because they could be "manipulated" which would be prejudicial to the rights of the accused.

Respondent Judge's insinuation or speculation that the prosecution, considering the fact that it had the diskettes in its possession prior to the hearing, may have tampered with them appears absolutely baseless and quite unfair to the prosecution. Such statement had in fact no basis in the evidence before the respondent Judge. There was neither testimonial evidence nor any physical evidence on the diskettes themselves which might indicate they had actually been tampered or their contents altered in order to secure the conviction of the accused. Respondent Judge was in effect charging the prosecution with fabricating evidence against the private respondents, which constitutes serious misconduct and quite possibly a criminal offense.

The mere fact that the diskettes had been in the possession of the prosecution does not necessarily imply that it had altered or tampered with the evidence to suit its prosecutorial objectives. Indeed, the presumption that official duty has been regularly performed prevails, in the absence of any evidence to the contrary.

We, therefore hold that the printing out of data (if any) encoded in the diskettes should be allowed. Respondent Judge's asserted apprehension that the witness brought in by the prosecution to undertake the printing out of the diskettes' contents could himself "manipulate" said diskettes during the actual printing out in court may very easily be relieved by designating a competent person agreeable to both parties, and especially to respondent Judge, who can perform the task of printing out the contents of the diskettes. Respondent Judge's ostensible lack of confidence in the prosecution witness should not in any way affect the integrity of the diskettes themselves or the right of the prosecution to show the contents of the diskettes subject, of course, to applicable rights of the accused.

Moreover, contrary to private respondents' contention that the diskettes themselves should be deemed inadmissible in evidence because they were not included in the things mentioned in the search warrant, we find that these diskettes had been sufficiently described in the search warrant. The search warrant states:

"You are, therefore, hereby commanded to make immediate search at any time of the day or night of Rm. 3-1 of the third floor of said building where the persons or suspects above-named are presently occupying and to seize and to take possession of the following properties used or intended to be used as the means of committing violation of RA 1700 and/or Art. 142 of the Revised Penal Code:

'Incendiary or subversive documents, pamphlets; books, computer print-outs and subversive materials, and computer machine used in printing seditious or subversive literature.'" (Underscoring supplied)

The phrase "computer machine used in printing seditious or subversive literature" is appropriately regarded as necessarily including diskettes into which data is encoded and stored, such as those seized in the present case on the same occasion the computer itself was seized, for indeed a computer system cannot store and print out any data without diskettes. Technically and realistically speaking, diskettes are deemed integral parts of a computer system, the diskettes constituting one of the "input-output devices" or "peripherals," in the same manner that the keyboard is an "input-output device" and the monitor, keyboard and printer are "peripherals" in relation to the memory or central processing unit (CPU) of a computer system.[4]

ACCORDINGLY, the Court Resolved to GRANT the Petition for Certiorari and to SET ASIDE and ANNUL the

Order dated 5 April 1990. Respondent Judge is hereby ORDERED forthwith to continue hearing the motions for bail and to allow the prosecution to finish presenting its evidence. Respondent Judge is also ORDERED to cause the re-arrest of the five (5) private respondents previously ordered released in the 5 April 1990 Order.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

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[1] As restored and re-established in its original tenor by Executive Order No. 167, dated 5 May 1987. Section 4 of R.A. No. 1700 as amended by Executive Order No. 276 dated 15 July 1987 imposes the penalty of prison mayor to reclusion perpetual upon officers and ranking leaders of the Communist Party of the Philippines or of any subversive organization as defined in the Act.

**[2] 170 SCRA 489 (1989).**

**[3] 26 SCRA 522 (1968).**

[4] See: Goldschlager and Lister, Computer Science: A Modern Introduction (1988); Sanders, Computers Today (1985); Dumas, Fundamentals of Basic Programming (1984); Givone and Roesser, Microprocessors/Microcomputers: An Introduction (1983).

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