

FIRST DIVISION

[G.R. NO. 149723, October 27, 2006]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. VICTOR KEITH FITZGERALD, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Assailed by way of Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the August 31, 2001 Resolution^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 20431 which granted the Motion for Bail^[2] of accused-appellant, herein respondent Victor Keith Fitzgerald, (Fitzgerald).

The facts are of record.

An Information filed with the Regional Trial Court (RTC), Branch 75, Olongapo City and docketed as Criminal Case No. 422-94, charged Fitzgerald, an Australian citizen, with Violation of Art. III, Section 5, paragraph (a), subparagraph (5) of Republic Act (R.A.) No. 7610,^[3] allegedly committed as follows:

That sometime in the month of September 1993, in the City of Olongapo, Zambales, Philippines and within the jurisdiction of this Honorable Court, said accused VICTOR KEITH FITZGERALD, actuated by lust, and by the use of laced drugs ("vitamins") willfully, unlawfully and feloniously induced complainant "AAA,"^[4] a minor, 13 years of age, to engage in prostitution by then and there showering said "AAA" with gifts, clothes and food and thereafter having carnal knowledge of her in violation of the aforesaid law and to her damage and prejudice.^[5]

After trial and hearing, the RTC rendered a Decision dated May 7, 1996, the decretal portion of which reads:

WHEREFORE, finding the accused Victor Keith Fitzgerald GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Paragraph (a) sub-paragraph 5 of Republic Act No. 7610, he is hereby sentenced to suffer an indeterminate prison term of eight (8) years and one (1) day of prison mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum, with all the accessory penalties attached therewith; and to indemnify the private complainant "AAA" the amounts of P30,000.00 as moral damages and P20,000.00 as exemplary damages.

The Lingap Center of the Department of Social Welfare and Development (DSWD) in Olongapo City shall hold in trust the said awards and dispose the same solely for the rehabilitation and education of "AAA", to the

exclusion of her mother and her other relatives.

The accused under Article 29 of the Revised Penal Code shall be credited in full of his preventive imprisonment if he has agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise to only 4/5 thereof.

Upon completion of the service of his sentence, the accused shall be deported immediately and forever barred from entry to the Philippines.

In Criminal Case No. 419-94 for Rape, the accused is acquitted.

SO ORDERED.^[6]

Fitzgerald applied for bail which the RTC denied in an Order dated August 1, 1996, which reads:

x x x x

In fine, on the basis of the evidence adduced by the Prosecution during the hearing on the bail petition, the Court is of the considered view that the circumstances of the accused indicate probability of flight and that there is undue risk that the accused may commit a similar offense, if released on bail pending appeal.

WHEREFORE, and viewed from the foregoing considerations, the Petition for Bail pending appeal is DENIED.

SO ORDERED.^[7]

Fitzgerald appealed to the CA which, in a Decision^[8] dated September 27, 1999, affirmed the RTC Decision, thus:

IN VIEW WHEREOF, with the modification that the penalty imposed on the accused-appellant is imprisonment of Fourteen (14) years, Eight (8) months and One (1) day of Reclusion Temporal to Twenty (20) years and One (1) day of Reclusion Perpetua, the decision of the court *a quo* is hereby AFFIRMED.

SO ORDERED.^[9]

Fitzgerald filed a Motion for New Trial^[10] and a Supplemental to Accused's Motion for New Trial^[11] on the ground that new and material evidence not previously available had surfaced. The CA granted the Motion for New Trial in a Resolution dated August 25, 2000, to wit:

WHEREFORE, the appellant's Motion for New Trial dated October 14, 1999 is GRANTED. ***The original records of this case is hereby REMANDED to the Presiding Judge of the Regional Trial Court of Olongapo City Branch 75 who is DIRECTED to receive the new evidence material to appellant's defense within sixty days from receipt and thereafter to submit to this Court the said evidence***

together with the transcript of stenographic notes together with the records of the case within ten (10) days after the reception of evidence. The Motion to Transfer appellant to the National Penitentiary is DENIED.^[12] (Emphasis ours)

The People (petitioner) filed a Motion for Reconsideration^[13] from the August 25, 2000 CA Resolution while Fitzgerald filed a Motion to Fix Bail with Manifestation.^[14] Both Motions were denied by the CA in its November 13, 2000 Resolution.^[15] In denying Fitzgerald's bail application, the CA held:

[T]his Court hereby RESOLVES to:

x x x x

2. DENY accused-appellant's Motion to Fix Bail with Manifestation, pursuant to the provisions of Section 7, Rule 114 of the Rules of Court which provides:

"Sec. 7. - Capital Offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. - No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment when evidence of guilt is strong shall be admitted to bail regardless of the stage of the criminal prosecution."

In the case at bar, the maximum imposable penalty in accordance with Republic Act 7610 otherwise known as the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act is *reclusion perpetua*. ***As it is, the evidence of guilt is strong, hence, We hold that his motion for bail cannot be granted at this point.***

With regard to his alleged physical condition, let it be stressed that accused-appellant is not precluded from seeking medical attention if the need arises provided the necessary representations with the proper authorities are made.

SO ORDERED.^[16] (Emphasis ours)

The People filed with this Court a Petition for Review on *Certiorari*^[17] docketed as G.R. No. 146008 questioning the August 25, 2000 and November 13, 2000 CA Resolutions. The petition was dismissed in a Resolution^[18] dated January 15, 2001, which became final and executory on May 2, 2001.^[19]

Meanwhile, on December 3, 2000, Fitzgerald filed with the CA a Motion for Early Transmittal of the Records and for the Re-Examination of the Penalty Imposed, and a Motion for Bail.^[20] The People filed its Comment^[21] to both Motions.

On August 31, 2001, the CA issued the herein assailed Resolution^[22] granting Fitzgerald's bail application, thus:

x x x x

Be that as it may, while ***We maintain that, as it is, the evidence of guilt is strong***, We have taken a second look at appellant's plea for temporary liberty considering primarily the fact that appellant is already of old age^[23] and is not in the best of health. Thus, it is this Court's view that appellant be GRANTED temporary liberty ***premised not on the grounds stated in his Motion for Bail*** but in the higher interest of substantial justice and considering the new trial granted in this case.

Accordingly, appellant is hereby DIRECTED to post a bail bond in the amount of P100,000.00 for his temporary liberty provided he will appear in any court and submit himself to the orders and processes thereof if and when required to do so. The appellant is likewise refrained from leaving the country now or in the future until this case is terminated.

Accordingly, the Bureau of Immigration and Deportation is ORDERED to include appellant in its hold departure list xxx.

x x x x

SO ORDERED.^[24] (Emphasis ours)

Thereafter, the RTC ordered Fitzgerald's temporary release on September 4, 2001 upon his filing a cash bond in the amount of P100,000.00.^[25]

Hence, the People filed this Petition to have the August 31, 2001 CA Resolution annulled and set aside. Petitioner argues that the CA erred in granting respondent Fitzgerald's Motion for Bail despite the fact that the latter was charged with a crime punishable by *reclusion perpetua* and the evidence of his guilt is strong.^[26] It also questions the jurisdiction of the CA to act on said Motion, considering that the case had been remanded to the RTC for new trial.^[27]

In his Comment and Memorandum, respondent counters that the grant of new trial negated the previous findings of the existence of strong evidence of his guilt;^[28] and justifies his provisional release on humanitarian grounds, citing as an extraordinary circumstance his advanced age and deteriorating health.^[29]

The petition is meritorious.

We resolve first the preliminary question of whether the CA, after issuing its August 25, 2000 Resolution granting a new trial, still had jurisdiction to act on respondent's Motion to Post Bail. Our ruling on this matter, however, shall be limited to the effect of the August 25, 2000 CA Resolution on the latter's jurisdiction; it shall have no bearing on the merits of said Resolution as this has been decided with finality in G.R. No. 146008.

According to petitioner, considering that the August 25, 2000 CA Resolution, referring the case to the RTC for new trial, had become final and executory on May 2, 2001 when this Court denied its petition for review in G.R. No. 146008, then, when the CA issued the August 31, 2001 Resolution granting respondent bail, it had been stripped of jurisdiction over the case.^[30]

Petitioner is mistaken.

When this Court grants a new trial, it vacates both the judgment of the trial court convicting the accused^[31] and the judgment of the CA affirming it,^[32] and remands the case to the trial court for reception of newly-discovered evidence and promulgation of a new judgment,^[33] at times with instruction to the trial court to promptly report the outcome.^[34] The Court itself does not conduct the new trial for it is no trier of facts.^[35]

However, when the CA grants a new trial, its disposition of the case may differ, notwithstanding Sec. 1,^[36] Rule 125 of the 2000 Rules on Criminal Procedure which provides for uniformity in appellate criminal procedure between this Court and the CA. Unlike this Court, the CA may decide questions of fact and mixed questions of fact and law.^[37] Thus, when it grants a new trial under Sec. 14, Rule 124, it may either (a) directly receive the purported newly-discovered evidence under Sec. 12,^[38] or (b) refer the case to the court of origin for reception of such evidence under Sec. 15.^[39] In either case, it does not relinquish to the trial court jurisdiction over the case; it retains sufficient authority to resolve incidents in the case and decide its merits.

Now then, the CA, in its August 25, 2000 Resolution, ordered: first, the remand of the original records of the case to the RTC; second, that the RTC receive the new evidence material to appellant's defense within 60 days from receipt of the original records; and third, that the RTC submit to it the said evidence together with the transcript of the case within 10 days after reception of evidence.^[40] From the foregoing disposition, it is evident that the CA retained appellate jurisdiction over the case, even as it delegated to the RTC the function of receiving the respondent's newly-discovered evidence. The CA therefore retained its authority to act on respondent's bail application. Moreso that the original records of the case had yet to be transmitted to the RTC when respondent filed his bail application and the CA acted on it.

With that procedural matter out of the way, we now focus on the substantive issue of whether the CA erred when it allowed respondent to bail.

The right to bail emanates from the right to be presumed innocent. It is accorded to a person in the custody of the law who may, by reason of the presumption of innocence he enjoys,^[41] be allowed provisional liberty upon filing of a security to guarantee his appearance before any court, as required under specified conditions.^[42]

Implementing Sec. 13,^[43] Article III of the 1987 Constitution, Sections 4^[44] and 5, Rule 114 of the 2000 Rules of Criminal Procedure set forth substantive and procedural rules on the disposition of bail applications. Sec. 4 provides that bail is a matter of right to an accused person in custody for an offense not punishable by death, *reclusion perpetua* or life imprisonment,^[45] but a matter of discretion on the part of the court, concerning one facing an accusation for an offense punishable by death, *reclusion perpetua* or life imprisonment when the evidence of his guilt is strong.^[46] As for an accused already convicted and sentenced to imprisonment term exceeding six years, bail may be denied or revoked based on prosecution