

## SPECIAL FIFTH DIVISION

[ CA-G.R. SP NO. 127528, March 23, 2015 ]

**TONICA BUTALAN, PETITIONER, VS. HON. EFREN M. CACATIAN,  
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF  
SANTIAGO CITY (ISABELA), BRANCH 35 AND THE PEOPLE OF  
THE PHILIPPINES, RESPONDENTS.**

### DECISION

**TIJAM, J.:**

Before this Court is a *Petition for Certiorari*,<sup>[1]</sup> under *Rule 65* of the *Rules of Court*, seeking to nullify and set aside the August 2, 2012 Resolution<sup>[2]</sup>, and August 31, 2012 Order<sup>[3]</sup>, both issued by the Regional Trial Court (RTC), Branch 35 of Santiago City, Isabela, in *Criminal Case No. 35-5973*.

The salient facts of the case are as follows:

In its April 2, 2012 *Decision*,<sup>[4]</sup> the RTC convicted Petitioner Tonica Butalan of the crime of *estafa*, penalized under *Article 315, paragraph 1(b)* of the *Revised Penal Code* (RPC).<sup>[5]</sup>

On June 20, 2012, Petitioner moved for the reconsideration of the *Decision* on the ground that the RTC erred in convicting her because all the elements of *estafa* defined under *Article 315, paragraph 1(b)* of the *RPC*, were not proven.

On June 22, 2012, Petitioner filed a *Petition for Bail*,<sup>[6]</sup> arguing that since she does not suffer from any of the grounds for the denial or cancellation of discretionary bail as enumerated in *Section 5, Rule 114* of the *Rules of Court*,<sup>[7]</sup> she should be allowed to post bail in a reasonable amount as may be fixed by the court.

The *motion* and the *petition*, however, were both denied in the RTC's August 2, 2012 *Resolution*, which reads:

"The motion for reconsideration of the accused raised no new arguments to warrant modification or reversal of the decision of the court. In fact, the same arguments were already passed upon and resolved by the Court, hence, no cogent reason to disturb the decision of this Court.

And, pursuant to the recent case of *Leviste v. Court of Appeals*, after conviction, the accused's right to be presumed innocent ends; necessarily, his right to bail follows too.

SO ORDERED."<sup>[8]</sup>

Meanwhile, on August 23, 2012, Petitioner filed a *Notice of Appeal*<sup>[9]</sup> with the RTC which is still pending approval.

On even date, Petitioner likewise moved for the reconsideration of the RTC's August 2, 2012 *Resolution*. The *motion*, however, was denied in the RTC's August 31, 2012 *Order*.

Hence, this instant *Petition* relying on the sole ground that:

**"THE HONORABLE COURT ERRED IN DENYING THE PETITION FOR BAIL BASED ON THE MISPLACED RATIOCINATION OR JUSTIFICATION THAT 'AFTER CONVICTION, THE ACCUSED'S RIGHT TO BE PRESUMED INNOCENT ENDS; NECESSARILY, HIS RIGHT TO BAIL FOLLOWS TOO' CITING THE CASE OF LEVISTE VS. COURT OF APPEALS WITHOUT TAKING INTO CONSIDERATION THE CLEAR DIFFERENCE IN FACTUAL MILIEU BETWEEN THE INSTANT CASE AND THE SAID CASE OF LEVISTE."**

***The Petition lacks merit .***

In the instant *Petition*, Petitioner posits that her acquittal of the crime of *estafa* is likely to happen since it was clearly alleged in the *Information*, that she "*is not authorized to collect nor receive money,*" and "*for which reason Topmost x x x refunded the amount of P916,000.00 to the various applicants.*" Petitioner likewise insists that she has none of the disqualifications listed in *Section 5, Rule 114* of the *Rules of Court*, harping on the Prosecution's failure to oppose her *Petition for Bail*, by presenting evidence to establish bail-negating circumstances against her, as provided in the said *Rules*.

*Petitioner's arguments fail to persuade Us.*

Bail pending appeal is governed by *Section 5 of Rule 114, Revised Rules of Criminal Procedure*.<sup>[10]</sup>

Under the present rule, the grant of bail is a matter of discretion upon conviction by the RTC of an offense **not** punishable by death, *reclusion perpetua* or life imprisonment. The Supreme Court in the case of *Qui vs. People* it held:

"Indeed, pursuant to the **"tough on bail pending appeal"** policy, the presence of bail-negating conditions mandates the denial or revocation of bail pending appeal such that those circumstances are deemed to be as grave as conviction by the trial court for an offense punishable by death, *reclusion perpetua* or life imprisonment where bail is prohibited.

In the exercise of that discretion, the proper courts are to be guided by the fundamental principle that ***the allowance of bail pending appeal should be exercised not with laxity but with grave caution and only for strong reasons, considering that the accused has been in fact convicted by the trial court.***<sup>[11]</sup>

Here, Petitioner was already found guilty beyond reasonable doubt of the crime of *estafa* and meted the penalty of 4 years and 2 months of *prision correccional* as

minimum, to 20 years of *reclusion temporal* as maximum. Since the right to bail emanates from the right to be presumed innocent,<sup>[12]</sup> Petitioner's right to bail no longer had a basis when she was convicted of the crime of *estafa*.

More importantly, as reasoned out by the Supreme Court in ***Leviste vs. Court of Appeals***,<sup>[13]</sup> the discretionary nature of the grant of bail pending appeal **does not** mean that bail should **automatically be granted** absent any of the circumstances mentioned in the third paragraph of *Section 5, Rule 114 of the Rules of Court*.<sup>[14]</sup> The Court went on to explain that the third paragraph of *Section 5, Rule 114* applies to two scenarios where the penalty imposed on the appellant applying for bail is imprisonment exceeding six years.<sup>[15]</sup> The **first** scenario deals with the circumstances enumerated in the said paragraph which are not present; the **second** scenario, however, contemplates the existence of at least one of the said circumstances.<sup>[16]</sup> Citing the opinions of two Justices who are both authorities in *Remedial Law*, Justice Florenz D. Regalado and Oscar M. Herrera, the Supreme Court in ***Leviste***, elucidated that:

“In the first situation, bail is a matter of sound judicial discretion. This means that, if none of the circumstances mentioned in the third paragraph of Section 5, Rule 114 is present, the appellate court has the discretion to grant or deny bail. An application for bail pending appeal may be denied even if the bail-negating<sup>[17]</sup> circumstances in the third paragraph of Section 5, Rule 114 are absent. In other words, the appellate court’s denial of bail pending appeal where none of the said circumstances exists does not, by and of itself, constitute abuse of discretion.

On the other hand, in the second situation, the appellate court exercises a more stringent discretion, that is, to carefully ascertain whether any of the enumerated circumstances in fact exists. If it so determines, it has no other option except to deny or revoke bail pending appeal. Conversely, if the appellate court grants bail pending appeal, grave abuse of discretion will thereby be committed.

Given these two distinct scenarios, therefore, any application for bail pending appeal should be viewed from the perspective of two stages: (1) the determination of discretion stage, where the appellate court must determine whether any of the circumstances in the third paragraph of Section 5, Rule 114 is present; this will establish whether or not the appellate court will exercise sound discretion or stringent discretion in resolving the application for bail pending appeal and (2) the exercise of discretion stage where, assuming the appellant’s case falls within the first scenario allowing the exercise of sound discretion, the appellate court may consider all relevant circumstances, other than those mentioned in the third paragraph of Section 5, Rule 114, including the demands of equity and justice;<sup>18</sup> on the basis thereof, it may either allow or disallow bail.

On the other hand, if the appellant’s case falls within the second scenario, the appellate court’s stringent discretion requires that the exercise thereof be primarily focused on the determination of the proof of

the presence of any of the circumstances that are prejudicial to the allowance of bail. This is so because the existence of any of those circumstances is by itself sufficient to deny or revoke bail. **Nonetheless, a finding that none of the said circumstances is present will not automatically result in the grant of bail. Such finding will simply authorize the court to use the less stringent sound discretion approach.**"<sup>[19]</sup>

Instead of appreciating the fine yet substantial distinction between the two different situations that are governed by the third paragraph of *Section 5, Rule 114*, Petitioner trivializes the established policy governing the grant of bail pending appeal, by simply arguing that the absence of bail-negating circumstances would automatically result in granting the *Petition for Bail*.

Again, this kind of theory was struck down by the High Court in *Leviste*; thus:

"Petitioner's theory therefore reduces the appellate court into a mere fact-finding body whose authority is limited to determining whether any of the five circumstances mentioned in the third paragraph of *Section 5, Rule 114* exists. **This unduly constricts its "discretion" into merely filling out the checklist of circumstances in the third paragraph of Section 5, Rule 114 in all instances where the penalty imposed by the Regional Trial Court on the appellant is imprisonment exceeding six years.** In short, petitioner's interpretation severely curbs the discretion of the appellate court by requiring it to determine a singular factual issue — whether any of the five bail-negating circumstances is present. x x x

**to limit the bail-negating circumstances to the five situations mentioned in the third paragraph of Section 5, Rule 114 is wrong.** By restricting the bail-negating circumstances to those expressly mentioned, petitioner applies the expressio unius est exclusio alterius<sup>20</sup> rule in statutory construction. However, **the very language of the third paragraph of Section 5, Rule 114 contradicts the idea that the enumeration of the five situations therein was meant to be exclusive.** The provision categorically refers to "the following **or other similar circumstances.**" Hence, **under the rules, similarly relevant situations other than those listed in the third paragraph of Section 5, Rule 114 may be considered in the allowance, denial or revocation of bail pending appeal.**"<sup>[21]</sup>

Indeed, the present inclination of the rules on criminal procedure to frown on bail pending appeal parallels the approach adopted in the United States where our original constitutional and procedural provisions on bail emanated.<sup>[22]</sup> While this is of course not to be followed blindly, it nonetheless shows that our treatment of bail pending appeal is no different from that in other democratic societies.

In our jurisdiction, the trend towards a strict attitude towards the allowance of bail pending appeal is anchored on the principle that judicial discretion — particularly with respect to extending bail — should be exercised or allowed not with leniency or laxity but with **grave caution and only for strong reasons.**<sup>[23]</sup>