# RIGHT TO BAIL *

By EMILIANO R. NAVARRO **

The right to bail is guaranteed by Article III, section 1 (16) of the Constitution as follows: "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required."

The bail guarantee seems to imply that the person claiming the right must have first been charged with an offense for which he is being held. After the liberation, however, owing to the difficulty of filing charges at once against those held for alleged treason and yet it being necessary to hold them in custody, Commonwealth Act No. 682, creating the People's Court and the Office of Special Prosecutors, provided in its section 19, among other things, that those held shall "be released on bail, even prior to the presentation of the corresponding information, unless the Court finds that there is strong evidence of the commission of a capital offense." [1] So, in Herras Teehankee v. Rovira,[2] the question was, for the first time, squarely presented whether the constitutional guarantee above quoted could be invoked by one held for treason although no formal charge had yet been filed. The Supreme Court held the Constitution applicable, declaring as follows: "This constitutional mandate refers to *all persons,* not only to persons against whom a complaint or information has already been formally filed. It lays down the rule that all persons shall before conviction be bailable except those charged with capital offenses when evidence of guilt is strong. According to this provision, the general rule is that any person, before being convicted of any criminal offense, shall be bailable, except when he is charged with a capital offense and the evidence of his guilt is strong. Of course, only those persons who have been either arrested, detained or otherwise deprived of their liberty will ever have occasion to seek the benefits of said provision. But in order that a person can invoke this constitutional precept, it is not necessary that he should wait until a formal complaint or information is filed against him. From the moment he is placed under arrest, detention or restraint by the officers of the law, he can claim this guarantee of the Bill of Rights, and this right he retains unless and until he is charged with a capital offense and evidence of his guilt is strong. Indeed

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[1] See also Executive Order No. 65 of the President of the Philippines, dated September 3, 1945.

[2] 75 Phil. 634 (1945). See also Ocampo v. Bernabe et al., 43 O.G. No. 5, 1632, 1634 (1946).

if, as admitted on all sides, the precept protects those already charged under a formal complaint or information, there seems to be no legal or just reason for denying its benefits to one as against whom the proper authorities may even yet conclude that there exists no sufficient evidence of guilt. To place the former in a more favored position than the latter would be, to say the least, anomalous and absurd. If there is a presumption of innocence in favor of one already formally charged with criminal offense... *a fortiori*, this presumption should be indulged in favor of one not yet so charged, although already arrested or detained." [3]

The Teehankee case, extending the constitutional right to bail to those held but not yet charged, seems especially suited to those held for treason under Commonwealth Act No. 682. By section 19 of this Act, public officers were authorized to hold prisoners for a period of six months, incurring no criminal liabiltiy thereby under article 125 of the Revised Penal Code, although no formal charge was filed.[4] This period of time made the bail guarantee the only ample remedy for the prisoners, as *habeas corpus* would not lie within the period of six months. In ordinary cases, however, where detention shall last no more than six hours without a formal charge being filed,[5] the remedy, in case detention continues and no charge is filed, is *habeas corpus*, not a petition for bail as guaranteed by the Constitution. Similarly, under Commonwealth Act No. 682, if the detention exceeded six months and no charge was filed, the remedy would be a petition for *habeas corpus* and not for bail.[5a]

The purpose of the constitutional guarantee against excessive bail is to prevent the denial of bail by fixing the amount so unreasonably high that it may not be given.[6] The mere inability to procure bail does not of itself make the amount excessive.[7] The controlling circumstances in determining the amount of bail have been stated as follows: "(1) The bail shall be sufficiently high to give a reasonable assurance that the undertaking will be complied with; (2) the power to require bail is not to be so used as to make it an

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[3] At pp. 640-641. The opinion on this point was unanimous. See also Duran v. Abad Santos, 75 Phil. 410 (1945), where the matter seems to have been taken for granted.

[4] This was held constitutional in Laurel v. Misa, 42 O.G. No. 11, 2847.

[5] Art. 125, R.P.C. See also Bustos v. Lucero, 46 O.G. No. 1 (November, 1950), 438 (1948).

[5a] See, however, opinion of Pablo, J., in the Politburo cases, G.R. Nos. L-4855, 4964, 5102, October 11, 1952, to the effect that bail may be secured in *habeas corpus* proceedings.

[6] On the origin of the constitutional provision prohibiting excessive bail, Norton says: "Long imprisonments which had been made possible by excessive bail and the prevention of trials had so offended the English people that when William III and Mary ascended the throne they were required in the Declaration of Rights to assent to a provision substantially like this clause in our Constitution. As far back as the reign of Henry VI (1444) there was an act of Parliament requiring sheriffs and other officers to 'let out of prison all manner of persons upon reasonable sureties of sufficient persons.'" *The Constitution of the United States*, 1943, p. 222.

[7] *Ex parte* Malley, 50 Nev. 248, 53 A.L.R. 395 (1927).

instrument of oppression; (3) the nature of the offense and the circumstances under which it was committed are to be considered; (4) the ability to make bail is to be regarded, and proof may be taken upon this point." [8] The question whether or not bail is excessive rests mainly on judicial discretion.[9] The conditions of the bail are those fixed by law and to permit the imposition of other conditions might result in the bail being excessive.[10] The Supreme Court, in People v. Lara,[11] held that timely objection to excessive bail must be raised; and that on appeal of a criminal case to the Supreme Court, the question of excessive bail may not be assigned as error, the objection not being raised timely.

Under section 10, Rule 108, Rules of Court, summons may be issued instead of a warrant of arrest, in which case bail is unnecessary. But the judge may order that the accused be arrested and not released except upon furnishing bail.

*Bail as a matter of right.*—Section 3, Rule 110, Rules of Court, states the rule as follows: "After judgment by a justice of the peace and before conviction by the Court of First Instance, the defendant shall be admitted to bail as of right." [12] The Constitution provides: "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong." [13] The constitutional precept is repeated in section 6, Rule 110, Rules of Court, as follows: "No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong."

From these legal provisions, the following propositions may be deduced: (1) Since inferior courts have no jurisdiction to try capital offenses, bail is a matter of right in all cases within their competence, before or after conviction; (2) on appeal from inferior courts to Courts of First Instance and before conviction by the latter, bail is likewise a matter of right; (3) in non-capital cases within the original jurisdiction of Courts of First Instance, bail is a matter of right before conviction.

It would seem, from the constitutional provision above quoted that, in capital cases before conviction, where the court has concluded that evidence of guilt is not strong, the accused is entitled to bail as of right. On the other hand, where the court has concluded that the evidence of guilt is strong, the accused has no right to bail.

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[8] *Ex parte* Castillo, 102 Tex. Crim. Rep. 52, 277 S.W. 126 (1925). "The determination of what is disproportionate to the offense involved does not depend alone upon the amount of money which may have been lost to one party, or secured to another, by means of the offense; but it depends rather upon the moral turpitude of the crime, the danger resulting to the public from the commission of such offense, and the punishment imposed or authorized by law therefor." In re Williams, 82 Cal. 183, 23 Pac. 118 (1889). See 53 A.L.R. 401-407; and article 37 of the Provisional Law for the application of the Penal Code.

[9] See Weems v. U.S., 217 U.S. 349, 54 L. ed. 793, 799 (1910).

[10] Bandoy v. Judge of First Instance, 14 Phil. 620, 626 (1909).

[11] 75 Phil. 796, 791 (1946).

[12] Taken in modified form from section 64 of General Orders No. 58.

[13] Art. III, section 1 (16).

Consequently, the judicial discretion lies mainly in the determination of whether evidence of guilt is strong or not. Where evidence of guilt is not strong, and the court so finds, judicial discretion to grant or not to grant bail does not exist. The Supreme Court, however, seems to have departed from these observations. Section 19 of Commonwealth Act No. 682 reads partly as follows:

> "...*Provided, however,* That existing provisions of law to the contrary notwithstanding, the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the office of Special Prosecutors and hearing, be released on bail, even prior to the presentation of the corresponding information, unless the Court finds that there is strong evidence of the commission of a capital offense..."

Interpreting this provision, the Supreme Court, in Duran v. Abad Santos [14] said: "As may be seen from the above express provision of law, the release of a detainee on bail, 'even prior to the presentation of the corresponding information,' is *purely discretionary on the People's Court.* The only exception to it is when Court finds that there is strong evidence of the commission of a capital offense,' in which case no bail whatever can be granted, as the provision appears mandatory. *In other words, aside from that, the People's Court has the absolute discretion to grant bail or not."* [15] The Supreme Court, thus, held that, under above statutory provision, although evidence of guilt was not strong, the People's Court had the absolute discretion to grant bail or not. In strong language, characteristically his, Justice Perfecto dissented, saying: "If the interpretation of the majority is correct, then we must be compelled to declare section 19 of Commonwealth Act No. 682 unconstitutional, where it gives the People's Court absolute discretionary power to grant or to deny the petition of a prisoner to be released on bail, a power so unlimited that it cannot fail to remind us of the abhorrent absolutism of a judicial dictatorship." [16] While the Supreme Court's interpretation, however, seems violative of the Constitution, denial of bail to Pio Duran was based on the evidence of his guilt being strong, determined in a hearing where, presumably, adequate opportunity was given him.

Where bail is a matter of right, it is the ministerial duty of the court to grant it and *mandamus* lies to compel refusal. In Sy Guan v. Amparo,[17] the accused, charged with visiting an opium den, jumped bail while his case was pending trial in the Court of First Instance from an appeal from the decision of the Municipal Court. The bail

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[14] *Supra,* note 3.

[15] At p. 415. Underscoring ours. This interpretation is in harmony with section 67 of the American Law Institute Code of Criminal Procedure, involving constitutional amendment in most states, by providing that the granting of bail shall be a matter of discretion and not of right in capital cases where the proof is not evident or the presumption not great. Orfield, *Criminal Procedure From Arrest to Appeal,* 1947, p. 110.

[16] At p. 445.

[17] G.R. No. L-1771, December 4, 1947.

having been forfeited and the accused arrested, new bail was offered to and refused by the Court of First Instance. The Supreme Court granted *mandamus*, holding that, where bail is a matter of right, prior absconding and forfeiture do not affect it. That the accused absconded only gives the court power to increase the bail, provided not excessive. When bail is a matter of right, notice of application for the same need not be given to the fiscal.[18]

The Sy Guan case throws light on the fundamental problem of bail whether or not courts should be allowed discretion in granting bail and, if so, to what extent.[19] In England, New York, Maryland and Georgia, the courts enjoy a large measure of discretion as to whether or not they will grant freedom on bail. The following example took place in a jurisdiction where bail was a matter of right: "A man was arrested in Detroit on a charge of picking pockets; he secured release on bail and while the first case was pending he was arrested four additional times for picking pockets and secured bail each time." [20] Evils of the same character do happen in this jurisdiction. So, in Reyes v. Court of Appeals,[21] the petitioner committed five crimes while he was on bail. Professor Waite says: "The facts as they stand are strongly in favor of a judicial power of discretion." [22]

*Bail as a matter of discretion in non-capital offenses.*—Section 4, Rule 110, Rules of Court, provides as follows: "*Non-capital offenses after conviction by the Court of First Instance.*—After conviction by the Court of First Instance, defendant may, upon application, be bailed at the discretion of the court." [23] That this provision refers to charges for non-capital offenses seems clear, not only because of the note introducing the provision, but also because after conviction in a capital offense no right to bail exists. So, the Supreme Court, in People v. Follantes and Jacinto,[24] said: "Persons convicted of a crime punishable by death, as murder, are not bailable, as the law recognizes such right in a person accused of said crime, before conviction, only when the evidence of his guilt is not strong."

It has been seen that the Constitution guarantees that "All persons shall before conviction be bailable by sufficient sureties . . ." [25] Accordingly, above provision of the Rules of Court decrees that, after conviction by the Court of First Instance in non-capital cases, bail is a matter of discretion. The Supreme Court, in People v. Follantes

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[18] See Sec. 8, Rule 110, Rules of Court.

[19] See Waite, "Code of Criminal Procedure: The Problems of Bail," 15 A.B.A.J., 71, 72, (1929).

[20] Sutherland, Criminology, p. 213, quoted in Waite, Criminal Law and Its Enforcement, 1947, p. 635.

[21] G.R. No. L-1989, May 23, 1949.

[22] *Supra*, note 20, p. 636. "The English practice of large discretion seems sound." Orfield, *supra*, note 15, at p. 110.

[23] Taken from section 64 of General Orders No. 58, providing as follows: ". . . in all non-capital cases after judgment by any court, as matter of judicial discretion."

[24] 63 Phil. 474, 475 (1936).

[25] Art. III, section 1 (16).

and Jacinto,[26] said that "the right to bail after conviction is not authorized by the Constitution and is, as a general rule, not recognized . . " And this holding was upheld in Reyes v. Court of Appeals.[27] Justice Perfecto, concurred in by Justice Paras, now Chief Justice, in the latter case, thought that the word "conviction" as used in the Constitution should mean "final conviction." According to this opinion, section 4, Rule 110, Rules of Court, would be unconstitutional as it makes bail a matter of discretion before conviction by the Court of First Instance has become final, when it should be a matter of right. This dissent not only strains the Constitution but also runs counter to the beneficent policy to vest the courts with ample discretion in granting or denying bail.

In the above case of Reyes v. Court of Appeals, the Supreme Court affirmed the denial of bail to the accused by the Court of Appeals on the grounds of his notorious antecedents—there being twelve criminal cases against the accused, five of which were committed while he was enjoying provisional liberty under bail—that the accused was caught *in flagranti* in the instant case, and that the appeal was frivolous. The Supreme Court quoted with approval the following doctrine: "It is generally held, however, that where bail is allowed pending an appeal from a conviction, the appeal must be one which is taken in good faith, and not for frivolous reasons, and must be one for which there is probable cause . . . In determining whether or not to grant bail pending appeal, the court should also consider whether or not, under all the circumstances, the accused will be present to abide his punishment, if his conviction is affirmed, as well as any other pertinent matters beyond the record of the particular cause wherein the application is made, such as the record, character, and reputation of the applicant . . . Where an application for bail pending appeal has been refused by the trial judge, his action will ordinarily be given great weight by the appellate judge, who will not grant bail upon the same facts unless it clearly appears that the trial judge abused his discretion." [28]

Section 8, Rule 110, Rules of Court, provides that when "admission to bail is a matter of discretion, the court must require that reasonable notice of the hearing of the application for bail be given to the fiscal." This notice gives the fiscal an opportunity to oppose the application or merely to recommend a big amount.

*Bail in capital offenses.*—Section 5, Rule 110, Rules of Court, defines a capital offense as one which, "under the law existing at the time of its commission, and at the time of the application to be admitted to bail, may be punished by death." This means that an offense is capital if it may be punished with death, although, after conviction, less than death is actually imposed.[29] Two periods of

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[26] *Supra,* note 24 at p. 475.

[27] *Supra,* note 21.

[28] 6 Am. Jur., sec. 29, p. 62.

[29] People v. Sta. Lucia, 315 Ill. 258, 146 N.E. 183 (1925); State v. Barone, 96 N.J.L. 374, 114 Atl. 809 (1921); *Ex parte* Howard, 270 S.W. 550 (1925). *Contra,* the statute involved being different from ours, see Walker v. State, 209 S.W. 86 (1919); also 3 A.L.R. 970-971.

time are considered, namely, the date of the commission of the crime and the application for bail; the commission of the crime, because no penalty may be imposed other than that prescribed by law at that time; [30] and the application for bail, because, generally, a change in the law, favorably to the accused, benefits him.[31]

The capital offenses under the Revised Penal Code are treason,[32] qualified piracy,[33] parricide,[34] murder,[35] infanticide,[36] kidnapping, and illegal detention,[37] and robbery with homicide.[38] The penalties for these crimes range from one penalty to death, as the maximum. The maximum penalty, under the Code, may, however, be imposed only if aggravating circumstances be present to warrant its application. But since aggravating circumstances may be proved although not alleged in the complaint or information, it would be sufficient to charge above crimes so as to make the offenses capital.

Bail in capital offenses may be considered either before or after conviction by the Court of First Instance. Before conviction, says the Constitution, "All persons shall . . . be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong." [39] This is repeated by section 6, Rule 110, Rules of Court, which says: "No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong." [40] Of these provisions, Justice Imperial, writing for the Supreme Court, in Marcos v. Cruz,[41] Said: "When the crime charged is a capital offense, admission to bail lies within the discretion of the court, and depends upon whether the proof is evident and the presumption of guilt is strong." As we already have had occasion to observe, the court's discretion lies in the determination of whether or not evidence of guilt is strong. The granting or denial of bail depends upon this determination. The court may not find evidence of

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On abolition of the death penalty, the accused would be entitled to bail as of right or in the court's discretion, depending upon the circumstances. See 9 A.L.R. 1352-1353.

[30] Art. 21, R.P.C.

[31] Art. 22, R.P.C.

[32] Art. 114.

[33] Art. 123.

[34] Art. 246.

[35] Art. 248.

[36] Art. 255.

[37] Art. 267, as amended by R.A. No. 18, sec. 2.

[38] Art. 294, paragraph 1.

[39] Art. III, section 1 (16).

[40] This was taken from section 63 of G.O. No. 58, which provided: "All prisoners shall be bailable before conviction, except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong."

[41] 67 Phil. 82, 87 (1939). See also Montalbo v. Santamaria, 54 Phil. 955, 962 (1930). "In cases of capital offense the accused is bailable in the discretion of the court, as has been already declared by this court in Teehankee v. Rovira, 43 O.G., 513." People v. Alano, 45 O.G. No. 11, 4935, 4937 (1945). "From these provisions it is clear that even capital offenses are bailable in the discretion of the court before conviction." U.S. v. Babasa, 19 Phil. 198, 201 (1911).

guilt to be weak and yet deny bail; because discretion does not extend this far. It may, of course, be contended that this discretion is specious, for if the court desires to deny or grant bail, it may easily make a finding to sustain the conclusion it is desired to reach. This contention, however, will not cover the situation where no evidence is presented at all or where that presented is admittedly weak. And as we have seen the American Law Institute Code of Criminal Procedure, in section 67,[42] reforming the law of bail and necessitating a constitutional amendment, grants express power to the courts to grant or to deny bail in capital cases, before conviction, although the evidence of guilt be not strong. And it may be stated in passing that, if the Supreme Court has granted bail in capital offenses after conviction and pending appeal in special situations,[43] it may also be granted before conviction *under the same circumstances*, although evidence of guilt be strong.

The power of a trial court to grant bail in capital cases, before conviction, was raised for the first time in U.S. v. Babasa.[44] The bail granted by the trial court was forfeited and the sureties contended that the bail was null and void, for the court lacked power to grant it. The Supreme Court recognized the trial court's power and held as follows: "From these provisions [45] it is clear that even capital offenses are bailable in the discretion of the court before conviction. As a result, the objection of the appellants that the trial court had no power or jurisdiction to admit to bail in the case at bar, must be overruled. Under the facts presented in this case the trial court may have exercised bad judgment in admitting to bail; but he had jurisdiction in the premises.[46]

Unquestionably, the determination of whether or not evidence of guilt is strong requires a hearing where the prosecution and the defense have the right to be present and heard.[47] Indeed, notice to the fiscal is expressly enjoined by law. Section 8, Rule 110, Rules of Court, provides: "When admission to bail is a matter of discretion, the court must require that reasonable notice of the hearing of the application for bail be given to the fiscal." So, where bail

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[42] See note 15, *supra*.

[43] De la Rama v. The People's Court, 43 O.G. No. 10, 4107, 4110 (1946), citing the cases of Pio Duran and Benigno Aquino; People v. Sison, G.R. No. L-398, September 19, 1946.

[44] *Supra*, note 41.

[45] The provisions referred to were section 5, paragraph 4 of the Act of July 1, 1902, and section 63, G.O. No. 58.

[46] At p. 201.

[47] "Indudablemente, mediante una investigacion por el tribunal que conozca de la causa, con asistencia de todas las partes, la acusacion y la defensa." Peralta v. Ramos, 40 O.G. No. 21 (13th Supp.), 68, 71 (1941). "Since the discretion is directed to the weight of evidence and since evidence cannot properly be weighed if not duly exhibited or produced before the court . . ., it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner having the right of cross-examination and to introduce his own evidence in rebuttal." Ocampo v. Bernabe *et al.*, 43 O.G. No. 5, 1632, 1634 (1946). See also Montalbo v. Santamaria, *supra*, note 41, at pp. 961-962.

was denied without a hearing of the accused, the Supreme Court ordered one to be conducted.[48] It was likewise held that a hearing should be conducted of applications for bail of those held for treason, though no charge had yet been filed, pursuant to sections 19 and 22 of C.A. No. 682. The Supreme Court said: "As to the second question, we hold that upon application by a political prisoner or detainee to the People's Court for provisional release under bail, a hearing, summary or otherwise, should be held with due notice to the Office of Special Prosecutors, as well as to the prisoner or detainee. It will be remembered that section 22 of the People's Court subjects the prosecution, trial, and disposal of cases before the People's Court to 'existing laws and rules of court,' unless otherwise expressly provided in said act. Consequently, the hearing and disposal of application for bail for provisional release before the People's Court should be governed by existing laws and rules of court, the hearing and disposal of such applications being a mere part of the 'prosecution, trial, and disposal' of the corresponding cases before said court." [49]

The duty to decide whether or not evidence of guilt is strong is ministerial and may, therefore, be compelled by *mandamus*, although this remedy may not be used to compel a decision one way or the other. Justice Villamor, speaking for the Court in Montalbo v. Santamaria,[50] said: "It is indisputably his ministerial duty to grant or deny the motion for freedom on bail; he cannot shirk it. Since he must deny or grant it whether the proof is evident or not, or the presumption of guilt be strong or not, he is likewise ministerially bound to decide which circumstance is present. As far as the principles involved are concerned, there is no difference between refusing to admit a defendant to bail in a capital offense without considering or deciding whether proof be evident or the presumption of guilt strong, and convicting defendant of the crime charged without considering or deciding whether he is guilty or not. The only difference is the degree of freedom of which he is deprived."

If then a hearing must be conducted, who has the burden of proof to show that evidence of guilt is strong? In case the prosecution asks for the cancellation of bail already given on the ground that evidence of guilt is strong, there would seem to be no doubt that the prosecution has the burden. But if the accused applies for bail, it would seem that the accused has the burden of proof to show that evidence of guilt is not strong. General Orders No. 58 contained no provision resolving this question. American authorities pose two conflicitng theories, placing the burden upon one and the other.[51] The

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[48] Peralta v. Ramos, *supra*, note 46.

[49] Herras Teehankee v. Rovira, *supra*, note 2, at p. 643. The minority agreed to this point. At p. 645. See also Duran v. Abad Santos, *supra*, note 3 at pp. 416-417; Payao v. Lesaca, 63 Phil. 210, 215 (1936).

[50] *Supra*, note 41, at p. 962.

[51] Marcos v. Cruz, 67 Phil. 82, 88-89 (1939). That the burden is on the applicant, see *Ex parte Paige*, 82 Cal. App. 576, 255 Pac. 887 (1927); *Ex parte* Tully, 70 Fla. 1 (1914); *Ex parte* Andrews, 39 Okl. Cr. Rep. 359, 265 Pac. 144 (1928). That the burden is on the prosecution, see In re Haigler, 15 Ariz. 150, 137 Pac. 423 (1913); State v. District Court, 35 Mont. 504 (1907); State v. Kauffman, S.D.

Supreme Court, however, decided, under General Orders No. 58, that when a person accused of a capital offense asks to be admitted to bail before conviction, the burden of proof lies, not on him, but on the prosecution to show that he is not bailable.[52] This rule is now adopted expressly by the Rules of Court, which, in section 7, Rule 110, provides: "On the hearing of an application for admission to bail made by any person who is in custody for the commission of a capital offense, the burden of showing that evidence of guilt is strong is on the prosecution." [53] Consequently, whether the prosecution petitions for cancellation of bail or opposes an application for one, the burden is upon it to show that evidence of guilt is strong. It may not, therefore, be infrequent to find the prosecution allowing bail, instead of divulging the nature of its evidence in a hearing well in advance of the trial.[54]

And then, what kind of a hearing must it be? It is said that the hearing may be summary or "such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of the evidence for purposes of bail. On such hearing, the court 'does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted.' (8 C.J.S., 93, 94.) The course of the inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters avoiding unnecessary thoroughness in the examination and cross-examination of witnesses and reducing to a reasonable minimum the amount of corroboration particularly on details that are not essential to the purpose of the hearing.[55] This right to a summary hearing may be waived, by the accused agreeing that the trial on the merits and the hearing on bail application be held jointly, as also by asking repeated postponements of the hearing on the bail application. Where there is an agreement to have the trial on the merits and the application for bail heard jointly, it becomes discretionary on the courts to grant or to deny the subsequent request of the accused to have the bail application heard summarily. This discretion may not be controlled by mandamus.[56] In Gerardo v. Judge of First Instance of Ilocos Norte,[57] the Supreme Court went further and said that the court is not obliged to conduct a separate proceeding to determine the right of an accused to be admitted to bail. The application for bail may be

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620, 108 N.W. 246 (1906); *Ex parte* Donohue, 112 Tex. Cr. App. 124 S.W. (2d) 848 (1929).

[52] Marcos v. Cruz, *supra*, note 50, at p. 89.

[53] Section 68 of the American Law Institute Code of Criminal Procedure contains the same provision.

[54] See for instance, Marcos v. Cruz, 68 Phil. 96, 99 (1939); Duran v. Abad Santos, *supra*, note 3, at p. 441; Herras Teehankee v. Rovira, *supra*, note 2, at p. 653.

[55] Ocampo v. Bernabe, 43 O.G. No. 5, 1632, 1637 (1946).

[56] Muños v. Rilloraza, 46 O.G. No. 11 (November, 1950, Suppl.), 62, 64 (1949).

[57] G.R. No. L-3451, May 29, 1950.

heard along with the trial on the merits, in the court's discretion. "At any rate," said the Court, "the court has the choice of method to attain this end." The facts, however, indicate that the separate hearing for the bail application was suspended four times at the instance of the accused. This brings the case precisely within the doctrine of Muñoz v. Rillaroza.[58] An undue discretion to combine the trial and the bail application is likely to be oppressive. Who would like to do two successive steps, instead of just one?

In the summary hearing of the application for bail, it was held that the evidence of guilt be submitted to the court, the petitioner having the right of cross-examination and to introduce his own evidence in rebuttal. Mere affidavits or recital of their contents are not sufficient since they are mere hearsay evidence, unless the petitioner fails to object thereto.[59] But may the records of the preliminary investigation be sufficient to sustain the claim that the evidence of guilt is strong? In Payao v. Lesaca,[60] the prosecution moved that the bail granted by the committing magistrate be cancelled. The prosecution apparently invoked the records of the preliminary investigation. The defense did not seem to have objected nor presented any evidence on his behalf. The Supreme Court held that the trial judge was justified in taking into account the records of the preliminary investigation on the basis of which the bail was cancelled. Said the Court, through Justice Laurel: "In such a case, the judicial investigation may consist in the examination of the evidence in the hands of the prosecuting officer." [61] Objection to the admission of the records of the preliminary investigation would, perhaps, have been sustained, had one been made. For, in the subsequent case of Marcos v. Cruz,[62] the Supreme Court held that, in spite of Payao v. Lesaca, the records of the preliminary investigation were not sufficient. The Court said: "But it must be borne in mind that the hearing required (for the bail application) is essentially different from the preliminary investigation to which every person is entitled who is accused of a crime triable before the Court of First Instance . . ."[63] The testimony in a preliminary investigation is taken in the absence

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[58] *Supra,* note 54.

[59] Ocampo v. Bernabe, *supra,* note 53, at p. 1636. In this case, the prosecutor merely recited the contents of affidavits and said that he had 27 more affidavits. The Supreme Court held these insufficient to satisfy the requirements of a summary hearing. See also Beltran v. Diaz, G.R. No. L-608, October 7, 1946.

But see Duran v. Abad Santos, *supra,* note 3, where the Supreme Court seemed to have approved the contrary. This case was decided in 1945 and, therefore, does not seem to be the law now. The scathing dissent of Justice Perfecto (at pp. 448-451) seems to have been adopted in the Ocampo v. Bernabe case. Said Justice Perfecto: "No greater tragedy can be inflicted on our people if the tyranny of the arch criminals is to be replaced by that of the prosecutors, whose mere 'recital' of supposed acts is evidence enough to prove the guilt of any person, making said 'recital' as powerful as a dreadful imperial ukase." At p. 451.

[60] *Supra,* note 48.

[61] At p. 214.

[62] *Supra,* note 59, at p. 90.

[63] *Id.*

of the accused and he has no opportunity to see the witnesses testify or to cross-examine them. The Supreme Court suggested that, since the information was filed directly with the Court of First Instance and the preliminary investigation was accordingly conducted by it, if it was intended that the summary investigation should also be the preliminary investigation, the prosecution should have summoned the accused and adduced its evidence in their presence.[64] The impact of the holding in the Marcos case is, however, weakened by an observation, which now clearly appears to be unwise. Said the Court: "Other reasons preventing the consideration of such evidence against the accused are: that the fiscal did not reproduce or offer it at the hearing of the petitions for bail; . . .[65] Did the Court then mean that, had the prosecution offered the evidence, it should have been considered? It is apparent that the writer of the opinion [66] was confused and, therefore, practically nullified the doctrine on confrontation he so well laid down. At any rate, if according to the case of Ocampo v. Bernabe,[67] hearsay evidence is inadmissible in the summary hearing for bail, then the records of the preliminary investigation is inadmissible, for they belong to this category. The reason why hearsay evidence is inadmissible and that the summary hearing should be given the character of an anticipated trial is that, "if the Constitution requires the court to determine for itself whether or not the proof is evident or presumption great in a given case, all consideration of expediency or convenience, however patent they might be at the common law, must give way." [68]

The discretion of the court is neither absolute nor beyond control.[69] While it is true that the discretion o fthe lower court is given great weight by the appellate court, the latter amy interfere in case of abuse of discretion. So, in People v. Alano, the Court said: "After a long deliberation on petitioner's case, and considering the fact that, of 14 counts of the information 10 had to be dismissed upon petition of the prosecution itself, that the trial is being protracted, and petitioner is undergoing a long confinement, while there are no assurances that his case can be speedied in accordance with the constitutional intent, we are convinced that petitioner should be bailed and that lower court has committed a grave abuse of discretion in denying the bail.[70] In the same case, it was held that the mere fact that the petitioner escaped from jail was not a reason to deny him bail, because he did so only to secure witnesses and he surrendered voluntarily when his object was served.[71]

As we have earlier noted, no right to bail exists after conviction in a capital case. The reasons are not only because the conviction

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[64] *Id.*

[65] *Id.*

[66] Justice Imperial.

[67] *Supra,* note 55. See also Beltran v. Diaz, *supra,* note 59.

[68] Re Iosasso, 10 A.L.R. (1891), 850, quoted with approval in Ocampo v. Bernabe, *supra,* note 55, at p. 1637.

[69] People v. Alano, 45 O.G. No. 11, 4935, 4936-4937 (1945).

[70] Id.

[71] At p. 4937.

has established the evidence of guilt to be strong, but the Constitution guarantees bail before conviction.[72] However, for humanitarian reasons, as when incarceration is detrimental to the detainee's health, the Supreme Court has granted bail.[73] Said the Court, in De la Rama v. People's Court: ". . . unless allowance of bail is forbidden by law in the particular case, the illness of the prisoner, independently of the merits of the case, is a circumstance, and the humanity of the law makes it a consideration which should, regardless of the charge and the stage of the proceeding, influence the court to exercise its discretion to admit the prisoner to bail."[74]

[72] People v. Follantes and Jacinto, *supra*, note 24.

[73] De la Rama v. People's Court, *supra*, note 43; People v. Teofilo Sison, *supra*, note, 43.

[74] *Supra*, note 43. The prisoner was suffering from minimal tuberculosis and chronic pharyngitis.