

SECOND DIVISION

[G.R. NO. 141805, August 08, 2005]

**GENEVIEVE C. POBRE, PETITIONER, VS. COURT OF APPEALS,
REGIONAL TRIAL COURT, BRANCH 45, SAN JOSE, OCCIDENTAL
MINDORO, PEOPLE OF THE PHILIPPINES AND ANDREW
OVALLES, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

In an Information dated May 8, 1998, private respondent Andrew Ovalles was charged before the Regional Trial Court of San Jose (Branch 46), Occidental Mindoro, with the crime of Parricide, committed as follows:

That on or about the 18th day of October, 1997, at around 1:46 o'clock in the morning, in Barangay Pag-asa, San Jose, Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously with intent to kill and with abuse of superior strength and in the course of their quarrel, did then and there pushed Alma Casaclang-Ovalles, his legitimate spouse, causing her to fall, her head hitting the hard floor and thereby inflicting upon her fatal injury, rendering her unconscious which caused her death shortly thereafter.

CONTRARY TO LAW.^[1]

Assistant Prosecutor Levitico F. Salcedo recommended bail in the amount of P200,000.00, but a copy of the Information attached to the records of this case shows a cancellation of the amount and the words "no bail" were annotated therein.

^[2] Judge Ernesto F. Pagayatan issued an order of arrest on May 15, 1998, with the recommended bail of P200,000.00 likewise canceled and "no bail" written thereon.

^[3] When the warrant was returned unserved, Judge Pagayatan issued an alias order of arrest on June 3, 1998.^[4] Private respondent was arrested in Quezon City on June 8, 1998, and committed to the Municipal Jail of San Jose, Occidental Mindoro on the same day.^[5]

Private respondent filed a Motion to Quash the Information,^[6] and a Manifestation and Motion praying that in the event the Motion to Quash is denied, the same be treated as a motion to admit bail.^[7] Hearing on the motions was scheduled on June 26, 1998.^[8] On the day of the scheduled hearing, Atty. Mario G. Aglipay filed his entry of appearance for private complainant Genevieve C. Pobre, the victim's sister (herein petitioner). Atty. Aglipay prayed that he be given ten days within which to file his opposition to the motions, and that the hearing be re-set to July 10, 1998. Judge Pagayatan, however, pushed through with the hearing on June 26, 1998 and

treated private respondent's motions as one to fix bail. During the hearing, Fiscal Salcedo informed the court that Atty. Aglipay was not able to come to the hearing because he was left by the boat going to Mindoro, and that Atty. Aglipay was asking that the hearing be re-set to Friday. Counsel for the defense, however, stated that it is the government prosecutor who controls the prosecution of the case. Judge Pagayatan then asked Fiscal Salcedo if he was willing to submit the motions for resolution, to which the latter acceded. The motions were then considered submitted for resolution. On the same day, private respondent posted a property bond.

It was on June 29, 1998, that Judge Pagayatan issued an order granting private respondent's motion to fix bail, with the amount fixed at P40,000.00.^[9] Judge Pagayatan also issued an order on the same day approving private respondent's property bond.^[10]

On July 10, 1998, private respondent was arraigned and pleaded not guilty to the offense charged.^[11]

Atty. Aglipay filed an Omnibus Motion on July 30, 1998, contesting the Order dated June 29, 1998 granting bail, which Order was received by Atty. Aglipay on July 17, 1998.^[12] Atty. Aglipay prayed for the inhibition of both Judge Pagayatan and Fiscal Salcedo from the case; that the case be re-raffled to another sala and prosecuted by another public prosecutor; and that the Information be amended.^[13] According to the private prosecutor, there is a need to amend the Information to read, as follows:

That on or about the 17th day of October, 1997, at around 11 o'clock on the evening, or thereabouts, in Barangay Pag-asa, San Jose, Occidental, Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously assaulted with intent to kill and inflicted fatal head and brain injury upon her legitimate spouse, Alma Casaclang-Ovalles, causing her death shortly thereafter on October 18 1997 at around 1:46 o'clock in the morning or thereabout.

CONTRARY TO LAW.^[14]

Petitioner contends that the previous Information, which states in part:

... with intent to kill and with abuse of superior strength and in the course of their quarrel, did then and there pushed Alma Casaclang-Ovalles, his legitimate spouse, causing her to fall, her head hitting the hard floor and thereby inflicting upon her fatal injury, rendering her unconscious which caused her death shortly thereafter.

limits the prosecution in presenting evidence that will prove that private respondent had intent to kill his wife by pushing her.

Hearing on the motion was held on August 28, 1998.

On September 28, 1998, Judge Pagayatan issued an order granting the motion to inhibit and ordering the raffle of the case to the other sala of the court, but the motion to set aside the Order dated June 29, 1998 was denied.^[15] Consequently,

the case was raffled to Branch 45 of the Regional Trial Court of San Jose, Occidental Mindoro. However, during the hearing on November 26, 1998, proceedings were temporarily deferred due to the impending retirement of the judge assigned to Branch 45 in January 1999, to be resumed only after the designation of a new judge.^[16]

On December 11, 1998, herein petitioner filed a special civil action for *certiorari* with the Court of Appeals (CA), docketed as CA-G.R. SP No. 49878, questioning the Order dated June 29, 1998, issued by Judge Pagayatan. The CA^[17] dismissed the petition per its Resolution dated December 22, 1998, to wit:

Petition for review^[18] having been filed late, the appeal is deemed ABANDONED and hereby ordered DISMISSED.^[19]

A motion for reconsideration was filed but the CA^[20] denied it in its Resolution dated February 7, 2000 for the reason that the petition was filed 83 days late.^[21]

Thereafter, petitioner filed the present petition for *certiorari*, arguing that:

I

THE DISMISSAL OF THE PETITION SEEKING THE ANNULMENT OF THE ORDER ADMITTING THE ACCUSED ON BAIL IS A LEGAL ERROR IN THAT THE PETITION IS NOT SUBJECT TO THE APPLICABLE REGLAMENTARY (sic) PERIOD CONSIDERING THAT THE ACCUSED IS NOT ENTITLED TO BAIL "REGARDLESS OF THE STAGE OF THE CRIMINAL PROSECUTION."

II

THE ENTIRE RECORD SHOWS THAT THERE IS A GREAT PRESUMPTION THAT THE ACCUSED IS GUILTY OF THE CRIME OF PARRICIDE.

III

THERE IS A NEED TO AMEND THE INFORMATION.

IV

THERE WAS MANIFEST PARTIALITY IN THE ACCUSED'S FAVOR RENDERING ALL THE PROCEEDINGS BEFORE THE PUBLIC PROSECUTOR AND THE TRIAL COURT NULL AND VOID *AB INITIO*.^[22]

The Court gave due course to the petition and required the parties to submit their respective memoranda. Accordingly, petitioner filed her Memorandum. The Office of the Solicitor General, in behalf of the People of the Philippines, filed its Memorandum. However, private respondent, despite several extensions granted by the Court, failed to file his memorandum.

In a Resolution dated April 25, 2005, the Court declared private respondent's counsel guilty of contempt of court under Rule 71, Section 3 (b) of the Rules of Court, as amended, and his arrest and detention were ordered until he complies and

pays the fine of P4,000.00.^[23] In a Return of Order of Arrest dated May 25, 2005, the National Bureau of Investigation (NBI) Calapan District Office informed the Court that private respondent's counsel, Atty. Crispin P. Perez, voluntarily surrendered at the NBI Calapan District Office on May 24, 2005. Atty. Perez likewise filed a Memorandum for private respondent via courier on May 27, 2005, together with a postal money order for P4,000.00, representing the fine imposed on him.

Initially, the Court recognizes the legal standing of herein petitioner as she is the victim's sister. In *Narcisco vs. Romana-Cruz*,^[24] involving the crime of parricide, the Court sustained the legal standing of the sister of the deceased to file a petition for certiorari as she is a party-litigant who is akin to the "offended party," she being a close relative of the deceased.

The Court also notes that petitioner filed a special civil action for *certiorari* under Rule 65 of the Rules of Court, instead of a petition for review under Rule 45. A petition for review under Rule 45 is the proper remedy in assailing the CA Resolutions dated December 22, 1998 and dated September 7, 2000, considering that these are final dispositions of the case before it. In any case, the Court may disregard petitioner's lapse and treat the present petition as one for review under Rule 45. This is in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, especially (1) if the petition was filed within the reglementary period for filing a petition for review; (2) errors of judgment are averred; and (3) there is sufficient reason to justify the relaxation of the rules.^[25] The petition in this case actually asserts errors of judgment committed by the CA, which are proper in a petition for review,^[26] and it is settled that it is the allegations in the complaint or petition and the character of the relief sought that determine the nature of an action.^[27]

Petitioner argues that the CA erred in dismissing her petition for *certiorari* on the ground that it was filed out of time. She believes that the filing thereof is not subject to the period prescribed by Rule 65 of the Rules of Court because of Rule 114, Sec. 7 thereof, which states: "(N)o person charged with the capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when the evidence of guilt is strong, *regardless of the stage of the criminal prosecution.*" According to petitioner, a null and void order granting bail cannot reach finality any time during the stage of the criminal prosecution and may be questioned on appeal or petition for review even if filed beyond the reglementary period.^[28]

The Court cannot sustain petitioner's argument. It is true that under Rule 114, Sec. 7 of the Rules of Court, an accused charged with a capital offense is not entitled to bail at any time during trial when the evidence of guilt is strong. It does not mean however that since the accused is not entitled to bail at any stage of the trial, a grant thereof can be questioned any time and without regard to the period of filing provided by the Rules of Court.

An order granting bail is an interlocutory order. The word *interlocutory* refers to something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy.^[29] In that sense, it does not attain finality since there leaves something else to be done