3 Phil. 121

[G. R. No. 1503. December 29, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ALEJO RAVIDAS ET AL, DEFENDANTS AND APPELLANTS.

D E C I S I O N

The defendants Alejo Ravidas and Narciso Melliza, together with. several other defendants, were tried in the Court of First Instance of Misamis on a charge of insurrection. Both were convicted, and Ravidas was sentenced to imprisonment for a term of five years and Melliza to three years. Both appealed to the Supreme Court from the judgment of conviction. After the case was lodged in the Supreme Court the attorneys for the two defendants named made a motion that they be allowed bail pending appeal, no such motion having been made in the trial court. This motion was heard on November 16, 1903, and was opposed by the representative of the Attorney-General who appeared on behalf of the Government,

On November 30, 1903, the court directed the entry of the following order on its minutes:

> "Acting upon the motion of Messrs. Palma, Gerona & Mercado, attorneys for Alejo Ravidas and Narciso Melliza, defendants in the case of the United States vs. Ravidas. et al., that the said defendants be granted bail during the pendency of the appeal in this case before the court, after deliberation:
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> "Resolved, by a majority vote, That the motion to admit the said defendants to bail be denied. The Hon. C. S. Arellano, Chief Justice, and Justices Torres, Willard, and Johnson voted to deny the motion."

From the order so entered and the refusal to grant bail Justices McDonough, Mapa, and Cooper dissented.

DISSENTING

MCDONOUGH, J., with whom concur **COOPER** and **MAPA, JJ.,**

This is a motion to admit the defendants to bail pending the trial of their appeal in this court.

Bail is usually favored. Before conviction, except in capital cases, it is allowed as a matter of right. After conviction, however, it is discretionary with the Court of First Instance and also with this court to grant or refuse bail in noncapital eases pending on appeal. (See sec. 53, G. O., 58.)

In several of the States the courts have refused to exercise this discretion unless there exist special circumstances which call for the intervention of the court in behalf of the prisoner. In those States the question has often been raised as to what is a special circumstance which justifies the courts in letting to bail after conviction and pending an appeal. The answers have been numerous, various, and many of them vague.

1. In California it was said in the case of Ex parte Smallman et al. (54 Cal., 35), that it might be a special circumstance warranting the granting of bail when, for example, after a conviction for the crime of felonious homicide and appeal "the deceased" was produced alive.

2. The same court gave as another instance: Where the defendant had been convicted of stealing goods and it turned out afterwards that the goods of which he was convicted of stealing were at the time of the alleged theft in the hands of the owner.

   With all due respect to the learned judge who gave these instances, it may be remarked that these were special circumstances warranting speedy pardon rather than bail.

3. It was held in Nebraska (42 Neb., 48) that, after conviction and pending appeal, this discretion of the court may be exercised upon the showing of probable error calling for a reversal of the judgment.

New York State follows this view and, pending appeal and an application for a stay and for bail, the court will look into the record for the purpose of ascertaining whether or not there is probable cause for reversal.

In Indiana it has been held, on an appeal from the refusal of a judge to admit to bail, the supreme court will weigh the evidence and determine the facts, as if trying the case originally. (Ex-parte Heffernan, 27 Ind., 87; Ex-parte Kendall, 100 Ind., 599, and cases cited.)

4. In 3 American and English Encyclopedia of Law, 677, it is said that a special circumstance justifying bail, after conviction, is where the defendant voluntarily surrendered; or

5. Where he is a man of large means; or

6. Where he refused an opportunity to escape; or

7. When the defendant is seriously ill; or

8. When the hearing on the appeal has been unnecessarily delayed.

Thus it appears that the exceptions are so numerous that they almost constitute the rule.

The discretion to let to bail conferred on this court is to be exercised regardless of the action of the Court of First Instance. Even in California, where it frequently happened that the trial court refused to exercise the discretion vested in it to let to bail, the supreme court, in the case of Smith (89 Cal., 80), rebuked the court below for failure to act. "The fact," said the learned judge of the supreme court who wrote the opinion, "that the trial court adopted an inflexible rule not to admit a defendant to bail who has been convicted of a felony, can have no weight with us, however inconsistent such rule is with section 1272 of the Penal Code" (allowing the court to exercise discretion). "This court passes upon the merits of the petition presented to it *regardless of any action or rule the trial court niwy have adopted"*

In the case of Hodge (48 Cal., 3) the chief justice of the supreme court allowed bail after it had been refused by the court below. There the defendant had been convicted of assault with a deadly weapon with intent to do bodily injury. The punishment for that offense

was a fine or imprisonment, and the defendant had been sentenced to serve a term of imprisonment of eighteen months in the State prison.

On the argument, the attention of Chief Justice Wallace was called to the record, and he evidently examined the record and the rulings of the court below and the charge to the jury, for he said:

> "It is not proper that I should intimate an opinion as to the ultimate determination of the points which it is the purpose of this appeal to present for the judgment of the supreme court.
>
> "They are sufficient in my judgment to show that the appeal is *bona fide* and that the case made is not to be characterized as frivolous or unsubstantial.
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> "I think that should I, under the circumstance, refuse to admit the prisoner to bail, it would be a misapplication of the discretion conferred by the statute.
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> "The right to, appeal to the supreme court is guaranteed by the Constitution to the prisoner and is as secure as the right of trial by jury. It is one of the means the law has provided to determine the question of his guilt or innocence. Upon such an appeal the ultimate question is nearly always as to the validity of the judgment under which the prisoner is to suffer, and it is certainly not consonant to our ideas of justice, if it can be prevented by legal means, that, even while the *question of guilt* or innocence is yet being agitated in the form of an appeal, the prisoner should be *undergoing the very punishment* and suffering the very infamy which it was the lawful purpose of the appeal to avert. It would be somewhat akin to a practice of punishing the accused for his alleged offense while the jury was yet deliberating upon a verdict."

These are sensible and weighty reasons for the exercise of the discretion of the court to let a prisoner out on bail pending his appeal, but weighty and just as they may be in California, there is much more reason for following them in these Islands, because here the accused is not finally tried until his case is heard, retried, and determined by this court, which, in case of conviction, sentences the accused for the full term prescribed by law; and he is obliged to serve the full term of imprisonment imposed upon him by this court, without being credited with the time served in prison, between the time of determining his guilt

below and the time of conviction here, except where convicted of certain minor offenses in which the convict is credited with half the time served pending the appeal. So that this may result, especially if delay occurs in bringing the case to trial in this court, and in deciding the same, that an accused may have to serve a longer term in prison than is prescribed by the Code.

Moreover, in the State courts, the accused is allowed bail as a matter of right before conviction by a jury in noncapital cases. The conviction, under our system, in a Court of First Instance, where an appeal has been taken, is very like an examination and a holding for trial by a committing magistrate in the States, if the holding of this court in the case of the United States *vs*. Kepner (1 Off. (Gaz., 353) be good law.[1] In the opinion of this court in that case, it is stated, under the Spanish rule in these Islands: "There never was any finality to the judgment of the trial court, in felony cases, until it had been ratified and confirmed by the court of last resort. Such a judgment was merely advisory to the appellate tribunal. * * * That was the law of the land when the change of sovereignty took place, and it has only been modified since to the extent of making the judgment of the Court of First Instance, in felony cases (except capital offenses) final, *unless* an appeal lias been taken either by the Attorney-General or the accused. So then, so now."

Inasmuch as there has been an appeal taken in the case at bar, the judgment below, therefore, is not final; it is not such a judgment as is entered in the States upon the verdict of a jury; it is in its nature "merely advisory," and, therefore, it, together with the double punishment mentioned above, constitutes a special circumstance entitling the defendants to the exercise of the discretion of the court in their favor.

It seems to me that this court ought to follow the practice of the Federal courts and that of the Supreme Court of the United States, and not deny bail after conviction unless some special circumstance exists which appeals especially to the discretion of the court, but rather to allow bail, unless some great urgency exists which would make it manifestly improper to grant the petition.

Thus in the case of McKnight (113 Fed. Rep., 451), decided by the circuit court of appeals of the sixth circuit, 1902, it was held that the United States Court of Appeals, pending a writ of error, had power, and that it was *generally its duty* to.admit to bail, after conviction of a crime not capital; that where the trial court refused to admit to bail pending a writ of error, in the absence of some great urgency, a further application should be made to the appellate court, and that the fact that the defendant had been three times

convicted on the same indictment, for embezzling funds of a national bank, was not sufficient ground for denying bail pending a writ of error.

In the case of Hudson *vs.* Parker (156 U. S., 277) it appeared that Hudson had been convicted in the United States district court for the western district of Arkansas, of assault with intent to kill, and was sentenced to imprisonment for a term of years.

A writ of error was granted by one of the justices of the supreme court (not assigned to that circuit) and an order made for supersedeas and bail, in a sum named, pending the writ, the bond to be approved by Judge Parker, the district judge. He, however, refused to approve the bond, holding that the supreme court judge was without authority to let the prisoner to bail.

In the opinion of the supreme court it was said that: "The statutes of the United States have been framed upon the theory that a person accused of a crime *shall not, until he is finally adjudged guilty in the court of last resort,* be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail not only after arrest and before trial, but after conviction and pending a writ of error," and so the court ordered a mandamus to be issued commanding Judge Parker to take action regarding the approval of the bond.

For the foregoing reasons I am of opinion that the defendants should be let to bail pending the disposal of their appeal in this court.

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[1] 1 Phil. Rep., 397.

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