

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. MAYOR PABLO SOLA, SANGGUNIANG BAYAN MEMBER FRANCISCO (ECOT) GARCIA, RICARDO (CADOY) GARCIA, JOSE BETHOVEN (ATSONG) CABRAL, CAPTAIN FLO...

G.R. Nos. 56158-64. March 17, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The power of this Tribunal, constitutionally mandated,[1] to order a change of venue to avoid any miscarriage of justice as well as the procedure ordained in the implementation of the right to bail[2] are involved in this petition which, even if not so denominated, partakes of the nature of a certiorari. It must have been the zeal of private prosecutors Francisco Cruz and Renecio Espiritu,[3] no doubt under the conviction that there was no time to lose, that must have led them to devote less than that full measure of attention to certain fundamentals. They ignored the principle that the responsibility for the conduct of the prosecution is with the public officials concerned. Nonetheless, the importance of the questions raised, the need for a change of venue and the cancellation of the bail bonds, necessitated that further action be taken. Accordingly, in a resolution dated February 12, 1981, one day after the filing of the petition, the Court required the comment of the Solicitor General as well as of the private respondents,[4] the accused in six pending criminal cases before the Court of First Instance of Negros Occidental.

On March 4, 1981, the Comment was submitted by Solicitor General Estelito P. Mendoza.[5] It opened with this preliminary statement: "The present petition was filed by the private prosecutors in Criminal Cases Nos. 1700-1706, People v. Pablo Sola, et al., pending trial before the Court of First Instance of Negros Occidental. Rightly, any petition before this Honorable Court on behalf of the People of the Philippines can, under the law, be instituted only by the Solicitor General. The assertion of the petitioner private prosecutors that they are instituting the action 'subject to the control and supervision of the Fiscal' will not, therefore, improve their legal standing." [6] None-theless, it did not press the legal point but instead adopted "the two-pronged thrusts of the petition: 1. the setting aside, by certiorari, of the order of the Municipal Court of Kabankalan, presided over by Judge Rafael Gasataya, granting bail to the accused in the criminal cases mentioned above, and 2. the petition for a change of venue or place of trial of the same criminal cases to avoid a miscarriage of justice." [7]

The facts were therein narrated thus: "On September 15, 1980, acting on the evidence presented by the Philippine Constabulary commander at Hinigaran, Negros Occidental, the Court of First Instance of that province issued a search warrant for the search and seizure of the deceased bodies of seven persons believed in the possession of the accused Pablo Solo in his hacienda at Sta. Isabel, Kabankalan, Negros Occidental. * * * On September 16, 1980, armed with the above warrant, elements of the 332nd PC/INP Company proceeded to the place of Sola. Diggings made in a canefield yielded two common graves containing the bodies of Fernando Fernandez, Mateo Olimpos, Alfredo Perez, Custodio Juanica, Arsolo Juanica, Rollie Collet and Bienvenido Emperado. On September 23 and October 1, 1980, the PC provincial commander of Negros Occidental filed seven (7) separate complaints for

murder against the accused Pablo Sola, Francisco Garcia, Ricardo Garcia, Jose Bethoven Cabral, Florendo Baliscao and four-teen (14) other persons of unknown names. The cases were docketed as Criminal Cases No. 4129, 4130, 4131, 4137, 4138, 4139 and 4140 of the Municipal Court of Kabankalan. After due preliminary examination of the complainant's witnesses and his other evidence, the municipal court found probable cause against the accused. It thus issued an order for their arrest. However, without giving the prosecution the opportunity to prove that the evidence of guilt of the accused is strong, the court granted them the right to post bail for their temporary release. The accused Pablo Sola, Francisco Garcia, and Jose Bethoven Cabral availed themselves of this right and have since been released from detention. In a parallel development, the witnesses in the murder cases informed the prosecution of their fears that if the trial is held at the Court of First Instance branch in Himamaylan which is but 10 kilometers from Kabankalan, their safety could be jeopardized. At least two of the accused are officials with power and influence in Kabankalan and they have been released on bail. In addition, most of the accused remained at large. Indeed, there have been reports made to police authorities of threats made on the families of the witnesses."^[8] The facts alleged argue strongly for the remedies sought, namely a change of venue and the cancellation of the bail bonds.

On the very next day, March 15, 1981, this Court issued the following resolution: "The Court Resolved to (a) [Note] the comment of the Solicitor General on the urgent petition for change of venue and cancellation of bail bonds, adopting the plea of the petition, namely, (1) the setting aside, by certiorari, of the order of the Municipal Court of Kabankalan, presided over by Judge Rafael Gasataya, granting bail to the accused in Criminal Cases Nos. 4129, 4130, 4131, 4137, 4138, 4139 and 4140, all entitled 'People of the Philippines v. Mayor Pablo Sola, et al.'; (2) the petition for a change of venue or place of trial of the same criminal cases to avoid a miscarriage of justice; (b) [Transfer] the venue of the aforesaid criminal cases to Branch V of the Court of First Instance of Negros Occidental at Bacolod City, presided by Executive Judge Alfonso Baguio, considering that District Judge Ostervaldo Emilia of the Court of First Instance, Negros Occidental, Branch VI at Himamaylan has an approved leave of absence covering the period from January 12 to March 12, 1981 due to a mild attack of cerebral thrombosis and that the said Branch V is the nearest court station to Himamaylan; and (c) [Await] the comment of respondents on the petition to cancel bail, without prejudice to the public officials concerned taking the necessary measures to assure the safety of the witnesses of the prosecution."^[9] Thus, the issue of a change of venue has become moot and academic. The comments respectively submitted by respondent Florendo Baliscao on March 5, 1981, respondent Francisco Garcia on March 11, 1981 and respondent Pablo Sola on March 16, 1981, dealt solely with the question of the cancellation of the bail bonds. Such comments were considered as answers, with the case thereafter deemed submitted for decision.

The sole remaining issue of the cancellation of the bail bonds of respondents, there being a failure to abide by the basic requirement that the prosecution be heard in a case where the accused is charged with a capital offense, prior to bail being granted, must be decided in favor of petitioner. The bail bonds must be cancelled and the case remanded to the sala of Executive Judge Alfonso Baguio for such hearing. So we rule.

1. It may not be amiss to say a few words on the question of transferring the place of trial, in this case, from Himamaylan to Bacolod City. The Constitution is quite explicit. The Supreme Court could order "a change of venue or place of trial to avoid a mis-carriage of justice."^[10] The Constitutional Convention of 1971 wisely incorporated the ruling in the landmark decision of *People v. Gutierrez*,^[11] where Justice J. B. L. Reyes as ponente vigorously and categorically affirmed: "In the particular case before Us, to compel the prosecution to proceed to trial in a locality where its witnesses will not be at liberty to reveal what they know is to make a mockery of the judicial process, and to betray the very purpose for which courts have been established."^[12] Why a change of venue is imperative was made clear in the Comment of the Solicitor General. Thus: "The exercise by this Honorable Court of its above constitutional power in this case will be appropriate. The witnesses in the case

are fearful for their lives. They are afraid they would be killed on their way to or from Himamaylan during any of the days of trial. Because of this fear, they may either refuse to testify or testify falsely to save their lives." [13] Respondent Florendo Baliscao was not averse to such transfer, but his preference is for a court anywhere in Metro Manila. [14] Respondent Francisco Garcia confined his comment to the question of the cancellation of the bail bonds. Respondent Pablo Sola made clear that he had "no objection to the transfer." [15] It may be added that there may be cases where the fear, objectively viewed, may, to some individuals, be less than terrifying, but the question must always be the effect it has on the witnesses who will testify. The primordial aim and intent of the Constitution must ever be kept in mind. In case of doubt, it should be resolved in favor of a change of venue. As a matter of fact, there need not be a petition of this character filed before this Court. Such a plea could have been done administratively. In this particular case, however, there is justification for the procedure followed in view of the fact that along with the change of venue, the cancellation of the bail bonds was also sought.

2. Equally so the cancellation of the bail bonds is more than justified. Bail was granted to the accused in the Order of the Municipal Court without hearing the prosecution. That is to disregard the authoritative doctrine enunciated in *People v. San Diego*. [16] As pointed out by Justice Capistrano, speaking for the Court: "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." [17] These words of Justice Cardozo come to mind: "The law, as we have seen, is sedulous in maintaining for a defendant charged with crime whatever forms of procedure are of the essence of an opportunity to defend. Privileges so fundamental as to be inherent in every concept of a fair trial that could be acceptable to the thought of reasonable men will be kept inviolate and inviolable, however crushing may be the pressure of incriminating proof. But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." [18] This norm which is of the very essence of due process as the embodiment of justice requires that the prosecution be given the opportunity to prove that there is strong evidence of guilt. It does not suffice, as asserted herein, that the questions asked by the municipal judge before bail was granted could be characterized as searching. That fact did not cure an infirmity of a jurisdictional character. [19]

WHEREFORE, the assailed order of Judge Rafael Gasataya granting bail to private respondents is nullified, set aside, and declared to be without force and effect. Executive Judge Alfonso Baguio of the Court of First Instance of Negros Occidental, to whose sala the cases had been transferred by virtue of the resolution of this Court of March 5, 1981, is directed forthwith to hear the petitions for bail of private respondents, with the prosecution being duly heard on the question of whether or not the evidence of guilt against the respondents is strong. This decision is immediately executory. No costs.

Teehankee, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Barredo and Abad Santos, JJ., on official leave.

[1] According to Article X, Section 5(4) of the Constitution: "The Supreme Court shall have the following powers: (4) Order a change of venue or place of trial to avoid a mis-carriage of justice."

[2] According to Article IV, Section 18 of the Constitution: "All persons, except those charged with capital

offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. Excessive bail shall not be required."

[3] The name of the highly-experienced counsel. Juan Hagad was included in the list of private prosecutors, but he did not sign the petition.

[4] The private respondents are Francisco (Ecot) Garcia and Ricardo (Cadoy) Garcia.

[5] He was assisted by Assistant Solicitor General Roberto E. Soberano and Solicitor Roberto A. Abad.

[6] Comment, 1-2.

[7] Ibid, 2.

[8] Ibid, 2-4.

[9] Resolution of the Court dated March 5, 1981.

[10] Article X, Section 5(4) of the Constitution.

[11] L-32282-83, November 26, 1970, 36 SCRA 172.

[12] Ibid, 180.

[13] Comment of Solicitor General Estelito P. Mendoza, 9.

[14] Comment of respondent Florendo Baliscao, erroneously entitled Rejoinder to the Petition, 1.

[15] Comment of respondent Pablo Sola, erroneously entitled Opposition of respondent Mayor Pablo Sola, 1.

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

[17] Ibid, 524.

[18] *Snyder v. Massachusetts*, 291 U.S. 97, 122 (1933).

[19] Cf. *Inocencio v. Alconcel*, G.R. No. 55658, February 5, 1981.

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