

## FIRST DIVISION

[ G.R. No. 151005, June 08, 2004 ]

**PEOPLE OF THE PHILIPPINES AND HEIRS OF ESTEBAN LIM JR.,  
PETITIONERS, VS. THE HONORABLE PRESIDING JUDGE OF THE  
REGIONAL TRIAL COURT OF MUNTINLUPA CITY (BRANCH 276)  
AND RICARDO TOBIAS, RESPONDENTS.**

### D E C I S I O N

#### **PANGANIBAN, J.:**

An order granting bail in a capital offense must contain a summary showing the strength or the weakness of the prosecution evidence, as well as the trial judge's assessment thereof. Absent such summary and assessment, the order would not stand appellate scrutiny and must be struck down.

#### **The Case**

Before us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court, seeking to annul the September 26, 2001 Order,<sup>[2]</sup> the September 27, 2001 Order of Release,<sup>[3]</sup> and the November 7, 2001 Order<sup>[4]</sup> issued by the Regional Trial Court (RTC) of Muntinlupa City (Branch 276) in Criminal Case No. 1605. The assailed September 26, 2001 Order reads as follows:

"This is a PETITION FOR BAIL.

"After the Court evaluated the evidence and the testimony of the prosecution witnesses, it was shown that the victim was gunned down admittedly by Accused during a quarrel, or immediately soon after, with the quarrel still continuing.

"The Petition for Bail is therefore granted and the same is set at FIFTY THOUSAND PESOS (P50,000.00).

"The records show that Accused [Ricardo Tobias] was sentenced for possession of a low powered firearm for which he was meted a penalty of life imprisonment. However, with the amendment of the law on Illegal Possession of Firearms, this Court granted Accused a reduction of the penalty in a Petition for Writ of Habeas Corpus to only 6 years imprisonment because [a] 9MM caliber firearm is considered a low caliber firearm, as provided by RA 8294. Accused has been in jail for eight (8) years, eleven (11) months and fifteen (15) days already and has completed the service of his sentence. He may now post bail for this pending offense, in light of the evidence adduced by the [p]rosecution."

<sup>[5]</sup>

The assailed September 27, 2001 Order directed the release from detention of herein private respondent. On the other hand, the November 7, 2001 Order denied the prosecution's Motion for Reconsideration of the two earlier rulings.

### **The Facts**

This case is intimately connected with the Decision of this Court in GR No. 114185 penned by then Justice, now Chief Justice, Hilario G. Davide Jr. In that earlier proceeding before the RTC of Santiago, Isabela (Branch 21), herein private respondent was charged on January 10, 1991, with "qualified illegal possession of firearm used in murder." The accusatory portion of the Information was worded as follows:

"That on or about the 5<sup>th</sup> day of October, 1990, in the [M]unicipality of Santiago, [P]rovince of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being allowed or authorized by law to keep, possess and carry firearms, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) Browning pistol, Caliber 9MM with Serial No. RPT 3221943 without first having obtained the necessary permit and/or license therefor and on the occasion of such possession, the said accused, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and shoot with the said illegally possessed firearm one Esteban Lim, Jr. alias Jojo, inflicting upon him gunshot wounds on the different parts of his body which directly caused his death due to severe hemorrhage."<sup>[6]</sup>

On January 11, 1994, the RTC rendered its Decision finding private respondent guilty as charged and sentencing him to life imprisonment.<sup>[7]</sup>

On appeal, this Court affirmed on January 30, 1997, the lower court's Decision, with modifications consisting mainly of a change in the penalty from life imprisonment to *reclusión perpetua*. It also directed the provincial prosecutor of Isabela to institute a criminal action for murder against private respondent.

Without the knowledge of this Court, it turned out that as early as October 15, 1993, private respondent had already been charged with murder before the RTC of Santiago, Isabela.<sup>[8]</sup> We quote the Information therein as follows:

"The undersigned Third Assistant Provincial Prosecutor of Isabela accuses [RICARDO] TOBIAS @ DING TOBIAS of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

"That on or about October 5, 1990, in the [M]unicipality of Santiago, [P]rovince of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with Browning Pistol Cal. .9MM bearing No. RPT-3221943, through treachery, did then and there willfully, unlawfully and feloniously sho[o]t Esteban Lim, Jr., with the use of said firearm inflicting upon the said

Esteban Lim, Jr., several gunshot wounds which directly cause[d] his death.”

He was arraigned, however, only on November 23, 1998.<sup>[9]</sup>

In the meantime, Republic Act (RA) No. 8294 was approved on June 6, 1997. It amended Presidential Decree (PD) No. 1866, for violation of which he had been convicted earlier. Relying upon RA 8294, private respondent filed a Petition for Habeas Corpus before the RTC of Muntinlupa City.<sup>[10]</sup>

On September 21, 2000, the trial court issued an Order declaring private respondent’s Petition moot and academic on the ground that he was being validly detained for murder -- a non-bailable offense -- and no longer for illegal possession of firearms. Nonetheless, on the basis of the retroactive effect of the provisions of RA 8294 that were beneficial to the accused, the RTC reduced the penalty for illegal possession of firearms from *reclusion perpetua* to *prisión correccional*. Having already served the reduced penalty, he should have been freed from detention were it not for the murder charge.

On January 26, 2001, the murder trial commenced.

On August 9, 2001, private respondent filed a Petition for Bail on the ground that evident premeditation had not been proven. Moreover, no ballistic report was submitted by the prosecution. Despite opposition to the Petition, the trial court granted bail at P50,000 on September 26, 2001.

### **Ruling of the Trial Court**

The trial court opined that private respondent had already completed the service of his sentence in the previous case for illegal possession of a low-powered firearm. After evaluating the evidence and the testimony of the prosecution witnesses in the pending murder case, it ruled that he could post bail therein.

Thus, it ordered his release<sup>[11]</sup> from custody after he had posted the required bail bond<sup>[12]</sup> through the Wellington Insurance Company, Inc.<sup>[13]</sup>

Hence, this Petition.<sup>[14]</sup>

### **Issues**

Petitioners aver that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted bail to the accused.<sup>[15]</sup> On the other hand, private respondent counters that he cannot be tried anew for a crime for which he has already been convicted.<sup>[16]</sup>

Simply stated, the issues are as follows: first, whether bail was validly granted; and *second*, whether the accused may still be prosecuted for a crime for which he has already been convicted.

### **The Court’s Ruling**

The Petition is meritorious.

**First Issue:**  
**Propriety of Bail**

As a general rule, a person "in custody shall, before final conviction, be entitled to bail as a matter of right."<sup>[17]</sup> Bail is a security given for the release of a person under custody of the law, as a guarantee for his or her appearance before any court as required under specified conditions.<sup>[18]</sup> The right to bail flows from the presumption of innocence.<sup>[19]</sup> In the present case, private respondent is undergoing trial for murder. Is he entitled to bail?

His case falls within the exception to the aforesaid general rule on bail: When evidence of guilt is strong, a person shall not be admitted to bail<sup>[20]</sup> if charged with a capital offense; or with an offense that -- under the law --is punishable with reclusion perpetua at the time of its commission and at the time of the application for bail.<sup>[21]</sup>

At the time private respondent allegedly committed the felony in 1990, "[m]urder x x x was a crime punishable by *reclusion perpetua*."<sup>[22]</sup> With the passage of RA 7659, murder is now punishable with *reclusion perpetua* to death. Consequently, depending on the strength of the evidence of the prosecution, bail is merely discretionary, not a matter of right. In *People v. Hon. Cabral*<sup>[23]</sup> the Court explained:

"The grant or denial of an application for bail is, therefore, dependent on whether the evidence of guilt is strong which the lower court should determine in a hearing called for the purpose. The determination of whether the evidence of guilt is strong, in this regard, is a matter of judicial discretion. While the lower court would never be deprived of its mandated prerogative to exercise judicial discretion, this Court would unhesitatingly reverse the trial court's findings if found to be laced with grave abuse of discretion.

Judicial discretion in granting bail may indeed be exercised only after the evidence of guilt is submitted to the court during the bail hearing.<sup>[24]</sup> In the present case, no separate bail hearing was conducted. The Petition for Bail was filed on August 9, 2001. After the prosecution filed its Opposition, private respondent submitted a Reply. After the former had presented all its witnesses in the regular course of trial, but before it had rested its case, the Petition for Bail was deemed submitted for resolution. On the same day, the assailed September 26, 2001 Order was issued.

On its face, the one-page Order demonstrates grave abuse of discretion. "We have repeatedly stressed that the order granting or refusing the bail must contain a summary of the evidence presented by the prosecution."<sup>[25]</sup> The Court, as it had done many times, patiently discussed the reasons for this requirement, thus:

"There are two corollary reasons for the summary. First, the summary of the evidence in the order is an extension of the hearing proper, thus, a part of procedural due process wherein the evidence presented during

the prior hearing is formally recognized as having been presented and most importantly, considered. The failure to include every piece of evidence in the summary presented by the prosecution in their favor during the prior hearing would be tantamount to not giving them the opportunity to be heard in said hearing, for the inference would be that they were not considered at all in weighing the evidence of guilt. Such would be a denial of due process, for due process means not only giving every contending party the opportunity to be heard but also for the Court to consider every piece of evidence presented in their favor. Second, the summary of the evidence in the order is the basis for the judge's exercising his judicial discretion. Only after weighing the pieces of evidence as contained in the summary will the judge formulate his own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion. x x x.

"Based on the above-stated reasons, the summary should necessarily be a complete compilation or restatement of all the pieces of evidence presented during the hearing proper."<sup>[26]</sup>

The assailed September 26, 2001 Order was sorely defective in both form and substance. It had no summary of the evidence, but merely a curt one-sentence description of the evidence for the prosecution. Neither did the Order have a conclusion on whether the evidence of guilt was strong. Without such conclusion, there was no basis for granting bail. Thus, the Order cannot be sustained, allowed to stand, or given any semblance of validity.<sup>[27]</sup> It was patently a product of whim, caprice, and outright arbitrariness.<sup>[28]</sup> For the same reasons, we cannot also sustain the September 27, 2001 and the November 7, 2001 Orders, which are rooted in the invalid September 26, 2001 Order.

The arbitrariness of the trial judge is compounded by her failure to take into account this Court's Decision in GR No. 114185, which found the presence of treachery and directed the filing of an information for murder, as follows:

"Treachery is present in this case, as there was a sudden attack against an unarmed victim. That the attack was preceded by a scuffle, as pointed out by the accused, is of no moment, since treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. In the case at bench, the scuffle between Jojo Lim and the accused had already ended; Jojo Lim was chasing Giron, his attention was turned towards the latter, and his back was against the accused. Thus, the accused's shots were a complete surprise to Jojo Lim, and he could neither defend himself nor retaliate against the assault.

x x x x x x x x

"WHEREFORE, x x x

"The Provincial Prosecutor for Isabela is hereby directed to institute against the accused a criminal action for the crime of murder, if none has yet been made; x x x."<sup>[29]</sup>