The Present Status of the Law on Bail

By AMEURFINA A. MELENCIO
EMMA QUISUMBING
IRENE CORTES

THE right to bail, admittedly one of the most fundamental of human rights, derives its life and finds its guarantee in the Constitution. Article 1 paragraph (16) Title III of 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. Excessive bail shall not be required."

Supplementing this fundamental provision is Rule 110 of the Rules of Court, which, besides putting emphasis on the procedural aspect of the law, defines "bail" and "capital offenses", thus:

> "Section 1. Bail defined.—Bail is the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance."
>
> "Section 5. Capital offenses defined.—A capital offense as the term is used in this rule is an offense 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."

While the question of bail did not elicit so much interest before the war, the cases of the so-called political prisoners detained by the CIC of the Armed Forces of the United States and later turned over to the custody of the Commonwealth Government by virtue of Executive Order No. 65, taken in connection with the creation of the People's Court, brought the question to the fore and has resulted in the promulgation of a series of judicial decisions, liberally peppered with dissenting and concurring opinions. All these combined have served to thresh out and to bring to light the different facets of the subject. Indeed, it may now be stated without fear of contradiction, that our law on bail has stepped away from a state of uncertainty into a maturer and a more concrete stage.

The above-mentioned cases, brought to the attention of the Supreme Court by certiorari proceedings, originated from denials by the People's Court of several applications for bail presented by a number of political prisoners. The denials were made in the exercise of the discretionary power conferred on said Court by section 19 of Commonwealth Act No. 682 which provides:

> "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."

Before attempting to discuss this particular provision and its effect on the present status of the law on bail, a few general statements of the law as it existed prior to the passage of this Act are in order:

A. *Before Conviction*

1. Under the Constitution, the right to bail is mandatory before conviction in cases where a non-capital offense is charged. Where an individual is accused of a capital offense, the right is guaranteed if evidence of guilt is not strong.

2. Under the Rules of Court, before conviction in the Justice of the Peace Court, the Constitutional provision governs and bail is a matter of right.

Before conviction in the Court of First Instance, the Constitution again governs both as to non-capital and capital offenses.

B. *After Conviction*

1. Under the Constitution, the right to bail is not guaranteed after conviction.

2. Under the Rules of Court, after conviction in the Justice of the Peace Court, but before conviction in the Court of First Instance, the defendant shall be admitted to bail as of right.

After conviction in the Court of First Instance of a non-capital offense, the admission to bail is discretionary on the part of the Court. With respect to capital offenses, the Rules are silent.

C. *Burden of Proof*: Where a person charged with the commission of a capital offense files a petition for his temporary release before conviction, it is incumbent upon the prosecution and not upon him to show that he is not entitled to bail. The presumption of innocence is not destroyed, neither is presumption of guilt established upon filing of a formal charge or information. The examination made prior to the arrest is not sufficient to show that the evidence of guilt is strong.[1]

Have these general rules been modified with the passage of the People's Court Act? A perusal of the pertinent provision, section 19, already cited, shows:

1. The granting of bail is discretionary with the People's Court.

2. All applications for bail must be preceded by due notice and hearing.

3. Release on bail may be granted 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.

As will be noted, there is no distinction made in said section as to whether the application for bail is presented before or after conviction. Be the application before or after conviction therefore, the right to bail is discretionary with the People's court pursuant to paragraph 1 above. Again, no distinction is made in said section between capital and non-capital offenses. As long as the crime for which a prisoner is detained falls within "crimes against national security committed between December 8, 1941 and September 2, 1945."[2]

But a distinction is therein made between *release prior to the presentation of the information and release after such presentation.* This seems to be the equivalent of the distinction embodied in the previous law between release on bail *before or after conviction.* Where bail is a matter of right *before conviction* unless the evidence of guilt is strong, similarly, bail may be granted *prior to the presentation of the information* unless there is strong evidence of the commission of a capital offense. But the same provision does not state that bail is a matter of right before such presentation; it simply provides for an exception to the general rule implied from section 19, that bail is granted after the filing of the information, and that be it before or after such filing, the grant of bail is wholly within the discretion of the Court.

[1] Marcos vs. Judge, G. R. No. 46490. Jan. 4, 1939.
[2] Section 2, CA No. 682.

At first blush, there seems to be a broadening of the discretion that may be exercised by the People's Court and a conflict with the Constitutional precept which guarantees the right to bail before conviction. This is easily reconciled, however, when it is remembered that the right to bail before conviction is limited to non-capital offenses and to capital offenses when the evidence of guilt is not strong; and that as to capital offenses when the evidence of guilt is strong, the court is always empowered to exercise discretion in granting bail or not. Cases cognizable by the People's Court fall only under the category of capital offenses; hence, the discretion granted to the Court; hence, the absence of the distinction between release on bail before or after conviction; for be it one or the other, the right in so far as capital offenses are concerned, becomes subject to sound judicial discretion, which in the last analysis is exactly the same provision as that embodied in the Constitution.

Neither can it be stated that the distinction between "prior to the presentation of the information and after" furnishes an additional ruling. For even under the Rules of Court a person would not have to wait until a formal complaint or information is filed against him. Section 1 thereof is explicit: "bail is the security required and given for the release of a person *who is in the custody of the law* x x x." From the moment a person is deprived of his liberty therefore by having been placed under arrest, he can invoke his constitutional right to bail, to which he shall be entitled unless he is accused of a capital offense and the evidence of his guilt is strong. Even under the Constitution, "all persons without distinction whether formally charged or not yet so charged with any criminal offense 'shall before conviction be bailable,' the only exception being when the charge is for a capital offense and the court finds that the evidence of guilt is strong.[2a]

Having arrived at an harmonization of these provisions, a reconciliation which was imperative because of the provision in section 22 of the People's Court Act, to wit, "the prosecution, trial and disposal of cases before the People's Court shall be governed by existing laws and rules of court, unless otherwise expressly provided herein," it would now be interesting to make a brief resume of the new rulings on bail that have served to enrich the subject considerably and to clarify previously dubious points.

1. The Meaning of Capital Offense --Rule 110, section 4 defines it is "an offense, which, under the law existing at the time of the commission and at the time of the application to be admitted to bail. may be punished by death." In the application of this provision however, the Supreme Court has held that it is not the designation of the offense which is controlling; thus if murder is charged and although murder is a crime often punishable by death, this does not mean that the offense is capital and that courts are given discretion to grant or deny bail. "The question to be determined is whether the murder in a specific case is punishable by death". "A distinction must be made between a murder and another murder."[3]

It is hard to subscribe to this interpretation. The Rules of Court leave no room for doubt that a capital offense is one which *may be* punished by death, *under the law* existing at the time of the commission and at the time of the applicaton. It is clear from the provision that the

[2a] Teehankee v. Director of Prisons, G. R. No. L-278, June 18, 1946.
[3] People v. Samano, G. R. No. L-27 Concurring opinion of Justice Perfecto.

criterion should, therefore, be the penalty prescribed by law and not the penalty that is to be imposed by the courts taking into consideration the attendant circumstances of the case.

This by no means violates the rule that penal laws should be construed liberally in favor of the accused, for, in the last analysis, it is not only the designation of the offense which is the determining factor but more particularly the evidence of guilt. The offense may be a capital one and yet if the evidence of guilt is not strong, the accused would still be entitled to bail.

The concurring opinion states further that the conviction referred to in the Constitution can only mean "final conviction." This goes a long way in liberalizing the law on bail. If it were to be interpreted as "final," we would have to discard the provisions on convictions in the Justice of the Peace Courts and in the Courts of First Instance set forth in the Rules 110, section 3 and 4, inasmuch as the decisions rendered by said courts being subject to appeal are not by their nature final. Section 3 which provides: "After judgment by a justice of the peace and before conviction by the Court of First Instance defendant may, upon application, be bailed at the discretion of the court" negatives, in our opinion, the theory of "finality". But pursuing the line of reasoning of the Court, bail should be a matter of right irrespective of any judgment rendered by any such court as long as the case has not reached its final stage, that is, when a judgment is rendered on appeal. Whether this shall be considered the prevailing rule and whether sections 3 and 4 are deemed abrogated however, still remains to be seen.

2a. The Solicitor General is free to oppose the application for bail or not to oppose it at all. "If he opposes, the burden of proof will be on him to show that the petitioner is not entitled to bail."[4]

2b. "In capital cases when the prosecutor does not oppose the petition for release on bail, the court should as a general rule, in the proper exercise of its discretion, grant the release after approval of the bail which it should fix for that purpose."

2c. "But if the court has reasons to believe that the special prosecutor's attitude is not justified, it may ask him questions to ascertain the strength of the state's evidence or to judge the adequacy of the amount of the bail."

2d. When, however, the special prosecutor refuses to answer any particular question on the ground that the answer may involve a disclosure imperiling the success of the prosecution or jeopardizing the public interest, the court may not compel him to do so, if and when he exhibits a statement to that effect. The Solicitor General, as Head of the Office of Special Prosecutors may not, even at the trial, be ordered by the court to present evidence which he does not want to introduce—provided, of course, that such refusal shall not prejudice the rights of the defendant or detainees.[5]

The contrary view to the principles embodied in these directives, expressed in the dissenting opinions of Justices Ozaeta and Perfecto, hold that if no evidence has been presented by the prosecution, the competent court lacks absolutely any discretion and it is its imperative duty to grant bail to the accused. It would seem however, that since the ultimate decision and responsibility lies with the Court, the better rule is that laid down by the

4 Teehankee v. Rovira, G. R. No. L-101.
5 Teehankee v. Director of Prisons et al., G. R. No. L-278.

majority. Courts should be allowed to satisfy the judicial mind by means of inquiries, as to questions with respect to which it may entertain a doubt. For, in the words of Justice Jaranilla concurring with the majority, to deny it this discretion would be to convert it into a mere rubber stamp registering merely the will of the prosecution in bail cases.

If, however, the prosecution persists in its refusal to present evidence, clearly then the defendant should be admited to bail, for no evidence having been presented, there is no way of determining whether the evidence of guilt is strong or not. Thus "where the evidence however, does not make a *prima facie* case against the accused, he is entitled to bail, and it is error to refuse bail upon the statement of the district attorney that he has other evidence which he will not disclose for fear of weakening the state's case." (In ex parte Reynold 137 Texas, 1, cited in Ocampo v. Rilloroza, *supra*).

This does not give the Courts liberty, however, to conduct private conferences with the prosecution. To the accused should be guaranteed at all times the safeguards of confrontation, cross-examination and opportunity to be heard.[6]

3. The Supreme Court may in certiorari proceedings brought to set aside a decision denying bail in the lower Court, grant bail when the lower Court has "patently abused whatever discretion, if any, it may possess in the premises." Particularly so in a combined proceeding of certiorari and habeas corpus."[7]

Where, however, evidence showing new facts is introduced in certiorari proceedings before the Supreme Court, the case shall be remanded to the lower court for further proceedings "in order that the office of Special Prosecutors may have opportunity to rebut and refute the evidence showing the new facts in favor of the petitioner to cross-examine the expert witnesses for the latter, and the People's Court may properly decide the case."[8]

4. The evidence referred to here is evidence properly adduced by the parties or any of them before the Court in the manner and form prescribed by laws and rules of judicial procedure.[9]

5. It is only after this evidence is thus presented that the discretion may be exercised. "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. Mere affidavits or recital of their contents are not sufficient since they are mere hearsay evidence, unless the petitioner fails to object thereto."[10]

"But judicial discretion will be exercised in the negative sense only when the facts and circumstances of the crime are such that they give rise to the belief in the imminence and inevitableness of the death penalty for said crime.[11]

6. The hearing, however, should be summary or otherwise in the discretion of the Court.[12]

By "summary hearing" is meant such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of 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

6 Teehankee v. Rovira, *supra*.
7 Teehankee v. Director of Prisons, *supra*.
8 De la Rama v. Eriberto Misa, et al No. L-263, June 24, 1946.
9 Teehankee v. Director of Prisons, G. R. No. L-101.
10 Ocampo v. Rilloroza, G. R. No. L-439, August 20, 1946.
11 People v. Samano, concuring opinion of Justice Perfecto, L- 27.
12 Teehankee v. Director of Prisons, L-101.

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 therein be offered and admitted." 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.[13]

7. As to special circumstances which should influence the grant of bail, it has been held that "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."[14]

The Supreme Court may in its discretion allow bail in capital offenses even after conviction in the lower court.[15]

The same rule holds true as to convictions by the People's Court. A notable example is that of the case of Teofilo Sison wherein the accused was granted bail by the People's Court after he was convicted of treason on more than twenty counts and sentenced to life imprisonment.

Integrating all the foregoing rulings which deal mainly with procedure with the legal provisions above discussed, it may be concluded therefore that even with the passage of the People's Court Act the general rule remains the same — 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 guilt is strong. Under these conditions the power of the Court to deny bail is discretionary and therefore compatible with the power to grant. Expressed in other terms, bail is a matter of right even in cases of capital offenses, unless proof of guilt is evident in which case bail is thus discretionary on the court depending on whether or not the evidence of guilt is stong.[16]

---

13 Ocampo v. Rilloroza, L-439.
14 De la Rama v. Misa, L-263, June 24, 1946.
15 People v. Samano, L-26; People v. Bañez, L-27, 41 O. G. 288; and People v. Abad, G. R. No. 49200, O. G., 532.
16 Marcos v. Judge, *supra*.

★