PEOPLE v. JUAN L. BOCAR, JUDGE, ET AL., G.R. NO. L-9050, PROMULGATED, JULY 30, 1955

D E C I S I O N

MONTEMAYOR, *J.*:

This is a petition for certiorari and prohibition with preliminary injunction filed by the People of the Philippines against Juan L. Bocar, acting as vacation judge of the Court of First Instance of Rizal, Pasay City Branch, and Oscar Castelo. The facts in the case are not disputed; only questions of law, but important ones are involved.

In Criminal Case No. 3023-P of the Court of First Instance of Rizal, Pasay City Branch, Oscar Castelo and Rogelio Robles with 14 others were charged with the crime of murder for the death of Manuel P. Monroy. On motion of the prosecution defendant Rogelio Robles was discharged from the information with his consent to be utilized as witness for the Government as he did in fact testify for the prosecution. After a prolonged trial, Judge Emilio Rilloraza in a decision promulgated on March 31, 1955, found eight of the accused including Castelo guilty of the charge and sentenced all of them to suffer the death penalty. After promulgation respondent Castelo filed a motion to be released on bail. In the meantime respondent Judge Bocar had been detailed to the Court of First Instance of Rizal, Pasay City Branch since February 1, 1955. In the absence of Judge Rilloraza who, presumably had gone on vacation after promulgating his decision, Judge Bocar took his place. Acting upon this motion for bail and over the objection of the City Fiscal of Pasay City, Bocar granted the same upon filing a bond in the sum of ₱30,000.00.

On April 11, 1955, respondent Castelo filed a motion for new trial with notice of hearing on April 14th, based mainly on the affidavit of Rogelio Robles, one of the original accused who as already stated, was excluded from the information and who testified for the prosecution, recanting his testimony given during the trial against respondent Castelo, stating in said affidavit that all his testimony was false but that he had so testified because of alleged force, intimidation or violence exerted upon him.

On April 13, 1955, the petitioner People of the Philippines filed a motion for reconsideration of the order granting bail to respondent Castelo. It was denied by respondent Judge on April 20, 1955.

As originally scheduled, the hearing on the motion for new trial was held on April 14th at which hearing City Attorney Salva of Pasay City appeared for the prosecution. In the course of the hearing which lasted until April 20th, Manila City Fiscal Eugenio Angeles also appeared for the prosecution. In support of the motion for new trial, the

affidavit of recantation of Robles was presented and he himself testified extensively; so did Judge Hermogenes Caluag, Mrs. Felicidad Manuel, Atty. Alejandro de Santos and Liceria Siasoy, mother of Robles. For the prosecution, seven affidavits were presented, marked as Annexes H, H-1, H-2, H-3, H-4, H-5 and H-6, made by public officials such as Judge Luis B. Reyes who, during the main trial of the case before Judge Rilloraza, acted as assistant Manila City Fiscal, Hon. Arsenio H. Lacson, Mayor of Manila and some members of the Manila City Police Department, all denying the acts of violence, force or intimidation attributed to them by Robles. Immediately after the last hearing on April 20, Judge Bocar in an order of the same date granted the motion for new trial for April 25th. The same order denied the petitioner's motion for reconsideration of the order granting bail. Thereafter, Solicitor-General Ambrosio Padilla filed the present petition for certiorari and prohibition with preliminary injunction, seeking to annul the orders of respondent Bocar granting bail and granting new trial to respodent Castelo.

After a hearing held before this Court in Baguio on April 23, 1955, on the prayer in the petition for the issuance of a writ of preliminary injunction, at which hearing the Solicitor General and counsel for Castelo appeared and orally argued for the petitioner and respondents, respectively, a writ of preliminary injunction without bond was issued, enjoining respondent Bocar not to proceed with the new trial as set by him for April 25th. Another hearing was held before this Court in Baguio on May 5, 1955, at which hearing Solicitor General Ambrosio Padilla and Assistant Solicitor General Jose Bautista appeared and argued for the petitioner and Solicitor Troadio Quiazon also appeared for the petitioner, and Attys. Mariano H. de Joya and Estanislao Fernandez appeared and argued for respondents, and Attys. Roberto A. Gianzon, Alejandro de Santos, Constancio M. Leuterio and Felicisimo Ocampo also appeared for respondents, and respondent Oscar Castelo himself appeared and addressed the Tribunal on his own behalf. Thereafter, the case was submitted for decision.

The theory of the petitioner as may be gathered from the pleadings and the oral argument of its representatives, is that respondent Bocar presiding over the trial court had no jurisdiction to entertain, much less to grant the motion for new trial because the case involves a death sentence, and that even if he had said jurisdiction, he gravely abused his discretion in granting it, considering the circumstances surrounding the case. On the other hand, counsel for respondents maintain that respondent Bocar had jurisdiction to grant the new trial as in ordinary criminal cases, and that in the execise of that jurisdiction he did not commit any abuse of discretion.

The case is without established judicial precedent; it is one of first impression, and realizing the importance and far-reaching effects of a de-

cision on the matter we have given it special attention and considerable study and thought. In ordinary criminal cases where the penalty imposed is life imprisonment or less, there is no question that the trial court imposing the sentence may grant a motion for new trial. Not only this but under section 1, Rule 117, of the Rules of Court, the trial court even on its own motion but with the consent of the defendant may grant a new trial. The legal provision which has sown doubt or effected conviction in the mind of counsel for petitioner is section 9, Rule 118 of the Rules of Court which provides as follows:

> "SEC. 9. *Transmission of record in case of death penalty.*—The records of all cases in which the death penalty shall have been imposed by any Court of First Instance, whether the defendant shall have appealed or not, shall be forwarded to the Supreme Court for review and judgment as law and justice shall dictate. The records of such cases shall be forwarded to the clerk of the Supreme Court *within twenty days, but not earlier than fifteen days*, after rendition of sentence. The transcript shall also be forwarded without unnecessary delay."

The Solicitor General argues that under the above-quoted section, after the rendition of a death sentence the trial court is completely divested of all jurisdiction over the case which, regardless of whether the accused sentenced to death appeals or not, automatically goes to the Supreme Court for review of the sentence, the records of the case to be forwarded to it within 20 days. He further claims that a defendant under a death sentence is not deprived of his right to file a motion for new trial but that any such motion should be addressed to and resolved by the Supreme Court, all this, because of the extreme importance of the case, the defendant's life being at stake. On the other hand, counsel for respondents maintain that there is absolutely no reason why an accused under a death sentence, whose life is in the balance should be deprived of the rights enjoyed by defendants in ordinary criminal cases such as the right to file a motion for new trial before the trial court to be resolved by the same court.

The automatic review by this Tribunal of a decision or sentence imposing the death penalty is intended primarily for the protection of the accused (U. S. vs. Laguna, 17 Phil. 520). It is to insure the correctness of the decision of the trial court sentencing him to death. The Supreme Court under this automatic review is called upon to scrutinize the record and look for any error committed by the trial court against the defendant. In such review this Tribunal may find errors committed in his favor but such errors are not exactly the object of said review because even if found to be such, their correction by this Tribunal would be vain and of no practical utility because the sentence cannot be made more severe; the penalty of death already imposed is the extreme, the highest penalty imposable under the law. We repeat that the whole

purpose of the automatic review by this Court of a death sentence is to find and correct errors committed by the trial court against the accused such as finding him guilty of the crime deserving the death penalty when in fact the offense committed was less serious, or a finding against him of the existence of aggravating circumstances or a qualifying circumstance, not supported by the record, or failing to compensate proven aggravating circumstances with equally proven mitigating circumstances. In other words, the law providing for automatic review of a death sentence seeks to favor the defendant. If this is the case, then such defendant should and must be accorded at least the same rights, privileges and opportunities for acquittal or reduction of his sentence, enjoyed by other accused sentenced to penalties lower than death.

It might be argued as does the Solicitor General that a defendant sentenced to death is not being deprived of the right to move for new trial, only that said motion for new trial must be addressed to the Supreme Court and resolved by it instead of being addressed to and decided by the trial court. That is but partly correct, for should such motion for new trial before this Tribunal be denied, for the defendant-movant, that is the end of the trial. He cannot and may not pursue his remedy to a higher court because there is none. The Supreme Court is the highest Tribunal of the land, where all roads of relief and legal remedies lead to and end. In other words, he has only one chance for the granting of new trial. On the other hand, a defendant in an ordinary criminal case sentenced to say, *reclusion temporal* or *arresto mayor*, may petition the trial court for a new trial. If it is denied there, he appeals his case to the proper appellate court and there renews his petition for new trial. In other words, he has two chances and opportunities to be granted a new trial, while one sentenced to death, fighting for his life has only one chance and one opportunity. That would be unreasonable and illogical. Since as we have already stated the purpose of an automatic review of a death sentence is to favor the accused involved, it stands to reason that he should be given if possible more rights, remedies and opportunities to have any errors committed against him by the trial court corrected; at least the same rights, opportunities and privileges accorded a defendant sentenced to a lesser penalty.

In an ordinary criminal case involving a mere prison sentence, the trial court is given a period of 15 days after rendition of judgment within which is to mull over or ponder his decision, unless of course, within that period of time, the accused waives his right to appeal, begins serving the sentence or takes the case on appeal to an appellate court. Within that period, as already stated, the trial court may on its own motion with the consent of the defendant, grant a new trial. Within that period the trial court may modify its judgment by reducing the penalty or fine, or even set it aside altogether and acquit the accused. But under the theory of the petitioner, all these rights and prerogatives of the trial court in an ordinary

criminal case, are swept away in a case involving the death penalty with consequences tremendously, even fatally prejudicial to the accused. It is clear that every curtailment or reduction of the rights and prerogatives of a trial court to grant a new trial, to modify its sentence or even to acquit the accused, within the 15-day period during which it retains jurisdiction and control over its decision correspondingly and in equal measure abridges and diminishes the rights and chances of the defendant himself to have the penalty reduced or to be acquitted altogether. It is evident that the abridgement and diminution, whether of the jurisdiction, powers and prerogatives of a trial court, or of the rights, opportunities and chances of the defendant, in a death sentence case, is incompatible with and runs counter to the purpose and the intention of the law which as we have already stated, is to favor a defendant sentenced by the trial court to die.

A defendant in an ordinary criminal case sentenced to a mere prison term, fighting only to gain his freedom, is allowed by the law to invoke and take advantage of and exhaust all the legal remedies and opportunities available to him in the trial court such as asking for a modification of the sentence, even for his outright acquittal, or to file a motion for a new trial. Does and will the same law deny the same legal opportunities and remedies to one who is sentenced to the death penalty, who needs said remedies and opportunities most, for the reason that he is fighting not only for his liberty but his very life, specially when as we have already said, it is the policy of the Government as shown in the legal provision providing for automatic review of a death sentence to give the defendant thus sentenced every protection from any judicial error committed against him? Both reason and justice give and must give the answer in the negative.

It might be contended that to modify a death sentence or to pass upon a motion for new trial and to grant it, is such a delicate and serious matter that said task is reserved only to the Supreme Court, and that, consequently, a trial court is denied the jurisdiction and the power to modify a death sentence rendered by it or to grant a new trial. But if the law itself considers a trial court good enough and wise enough, and in all other respects fully qualified to try an accused for a capital offense and impose capital punishment on him, reason dictates that said trial court should be good and wise enough and fully qualified to modify the death sentence imposed by itself, or grant a new trial. Besides, even if a motion for new trial in a death sentence is granted by the Supreme Court itself, for lack of facilities and of material time, the new trial is almost invariably ordered to be conducted by the trial court itself and thereafter the case decided anew by the same trial court, proof, positive that a trial court is regarded by this Tribunal as possessed with sufficient wisdom and integrity to modify a death sentence, even to acquit the defendant should the evidence at the new trial so justify.

In this connection we might digress a little and say something about the responsibility of a trial court in imposing the death penalty. To sentence a fellowman to die is a serious matter. The law calls for the imposition of the death penalty only in rare and extreme cases, where the evidence is very strong, even conclusive, and extraordinary and aggravating circumstances attended the commission of the particular offense. The trial judge imposing the death sentence must be morally convinced and certain that the accused committed the crime and under the aggravating circumstances charged in the information, and to arrive at this moral certainty and conviction the trial judge must be sure that the witness or witnesses testifying on the commission of the crime and linking the accused to it, were sincere, truthful and credible. The tremendous responsibility of the trial judge may therefore be easily imagined, especially when we consider that he is alone on the Bench with no companions as in a collegiate court with whom to share the great responsibility. Why, therefore, should not a trial judge rendering a death sentence be allowed as he is allowed in ordinary cases involving a mere prison term or fine to retain control over his fateful decision within the reglamentary period of 15 days, to ponder the sentence, think and determine whether he had committed any error against the accused, as in the finding and consideration of aggravating and mitigating circumstances or in according credence to important witnesses, in order to modify and reduce the penalty if necessary, or to consider and grant a motion for new trial when said motion is justified?

It may again be contended as in fact it is contended by the Solicitor General that any error committed by the trial court in a death sentence case will be duly considered and corrected by this Tribunal in the automatic review. That is generally and theoretically correct. But there are errors that may be committed by a trial court which may not appear in the record and so are beyond the reach of this Tribunal to consider and correct. Take the case of credibility of witnesses. The rule is that the Supreme Court will not interfere with the judgment of the lower court in passing upon the credibility of the opposing witnesses unless there appears in the record some fact or circumstances of weight and influence which has been overlooked or the significance of which has been misinterpreted. Supposing that the trial judge after rendering a death sentence and within the period of 15 days, after pondering and reviewing in his mind the momentous sentence imposed by him, begins to entertain doubts about the motives and sincerity of the star prosecution witness, and recalls that the said witness' behavior on the witness stand or the tone of his voice was unnatural or otherwise suspicious? As contended by the Government the trial judge could do nothing about it because the case has been taken out of his hands the moment the sentence was promulgated. The trial judge cannot inform or advise the Supreme Court of his doubts and of the error he had committed on this point because

he is not a party in the automatic review, and any effort on his part to inform the high Tribunal of his doubts and conviction that he had erred in according credibility to an important witness for the prosecution, would be regarded as mere meddling and officious interference. In other words, the trial judge in such a case can do nothing to ease his troubled conscience. We believe that that is not and cannot be the meaning and intention of the law.

The 20 days mentioned in Rule 118, section 9, within which the records of a case involving a death sentence should be forwarded to the Supreme Court is not rigid or absolute, much less jurisdictional. It may be shortened or it may be extended. That period of 20 days was intended for a case wherein the accused sentenced to death says nothing and does nothing within the period of 15 days within which the case remains within the jurisdiction of the trial court, as for instance, he does not file a motion for new trial, he does not appeal, or does not waive his right to appeal. But should he, say, on the same day the death sentence is promulgated, file his notice of appeal, then there would be no need to wait for the 20 days to expire; the Clerk of Court will immediately or at the latest within five days thereafter transmit the record to the Supreme Court. Should the defendant sentenced to the death penalty within the period of 15 days file a motion for new trial, then the trial court may entertain said motion, grant or deny it, and if the consideration of the motion for new trial or the new trial itself take many days or even weeks, including the rendering of the new decision, then the 20 days mentioned in the Rules of Court must necessarily be extended.

There is and there must be a reason for that portion of section 9, Rule 118, that provides that the records in a case of death sentence should be forwarded to the Clerk of Court of the Supreme Court within 20 days *but not earlier than 15 days* after rendition of sentence. Why this prohibition of not sending up the records before the expiration of 15 days? It is because within those 15 days, despite the automatic review contemplated by law the trial court retains complete jurisdiction and control over the case and over its decision. Within that period, as in ordinary cases, the trial court may modify its decision by decreasing but not increasing the penalty or acquit the defendant, or grant a motion for new trial filed by the defendant, or even on its own motion with the consent of the accused, grant a new trial. A motion for new trial automatically suspends the running of the period of 15 days and so the sending up or transmission of the records to the Supreme Court for automatic review is necessarily suspended. There is also a relation between the period of 20 days and the 15 days mentioned in section 9, Rule 118. The difference between 20 and 15 is 5 days. In other words, after the expiration of the 15 days, the Clerk of Court must transmit the records to the Supreme Court within 5 days. This period of 5 days is also found

in section 8 of the same Rule 118 which provides that upon an appeal being taken in a criminal case (ordinary criminal case involving no death sentence), the Clerk or Judge of the court with whom the notice of appeal had been filed, must within 5 days from the filing of the notice, transmit to the Clerk of Court of the appellate court the complete record of the case. The same thing must be done in a case involving a death sentence if the accused files his notice of appeal; the Clerk of Court must send up the record within 5 days thereafter. He need not wait for the expiration of the 20 days mentioned in section 9, Rule 118. But one may ask, why does section 9, Rule 118 provide for 20 days but does not do so in section 8 of the same rule? It is because in a death sentence case the records go up to the Supreme Court anyway whether or not the accused appeals, but within the period of 15 days after the promulgation of the sentence, the trial court will not know until the 15 days have expired whether or not the accused appeals, and so cannot send the record to the Supreme Court within that period, unless of course the accused himself files his notice of appeal or does nothing and let the period of 15 days lapse in which case the Clerk of Court will within 5 days thereafter send up the records of the case to the Supreme Court. But in ordinary criminal cases where the sentence is less than death, covered by section 8 of Rule 118, if the defendant does not do anything within the period of 15 days, then the sentence becomes final and the records remain with the trial court; so, there is no occasion, much less the necessity of providing for the period of 20 days as is done in section 9. We therefore believe and hold that the trial court in a case involving the death penalty has the right to entertain and grant a motion for new trial in case it finds the motion meritorious.

Now comes the other question. Did respondent Judge Bocar in granting the motion for new trial gravely abuse his discretion to such an extent that his action is equivalent to an excess of jurisdiction? In support of the motion for new trial filed before him, there was an affidavit of recantation by Rogelio Robles. Instead of accepting this affidavit as sufficient to justify the granting of a new trial he set the same for hearing on April 14th at which hearing Pasay City Fiscal Salva appeared for the prosecution. The hearing was continued until April 18th and again continued on April 20th and during the last two hearings Manila City Fiscal Eugenio Angeles appeared in collaboration with Fiscal Salva. At the hearing, besides Robles, his mother Liceria Siasoy and Atty. Alejandro de Santos testified. Rogelio Robles gave extensive testimony but the prosecution waived its right to cross-examine him. Judge Hermogenes Caluag, Judge of the Court of First Instance of Quezon City and Mrs. Felicidad Manuel also testified for the defense. Both were cross-examined by Fiscal Angeles. During the hearing there was prolonged argument by the prosecution and the defense

counsel. In the absence of proof to the contrary, we must presume that Judge Bocar after listening to the testimonies and arguments must have been convinced of the sincerity of Rogelio Robles not only in his affidavit but also in his testimony given before him and that based on this conviction Judge Bocar granted the motion for new trial.

But the petitioner maintains that in order to be in a position to consider and pass upon the motion for new trial Judge Bocar should have reviewed the entire record including the testimony of the witnesses and this he could not have possibly done for the reason that at the time, the stenographic notes taken of the testimonies of the witnesses during the hearing which lasted about one year had not yet been transcribed, and that even if and when transcribed, they would cover from eleven to twenty thousand pages. As we understand the case, and after reading the pleadings filed in this petition for certiorari and prohibition with preliminary injunction and listening to the oral argument during the two hearings held before us in Baguio, we do not agree with petitioner that it was necessary to go over the whole records of the case, including the oral and documentary evidence. We must bear in mind that of the eight defendants sentenced to death by Judge Rilloraza, only one, Oscar Castelo, was filing a motion for new trial; so only the evidence for and against him introduced during the trial was material and relevant to the motion for new trial. It was then the consensus that the only direct evidence linking Castelo to the killing of Monroy was the testimony of Rogelio Robles. Counsel for respondents informed this Court during the oral argument that Fiscal Salva himself made this statement or declaration to Judge Bocar and when Fiscal Salva was asked by us to verify this assertion, he assured us that it was true. In a portion of his decision Judge Rilloraza reviewed and analyzed the testimony of Robles. Not being very long, Judge Bocar could have easily read and studied this portion of the decision to apprise himself of what Robles had said during the hearing about the alleged participation of Castelo in the killing. Furthermore, and this is important, where the newly discovered evidence claimed and sought to be presented during a trial is entirely different and independent of the evidence introduced during the main hearing as for instance, the newly discovered evidence is the testimony of one witness intended to contradict the testimony of another witness who testified during the main hearing, then it would be necessary to review and study said testimony during the main hearing, consider it in relation to the newly discovered evidence and see whether it was probable that the latter if presented and admitted would outweigh or offset the testimony in the main hearing to such an extent that it would change the judgment. But in the present case, the facts are different. The witness sought to be introduced at the new trial, Robles, is the same witness who testified in the main hearing directly

implicating Castelo in the commission of the offense charged, and the theory of respondents is that Robles is repudiating his previous testimony and recanting it on the ground that he gave it not voluntarily but due to intimidation, duress, and violence. So that, if the respondents can prove during the new trial sought that Robles' testimony in the main hearing was all false and that at the new trial he would testify freely and voluntarily and truthfully that Castelo had no participation whatsoever in the killing of Monroy, then the main concern of Judge Bocar in passing upon and considering the merits of the motion for new trial was not so much what Robles said at the main hearing but as to his sincerity and truthfulness in his affidavit in support of the motion for new trial and in his extensive testimony during the hearing on the motion for new trial, then there was reason to believe that his testimony at the main hearing linking Castelo to the killing of Monroy was of doubtful value, and therefore, the motion for new trial could properly be granted as in fact it was granted by Judge Bocar.

It is true that as was said by this Tribunal in the case of U.S. vs. Dacir, 26 Phil. 507, as a rule a motion for new trial is not granted when the motion is based on an affidavit or recantation whose effect is to free the appellant from participation in the commission of the crime; but it was also held in that case that there are exceptional cases as where it is made to appear that there was no other evidence sustaining the judgment of conviction other than the testimony of the recanting witness and this Court actually granted a new trial in said case although the motion was based on mere affidavits of the main prosecution witness changing his story or account of the commission of the crime, after the trial. As already stated, Judge Bocar was not satisfied with the mere affidavit of Robles but set the motion for new trial for hearing and required the defense to present evidence in support of the motion.

To avoid any misapprehension and to explain why we entertained the present petition for certiorari and prohibition with preliminary injunction over an order granting a motion for new trial, it should be stated that in civil cases the granting of a new trial is considered a mere interlocutory order not subject to appeal or special civil action. The reason is that the party dissatisfied with the order granting a new trial may, after judgment appeal from the same and include in his appeal the supposed error committed in the issuance of the interlocutory order. However, in a criminal case like the present, that theory or procedure of appeal in due time may not be practical or satisfactory for the reason that at the conclusion of the new trial, the trial court in deciding the case anew, may acquit the defendant and thereafter the prosecution would have no more opportunity of bringing before the appellate court the question of the legality or illegality of the order

granting a new trial because the defendant acquitted may plead double jeopardy.

Before concluding, the Tribunal wishes to unburden itself of what it thinks about the propriety of the actuations of Judge Bocar. While we believe that in entertaining the motion for new trial, granting it, and setting the new trial for the introduction of evidence before him, particularly the alleged newly discovered evidence, respondent Judge acted within the law, the majority of the members of the Court feel, and strongly, that he should not have taken action on the motion for new trial but should have left it to the regular Judge of the sala or one presiding over the trial court more or less permanently. Anyway, inaction on his part would not and could not have prejudiced the rights of the movant for the reason that the mere filing of the motion for new trial interrupted the running of the period of 15 days within which the trial court retained control over the case. Respondent Judge was on a mere temporary detail in the trial court. The motion for new trial was filed before him on April 11th and his detail was expiring at the end of the month. While he might have had the necessary time as we think he had of passing upon the merits of the motion for new trial and granting it, he should and must have realized that he was in no position to conduct and finish the new trial and decide the case as regards Oscar Castelo, anew. The main trial took about a year to finish, not only because of the extensive testimony and voluminous documentary evidence submitted but also due to the numerous incidents that featured the hearing. Said incidents were prominently, even exhaustively publicized in the papers, giving the impression that Judge Rilloraza presiding over the trial had his hands full, controlling counsel for prosecution and defense, their enthusiasm, mutual accusations and aggressive attitude against each other, and at times he had to resort to contempt proceedings in order to restore and have some semblance of order and decorum at the trial and protect the dignity of the court. It is true that there were then eight defendants on trial while in the new trial granted only Castelo is involved. However, one should not lose sight of the fact that under the theory of the prosecution, Castelo is the mastermind who decided and directed the killing and in fact said prosecution would appear to have more or less concentrated its attention and efforts on him as regards the presentation of evidence. As we have already said, the main hearing besides being protracted, was far from peaceful and pleasant. At times it was turbulent. Judge Bocar should and must have known all this, and also that there was no assurance that it would not be repeated at the new trial, at least as regards the time to be consumed to conduct and terminate it. This, specially when Robles in his affidavit and in his testimony given in support of the motion for new trial, he openly accused of having practiced and

committed acts of violence and intimidation on him, or tampering with his testimony government officials like Mayor Lacson of the City of Manila, Fiscal Luis B. Reyes, now Judge of the Court of First Instance, and officers of the Manila Police Department, and these officials would perhaps if not probably, take the witness stand to explain if not to deny the accusations against them, as they have already done by means of affidavits. It might be said figuratively that respondent Judge, as it were, rushed in where angels fear to tread.

We repeat that Judge Bocar should have known that he could not possibly conduct the new trial up to its termination, considering that his temporary detail to the trial court was expiring at the end of the month, unless he unduly rushed it and did not accord the parties sufficient time and opportunity to present their evidence. In fact, there is reason to believe that it was his action in ordering the new trial on April 25th before him, with only about six days to go, that alerted and alarmed the prosecution and gave it the impression and inspired the belief which it expressed and alleged in its present petition and in support thereof, that respondent Judge would most probably render another judgment acquitting Oscar Castelo,—sort of railroading his case to an acquittal. We are not sure that had Judge Bocar merely granted the motion for new trial and not decided to conduct said new trial himself, intending to finish it within the very limited time of about five or six days, or should the new trial have been granted by Judge Rilloraza who rendered the decision of conviction, the herein petitioner would have filed this petition to question the jurisdiction and power of a trial court to grant a new trial in case of death sentence.

In justice to respondent Judge, however, we should also say that there is nothing in the record nor any incident in relation with his actuations in the case that would reasonably warrant the suspicion, much less the belief, that he was out to acquit Castelo. We presume all judges to be honest and men of integrity unless proven otherwise. It is said that respondent Judge stated or manifested in the presence of counsel, while considering the motion for new trial that it were better if the motion had been presented before another judge because he (Bocar) had very little time for it because of his temporary detail. And as to his seeming hurry in issuing the order granting the motion for new trial on April 20, 1955, almost immediately after the termination of the hearing, it should be stated that he as well as the lawyers had the impression that under Rule 118, section 9, he had only 20 days from the rendition of the judgment within which to decide the motion for new trial, and April 20th was the last day. Of course, as we have already said, this period of 20 days is not rigid, inflexible, much less jurisdictional; if defendant files a notice of appeal, say the first day or second day after the promulgation of the decision, then the record will

be elevated to the Supreme Court within 5 days therefrom without having to wait for the expiration of the 20 days; and that the filing of a motion for new trial not only interrupts and even does away with the 20-day period mentioned in section 9, Rule 118.

In conclusion, we hold that in a case where the death sentence is imposed, the trial court as in ordinary criminal cases may entertain and grant a motion for new trial, conduct the same and thereafter decide the case anew as regards said defendant to whom the new trial was granted.

We deem it unnecessary to pass upon the legality and propriety of the order granting bail to respondent Castelo, considering the question involved as moot. Upon the granting of the motion for new trial the decision of Judge Rillorazа as regards Oscar Castelo was automatically set aside and as to him, the case reverted to its original status before judgment. We understand that he was then under bail. Unless there are reasons to the contrary, he should be accorded his original status of being out on bail.

In view of the foregoing, the petition for certiorari and prohibition is hereby denied. The writ of preliminary injunction heretofore issued is ordered dissolved. No costs.

(*Sgd.*) MARCELIANO R. MONTEMAYOR

We concur:

(*Sgd.*) CESAR BENGZON
" SABINO PADILLA
" FERNANDO JUGO
(*Sgd.*) FELIX BAUTISTA ANGELO
" ALEJO LABRADOR

I reserve my vote.

(*Sgd.*) JOSE B. L. REYES

Justice Alex Reyes did not take part.
Justice Concepcion did not take part.