

THIRD DIVISION

[G.R. No. 114350, January 16, 1997]

**JOSE T. OBOSA, PETITIONER, VS. COURT OF APPEALS
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.
D E C I S I O N**

PANGANIBAN, J.:

The main issue in this case is whether petitioner Jose T. Obosa, who was charged with two (2) counts of murder (a capital offense)^[1] for the ambush slaying of former Secretary of Interior and Local Governments Jaime N. Ferrer and his driver Jesus D. Calderon, but who was convicted only of two (2) counts of homicide by the trial court, may be granted bail after such conviction for homicide, a non-capital offense. The Regional Trial Court of Makati answered in the affirmative but the Court of Appeals ruled otherwise.

Petitioner thus asks this Court to resolve said issue in this petition under Rule 65 assailing the two Resolutions^[2] of respondent Court^[3] promulgated on November 19, 1993 and March 9, 1994, respectively. The first Resolution^[4] of November 19, 1993 disposed as follows:^[5]

"WHEREFORE, the Court GRANTS the Solicitor General's motion to cancel accused-appellant Jose T. Obosa's bailbond. The Court NULLIFIES the lower court's order dated May 31, 1990, granting bail to accused Obosa.

Let warrant issue for the arrest of the accused-appellant Jose T. Obosa."

On the same date, November 19, 1993, an Order of Arrest against petitioner was issued under signature of then Court of Appeals Associate Justice Bernardo P. Pardo.^[6]

On December 7, 1993, petitioner filed a Motion to Quash Warrant of Arrest and to Set Aside and Reconsider Resolution of November 19, 1993.^[7] The second assailed Resolution^[8] promulgated on March 9, 1994 denied the motion as follows:

"IN VIEW WHEREOF, the Court hereby DENIES accused Obosa's 'Motion to quash warrant of arrest and to set aside and reconsider the resolution of November 19, 1993' dated December 4, 1993, for lack of merit.

Let a copy of this resolution be given to the Honorable, the Secretary of Justice, Manila, so that he may issue the appropriate directive to the Director, Bureau of Corrections, Muntinlupa, Metro Manila, for the rectification of the prison record of accused Jose T. Obosa."

The Facts

Aside from the disagreement as to the date when notice of appeal was actually filed with the trial court,^[9] the facts precedent to this petition are undisputed as set out in the first assailed Resolution, thus: ^[10]

"On December 4, 1987, Senior State Prosecutor Aurelio C. Trampe charged the accused Jose T. Obosa and three others with murder on two counts, by separate amended informations filed with the Regional Trial Court of Makati, Branch 56, for the ambush-slaying of Secretary of Local Governments Jaime N. Ferrer and his driver Jesus D. Calderon, which occurred on August 2, 1987, at about 6:30 in the evening, at La Huerta, Parañaque, Metro Manila, as Secretary Ferrer was riding in his car, going to the St. Andrew Church near the plaza of La Huerta, to hear Sunday mass.

Each information alleged that the killing was with the attendance of the following qualifying/aggravating circumstances, to wit: treachery, evident premeditation, abuse of superior strength, nighttime purposely sought, disregard of the respect due to the victim on account of his rank and age (as to Secretary Ferrer), and by a band. The Prosecutor recommended no bail, as the evidence of guilt was strong.

During the trial of the two cases, which were consolidated and tried jointly, the accused Obosa was detained at Camp Bagong Diwa, Taguig, Metro Manila.

At the time of the commission of the two offenses, the accused Obosa was a virtual 'escapee' from the National Penitentiary at Muntinlupa, Metro Manila, particularly, at the Sampaguita Detention Station, where he was serving a prison term for robbery as a maximum security prisoner.

Indeed, by virtue of a subpoena illegally issued by a judge of the Municipal Trial Court of Sariaya, Quezon, accused Obosa was escorted out of prison to appear before said judge on the pretext that the judge needed his presence so that the judge could inquire about the whereabouts of the accused therein. While accused Obosa was out of prison, he was able to participate in the commission of the double murder now charged against him as principal for the ambush-slaying of Secretary Ferrer and his driver (Lorenzo vs. Marquez, 162 SCRA 546, 553).

Witnesses positively identified accused Jose T. Obosa as one of three assassins firing at a car near the canteen at the corner of Victor Medina Street and Quirino Avenue, Parañaque, Metro Manila. It was the car of Secretary Ferrer. He sustained eight entrance gunshot wounds on the right side of his head, neck and body, while his driver sustained three entrance wounds on the left temple, right side of the neck, right arm, chest and right hip. They died on the spot.

In its decision dated May 25, 1990, the lower court found the accused

Obosa guilty beyond reasonable doubt of homicide on two counts.^[11] In ruling that the crime committed was homicide, not murder as charged in the informations, the lower court declared that there was no qualifying circumstance attendant. In fact, however, the lower court itself found that the accused shot the victims while the latter were inside the car, unwary of any danger to their lives, for unknown to them, were the assassins lurking in the dark, firing their guns from behind, a circumstance indubitably showing treachery (*People vs. Tachado*, 170 SCRA 611; *People vs. Juanga*, 189 SCRA 226). There is treachery when the victims were attacked without warning and their backs turned to the assailants, as in this case (*People vs. Tachado*, supra). There is treachery when the unarmed and unsuspecting victim was ambushed in the dark, without any risk to his assailants (*People vs. Egaras*, 163 SCRA 692). Moreover, the crimes could be qualified by taking advantage of superior strength and aid of armed men (*People vs. Baluyot*, 170 SCRA 569). Where the attackers cooperated in such a way to secure advantage of their combined strength, there is present the qualifying circumstance of taking advantage of superior strength (*People vs. Baluyot*, supra; *People vs. Malinao*, 184 SCRA 148).

On May 31, 1990, the lower court promulgated its decision and on the same occasion, accused Obosa manifested his intention to appeal and asked the Court to allow him to post bail for his provisional liberty. Immediately, the lower court granted accused Obosa's motion and fixed bail at P20,000.00, in each case.

On June 1, 1990, accused Obosa filed a written notice of appeal, dated June 4, 1990, thereby perfecting appeal from the decision (*Alama vs. Abbas*, 124 Phil. 1465). By the perfection of the appeal, the lower court thereby lost jurisdiction over the case and this means both the record and the person of the accused-appellant. The sentencing court lost jurisdiction or power to do anything or any matter in relation to the person of the accused-appellant (*Director of Prisons vs. Teodoro*, 97 Phil. 391, 395-396), except to issue orders for the protection and preservation of the rights of the parties, which do not involve any matter litigated by the appeal (*People vs. Aranda*, 106 Phil. 1008).

On June 4, 1990, accused Obosa filed a bailbond in the amount of P40,000.00, through Plaridel Surety and Assurance Company, which the lower court approved. On the same day, June 4, 1990, the lower court issued an order of release. The prison authorities at the National Penitentiary released accused Obosa also on the same day notwithstanding that, as hereinabove stated, at the time of the commission of the double murder, accused Obosa was serving a prison term for robbery."

The respondent Court likewise discoursed on the service of sentence made by the accused. Thus, it extensively discussed the following computation on the penalties imposed upon the petitioner for his previous offenses, which all the more convinced respondent Court that petitioner was not entitled to bail on the date he applied therefor on May 31, 1990 and filed his bailbond on June 4, 1990, as follows: ^[12]

"At the time the accused committed the crimes charged, he was an inmate at the National Penitentiary, New Bilibid Prisons, Muntinlupa, Metro Manila. He was in jail, but was able to commit the Ferrer assassination. He was serving imprisonment by final judgment in each of three (3) cases, namely, (a) theft, for which he was sentenced to eleven (11) months and fifteen (15) days of prision correccional; (b) robbery in band, for which he was sentenced to an indeterminate penalty of six (6) months and one (1) day of prision correccional, as minimum, to four (4) years, two (2) months and one (1) day of prision correccional, as maximum, and (c) evasion of service of sentence, for which he was sentenced to six (6) months of arresto mayor. These sentences are to be served successively not simultaneously (Article 70, Revised Penal Code; People vs. Reyes, 52 Phil. 538; Gordon vs. Wolfe, 6 Phil. 76; People vs. Medina, 59 Phil. 134; United States vs. Claravall, 31 Phil. 652; People vs. Olfindo, 47 Phil. 1; People vs. Tan, 50 Phil. 660). In successive service of sentences, the time of the second sentence did not commence to run until the expiration of the first (Gordon vs. Wolfe, supra).

He commenced service of sentence on October 11, 1979 (with credit for preventive imprisonment) and was admitted to the New Bilibid Prisons on January 5, 1980 (See prison record attached to Supplement, dated January 31, 1994 of the Solicitor General; Cf. prison record [incomplete] attached to Manifestation dated February 2, 1994 of the Accused Appellant).

On December 25, 1980, he escaped from detention at Fort Del Pilar, Baguio City, where he was temporarily working on a prison project (See decision, Crim. Case No. 4159-R, Regional Trial Court, Baguio City, People vs. Jose Obosa y Tutaña). While a fugitive from justice, he committed other crimes, in Quezon City, Makati, and Muntinlupa, Metro Manila. The cases are pending (See prison record, supra).

He was recaptured on August 27, 1986. Under prison regulations, he forfeited his allowance for good conduct prescribed by law (Article 97, Revised Penal Code; Act 2489 of the Philippine Legislature). In addition, he must serve the time spent at large (TSAL) of five (5) years, eight (8) months and two (2) days, and the unserved portion of his successive sentences for robbery in band, theft and evasion of service of sentence aforementioned. In sum, he has to serve the balance of his sentence for robbery in band of four (4) years, two (2) months and one (1) day of prision correccional; the sentence for theft of eleven (11) months and fifteen (15) days of prision correccional; and the sentence for evasion of service of sentence of six (6) months of arresto mayor, reaching a total of five (5) years, seven (7) months and sixteen (16) days. Since his commitment to jail on October 11, 1979, to the time he escaped on December 25, 1980, he had served one (1) year, two (2) months, and fourteen (14) days, which, deducted from the totality of his prison term, would leave a balance of four (4) years, five (5) months and two (2) days. Thus, he must still serve this unserved portion of his sentences in addition to the time spent at large. Counting the time from his re-arrest on August 27, 1986, and adding thereto five (5) years, eight (8) months and two (2) days (time spent at large), the result is that he

must serve up to April 29, 1992. To this shall be added the remaining balance of his successive sentences of four (4) years, five (5) months and two (2) day(s). Consequently, he has to serve sentence and remain in confinement up to October 1, 1996. Of course, he may be given allowance for good conduct. But good conduct time allowance can not be computed in advance (*Frank vs. Wolfe*, 11 Phil. 466). This is counted only during the time an accused actually served with good conduct and diligence (*Frank vs. Wolfe*, supra; See Aquino, *The Revised Penal Code*, Vol. I, 1987 ed., pp. 803-804). However, accused Obosa can not avail himself of this beneficent provision of the law because, while he was at large, he committed infraction of prison rules (escaping) and other crimes, including the Ferrer assassination, and for which he was placed under preventive imprisonment commencing on December 4, 1987, the date the informations at bar were filed against him. Because he was then under custody, no warrant of arrest or commitment order need be issued (*Asuncion vs. Peralejo*, G.R. No. 82915, June 22, 1988, minute resolution; Cf. *People vs. Wilson*, 4 Phil. 381; *Umil vs. Ramos*, 187 SCRA 311). Allowance for good conduct does not apply to detention prisoners (*Baking vs. Director of Prisons*, 28 SCRA 851). Consequently, by all reckoning, accused Obosa could not be released from prison on June 4, 1990, when he was admitted to bail. His release was illegal. He still has to serve the balance of his unserved sentences until October 1, 1996."

On September 6, 1993, respondent People, through the Office of the Solicitor General (OSG), filed with respondent Court an urgent motion,^[13] praying for cancellation of petitioner's bail bond.

Petitioner promptly filed an opposition,^[14] to which respondent People submitted a reply.^[15] Thereupon, respondent Court issued its first questioned Resolution dated November 19, 1993:^[16] a) canceling petitioner's bail bond, b) nullifying the trial court's order of May 31, 1990 which granted bail to petitioner, and c) issuing a warrant for his immediate arrest.

Petitioner's twin motions for reconsideration^[17] and quashal of warrant of arrest proved futile as respondent Court, on March 9, 1994, after the parties' additional pleadings were submitted and after hearing the parties' oral arguments, issued its second questioned Resolution denying said motions for lack of merit.

The Issues

The petitioner worded the issue in this case as follows: ^[18]

"The principal constitutional and legal issues involved in this petition is (sic) whether petitioner as accused-appellant before the respondent Honorable Court of Appeals is entitled to bail as a matter of right and to enjoy the bail granted by the Regional Trial Court, in Makati, Metro Manila, pending appeal from the judgment convicting him of Homicide on two (2) counts though charged with Murder; and assuming that bail is a matter of discretion, the trial court had already exercised sound discretion in granting bail to accused-appellant, now petitioner in this case, and respondent Court of Appeals is devoid of jurisdiction in cancelling said bailbond."