

[G.R. No. 176933, October 02, 2009]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. LUIS PLAZA Y BUCALON, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Raising only questions of law, the People's petition for review on certiorari assails the January 31, 2007 Decision^[1] of the Court of Appeals which affirmed the November 12, 2002 Order of the Regional Trial Court (RTC) of Surigao City, Br. 29 in Criminal Case No. 5144 (the case) fixing bail for the temporary liberty of Luis Bucalon Plaza alias *Loloy Plaza* (respondent) who was indicted for Murder.

The case was originally raffled to Branch 30 of the Surigao RTC presided by Judge Floripinas Buyser (Judge Buyser).

After the prosecution rested its case, respondent, with leave of court, filed a Demurrer to Evidence.^[2] The Demurrer was denied by Judge Buyser by Order^[3] of March 14, 2002, the pertinent portion of which reads:

x x x x

The evidence thus presented by the prosecution is sufficient to prove the guilt of the accused beyond reasonable doubt, but only for the crime of **homicide** and not for murder, as charged. This is because the qualifying circumstance of **treachery** alleged in the information **cannot be appreciated** in this case.

x x x x (Emphasis and underscoring supplied)

The defense thereupon presented evidence^[4] in the course of which respondent filed a Motion to Fix Amount of Bail Bond,^[5] contending that in view of Judge Buyser's ruling that the prosecution evidence is sufficient to prove only Homicide, he could be released on bail. He thus prayed that the bail bond for his temporary liberty be fixed at P40,000.00 which he claimed was the usual bond for Homicide in the RTC of Surigao City and Surigao del Norte.

In its Opposition to Motion to Fix Amount of Bail Bond,^[6] the prosecution contended, in the main, that the case being for Murder, it is non-bailable as the imposable penalty is *reclusion temporal* to death; that it is the public prosecutor who has exclusive jurisdiction to determine what crime the accused should be charged with; that the accused should have filed a motion/application to bail and not just a motion to fix the amount of the bail bond; that the accused had already waived his right to apply for bail at that stage of the proceedings; that Judge Buyser's March 14, 2002 Order, being a mere opinion and not a ruling or a

dispositive part thereof, produced no legal effect inasmuch as it had no jurisdiction to rule on a matter outside the Demurrer; and that under the Rules, the prosecution could still prove the existence of treachery on rebuttal after the defense has rested its case.

During the hearing of the Motion to Fix Amount of Bail Bond, Senior State Prosecutor Rogelio Bagabuyo questioned Judge Buyser's impartiality, prompting the judge to inhibit himself and to order the case transferred to Branch 29 of the RTC for further proceedings.

Branch 29 Presiding Judge Jose Manuel Tan (Judge Tan) heard the Motion to Fix Amount of Bail Bond.

By Order^[7] of November 12, 2002, Judge Tan, concurring with the finding of Judge Buyser that since the prosecution evidence proved only Homicide which is punishable by *reclusion temporal* and, therefore, bailable, ruled that respondent could no longer be denied bail. He accordingly granted respondent's Motion and fixed the amount of his bond at P40,000.

Petitioner's motion for reconsideration *cum* prayer for inhibition of Judge Tan was denied for lack of merit.^[8]

Respondent was subsequently released^[9] after he posted a P40,000 bond.

Roberto Murcia (Roberto), the victim's brother, impleading the People as co-petitioner, assailed the trial court's orders via petition for certiorari^[10] with the Court of Appeals.

Roberto faulted Judge Tan for granting bail without an application for bail having been filed by respondent and without conducting the mandatory hearing to determine whether or not the prosecution's evidence is strong.

The Office of the Solicitor General (OSG) adopted Roberto's argument that the grant of bail to respondent without any separate hearing is contrary to prevailing jurisprudence.

By Decision of January 31, 2007, the appellate court, observing that the allegations in respondent's Motion to Fix Amount of Bail Bond constituted an application for bail, dismissed Roberto's petition and affirmed Judge Tan's orders.^[11]

In its present petition, the People contends that

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE CONTRARY TO LAW AND SETTLED JURISPRUDENCE WHEN IT RULED THAT THE HEARING CONDUCTED SATISFIES THE REQUIREMENT OF DUE PROCESS AND THAT RESPONDENT IS ENTITLED TO BAIL^[12]
(Underscoring supplied)

Section 13, Article III of the Constitution provides that "All persons, except those