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THIRD DIVISION

[G.R. No. 189122, March 17, 2010]

JOSE ANTONIO LEVISTE, PETITIONER, VS. THE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

CORONA, J.:

Bail, the security given by an accused who is in the custody of the law for his release to guarantee his appearance before any court as may be required,[1] is the answer of the criminal justice system to a vexing question: what is to be done with the accused, whose guilt has not yet been proven, in the "dubious interval," often years long, between arrest and final adjudication?[2] Bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring the accused's presence at trial.[3]

Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, the accused who has been sentenced to prison must typically begin serving time immediately unless, on application, he is admitted to bail.[4] An accused not released on bail is incarcerated before an appellate court confirms that his conviction is legal and proper. An erroneously convicted accused who is denied bail loses his liberty to pay a debt to society he has never owed.[5] Even if the conviction is subsequently affirmed, however, the accused's interest in bail pending appeal includes freedom pending judicial review, opportunity to efficiently prepare his case and avoidance of potential hardships of prison.[6] On the other hand, society has a compelling interest in protecting itself by swiftly incarcerating an individual who is found guilty beyond reasonable doubt of a crime serious enough to warrant prison time.[7] Other recognized societal interests in the denial of bail pending appeal include the prevention of the accused's flight from court custody, the protection of the community from potential danger and the avoidance of delay in punishment.[8] Under what circumstances an accused may obtain bail pending appeal, then, is a delicate balance between the interests of society and those of the accused.[9]

Our rules authorize the proper courts to exercise discretion in the grant of bail pending appeal to those convicted by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment. In the exercise of that discretion, the proper courts are to be guided by the fundamental principle that

the **allowance of bail pending appeal should be exercised not with laxity but with grave caution and only for strong reasons**, considering that the accused has been in fact convicted by the trial court.[10]

THE FACTS

Charged with the murder of Rafael de las Alas, petitioner Jose Antonio Leviste was convicted by the Regional Trial Court of Makati City for the lesser crime of homicide and sentenced to suffer an indeterminate penalty of six years and one day of *prision mayor* as minimum to 12 years and one day of *reclusion temporal* as maximum.[11]

He appealed his conviction to the Court of Appeals.[12] Pending appeal, he filed an urgent application for admission to bail pending appeal, citing his advanced age and health condition, and claiming the absence of any risk or possibility of flight on his part.

The Court of Appeals denied petitioner's application for bail.[13] It invoked the bedrock principle in the matter of bail pending appeal, that the discretion to extend bail during the course of appeal should be exercised "with grave caution and only for strong reasons." Citing well-established jurisprudence, it ruled that bail is not a sick pass for an ailing or aged detainee or a prisoner needing medical care outside the prison facility. It found that petitioner

... failed to show that he suffers from ailment of such gravity that his continued confinement during trial will permanently impair his health or put his life in danger. x x x Notably, the physical condition of [petitioner] does not prevent him from seeking medical attention while confined in prison, though he clearly preferred to be attended by his personal physician.[14]

For purposes of determining whether petitioner's application for bail could be allowed pending appeal, the Court of Appeals also considered the fact of petitioner's conviction. It made a preliminary evaluation of petitioner's case and made a *prima facie* determination that there was no reason substantial enough to overturn the evidence of petitioner's guilt.

Petitioner's motion for reconsideration was denied.[15]

Petitioner now questions as grave abuse of discretion the denial of his application for bail, considering that none of the conditions justifying denial of bail under the third paragraph of Section 5, Rule 114 of the Rules of Court was present. Petitioner's theory is that, where the penalty imposed by the trial court is more than six years but not more than 20 years and the circumstances mentioned in the third paragraph of Section 5 are absent, bail **must** be granted to an appellant pending appeal.

THE ISSUE

The question presented to the Court is this: in an application for bail pending appeal by an appellant sentenced by the trial court to a penalty of imprisonment for more than six years, does the discretionary nature of the grant of bail pending appeal mean that bail should automatically be granted absent any of the circumstances mentioned in the third paragraph of Section 5, Rule 114 of the Rules of Court?

Section 5, Rule 114 of the Rules of Court provides:

Sec. 5. *Bail, when discretionary*. -- **Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary**. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification;
(c) That he committed the offense while under probation, parole, or conditional pardon;
(d) That the circumstances of his case indicate the probability of flight if released on bail; or
(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (emphasis supplied)

Petitioner claims that, in the absence of any of the circumstances mentioned in the third paragraph of Section 5, Rule 114 of the Rules of Court, an application for bail by an appellant sentenced by the Regional Trial Court to a penalty of more than six years' imprisonment should automatically be granted.

Petitioner's stance is contrary to fundamental considerations of procedural and

substantive rules.

BASIC PROCEDURAL CONCERNS
FORBID GRANT OF PETITION

Petitioner filed this special civil action for certiorari under Rule 65 of the Rules of Court to assail the denial by the Court of Appeals of his urgent application for admission to bail pending appeal. While the said remedy may be resorted to challenge an interlocutory order, such remedy is proper only where the interlocutory order was rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[16]

Other than the sweeping averment that "[t]he Court of Appeals committed grave abuse of discretion in denying petitioner's application for bail pending appeal despite the fact that none of the conditions to justify the denial thereof under Rule 114, Section 5 [is] present, much less proven by the prosecution,"[17] however, petitioner actually failed to establish that the Court of Appeals indeed acted with grave abuse of discretion. He simply relies on his claim that the Court of Appeals should have granted bail in view of the absence of any of the circumstances enumerated in the third paragraph of Section 5, Rule 114 of the Rules of Court. Furthermore, petitioner asserts that the Court of Appeals committed a grave error and prejudged the appeal by denying his application for bail on the ground that the evidence that he committed a capital offense was strong.

We disagree.

It cannot be said that the Court of Appeals issued the assailed resolution without or in excess of its jurisdiction. One, pending appeal of a conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is expressly declared to be **discretionary**. Two, the discretion to allow or disallow bail pending appeal in a case such as this where the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable is exclusively lodged by the rules with the appellate court. Thus, the Court of Appeals had jurisdiction to hear and resolve petitioner's urgent application for admission to bail pending appeal.

Neither can it be correctly claimed that the Court of Appeals committed grave abuse of discretion when it denied petitioner's application for bail pending appeal. **Grave abuse of discretion is not simply an error in judgment** but it is such a capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction.[18] **Ordinary abuse of discretion is insufficient**. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[19] It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for certiorari to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion.[th20]

Petitioner never alleged that, in denying his application for bail pending appeal, the Court of Appeals exercised its judgment capriciously and whimsically. No capriciousness or arbitrariness in the exercise of discretion was ever imputed to the appellate court. Nor could any such implication or imputation be inferred. As observed earlier, the Court of Appeals exercised grave caution in the exercise of its discretion. The denial of petitioner's application for bail pending appeal was not unreasonable but was the result of a thorough assessment of petitioner's claim of ill health. By making a preliminary appraisal of the merits of the case for the purpose of granting bail, the court also determined whether the appeal was frivolous or not, or whether it raised a substantial question. The appellate court did not exercise its discretion in a careless manner but followed doctrinal rulings of this Court.

At best, petitioner only points out the Court of Appeal's erroneous application and interpretation of Section 5, Rule 114 of the Rules of Court. However, **the extraordinary writ of certiorari will not be issued to cure errors in proceedings or erroneous conclusions of law or fact**.[21] In this connection, *Lee v. People*[22] *is* apropos:

... **Certiorari may not be availed of where it is not shown that the respondent court lacked or exceeded its jurisdiction over the case, even if its findings are not correct**. Its questioned acts would at most constitute errors of law and not abuse of discretion correctible by certiorari.

In other words, certiorari will issue only to correct errors of jurisdiction and not to correct errors of procedure or mistakes in the court's findings and conclusions. An interlocutory order may be assailed by certiorari or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by certiorari will not only delay the administration of justice but will also unduly burden the courts.[23](emphasis supplied)

WORDING OF THIRD PARAGRAPH OF SECTION 5, RULE 114 CONTRADICTS PETITIONER'S INTERPRETATION

The third paragraph of Section 5, Rule 114 applies to two scenarios where the penalty imposed on the appellant applying for bail is imprisonment exceeding six years. The first scenario deals with the circumstances enumerated in the said paragraph (namely, recidivism, quasi-recidivism, habitual delinquency or commission of the crime aggravated by the circumstance of reiteration; previous escape from legal confinement, evasion of sentence or violation of the conditions of his bail without a valid justification; commission of the offense while under probation, parole or conditional pardon; circumstances indicating the probability of flight if released on bail; undue risk of committing another crime during the pendency of the appeal; or other similar circumstances) not present. The second scenario contemplates the existence of at least one of the said circumstances.

The implications of this distinction are discussed with erudition and clarity in the commentary of retired Supreme Court Justice Florenz D. Regalado, an authority in remedial law:

Under the present revised Rule 114, the availability of bail to an accused may be summarized in the following rules:

x x x x x x x x x

e. After conviction by the Regional Trial Court wherein a penalty of imprisonment exceeding 6 years but not more than 20 years is imposed, and not one of the circumstances stated in Sec. 5 or any other similar circumstance is present and proved, **bail is a matter of discretion** *(Sec. 5)*;

f. After conviction by the Regional Trial Court imposing a penalty of imprisonment exceeding 6 years but not more than 20 years, and any of the circumstances stated in Sec. 5 or any other similar circumstance is present and proved, **no bail shall be granted** by said court *(Sec. 5)*; x x x[24] (emphasis supplied)

Retired Court of Appeals Justice Oscar M. Herrera, another authority in remedial law, is of the same thinking:

Bail is either a matter of right or of discretion. It is a matter of right when the offense charged is not punishable by death, *reclusion perpetua* or life imprisonment. On the other hand, upon conviction by the Regional Trial Court of an offense not punishable death, *reclusion perpetua* or life imprisonment, bail becomes a matter of discretion.

Similarly, **if the court imposed a penalty of imprisonment exceeding six (6) years then bail is a matter of discretion, *except when any of the enumerated circumstances under paragraph 3 of Section 5, Rule 114 is present then bail shall be denied***.[25] (emphasis supplied)

In the first situation, bail is a matter of sound judicial discretion. This means that, if none of the circumstances mentioned in the third paragraph of Section 5, Rule 114 is present, the appellate court has the discretion to grant or deny bail. An application for bail pending appeal may be denied even if the bail-negating[26] circumstances in the third paragraph of Section 5, Rule 114 are absent. In other words, the appellate court's denial of bail pending appeal where none of the said circumstances exists does not, by and of itself, constitute abuse of discretion.

On the other hand, in the second situation, the appellate court exercises a more stringent discretion, that is, to carefully ascertain whether any of the enumerated circumstances in fact exists. If it so determines, it has no other option except to deny or revoke bail pending appeal. Conversely, if the appellate court grants bail pending appeal, grave abuse of discretion will thereby be committed.

Given these two distinct scenarios, therefore, any application for bail pending appeal should be viewed from the perspective of two stages: (1) the determination of discretion stage, where the appellate court must determine whether any of the circumstances in the third paragraph of Section 5, Rule 114 is present; this will establish whether or not the appellate court will exercise sound discretion or stringent discretion in resolving the application for bail pending appeal and (2) the exercise of discretion stage where, assuming the appellant's case falls within the first scenario allowing the exercise of sound discretion, the appellate court may consider all relevant circumstances, other than those mentioned in the third paragraph of Section 5, Rule 114, including the demands of equity and justice;[27] on the basis thereof, it may either allow or disallow bail.

On the other hand, if the appellant's case falls within the second scenario, the appellate court's stringent discretion requires that the exercise thereof be primarily focused on the determination of the proof of the presence of any of the circumstances that are prejudicial to the allowance of bail. This is so because the existence of any of those circumstances is by itself sufficient to deny or revoke bail. **Nonetheless, a finding that none of the said circumstances is present will not automatically result in the grant of bail. Such finding will simply authorize the court to use the less stringent sound discretion approach.**

Petitioner disregards the fine yet substantial distinction between the two different situations that are governed by the third paragraph of Section 5, Rule 114. Instead, petitioner insists on a simplistic treatment that unduly dilutes the import of the said provision and trivializes the established policy governing the grant of bail pending appeal.

In particular, a careful reading of petitioner's arguments reveals that it interprets the third paragraph of Section 5, Rule 114 to cover **all situations** where the penalty imposed by the trial court on the appellant is imprisonment exceeding six years. For petitioner, in such a situation, the grant of bail pending appeal is always subject to limited discretion, that is, one **restricted to the determination of whether any of the <u>five</u> bail-negating circumstances exists**. The implication of this position is that, if any such circumstance is present, then bail will be denied. Otherwise, bail will be granted pending appeal.

Petitioner's theory therefore reduces the appellate court into a mere fact-finding body whose authority is limited to determining whether any of the five circumstances mentioned in the third paragraph of Section 5, Rule 114 exists. This unduly constricts its "discretion" into merely filling out the checklist of circumstances in the third paragraph of Section 5, Rule 114 in all instances where the penalty imposed by the Regional Trial Court on the appellant is imprisonment exceeding six years. In short, petitioner's interpretation severely curbs the discretion of the appellate court by requiring it to determine a singular factual issue -- whether any of the five bail-negating circumstances is present.

However, judicial discretion has been defined as "choice."[28] Choice occurs where, between "two alternatives or among a possibly infinite number (of options)," there

is "more than one possible outcome, with the selection of the outcome left to the decision maker."[29] On the other hand, the establishment of a clearly defined rule of action is the end of discretion.[30] Thus, by severely clipping the appellate court's discretion and relegating that tribunal to a mere fact-finding body in applications for bail pending appeal in all instances where the penalty imposed by the trial court on the appellant is imprisonment exceeding six years, petitioner's theory effectively renders nugatory the provision that "**upon conviction by the Regional Trial Court** of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, **admission to bail is discretionary**."

The judicial discretion granted to the proper court (the Court of Appeals in this case) to rule on applications for bail pending appeal must necessarily involve the exercise of judgment on the part of the court. The court must be allowed reasonable latitude to express its own view of the case, its appreciation of the facts and its understanding of the applicable law on the matter.[31] In view of the grave caution required of it, the court should consider whether or not, under all circumstances, the accused will be present to abide by his punishment if his conviction is affirmed.[32] It should also give due regard to any other pertinent matters beyond the record of the particular case, such as the record, character and reputation of the applicant,[33] among other things. More importantly, the discretion to determine allowance or disallowance of bail pending appeal necessarily includes, at the very least, an initial determination that the appeal is not frivolous but raises a substantial question of law or fact which must be determined by the appellate court.[34] In other words, a threshold requirement for the grant of bail is a showing that the appeal is not *pro forma* and merely intended for delay but presents a fairly debatable issue.[35] This must be so; otherwise, the appellate courts will be deluged with frivolous and time-wasting appeals made for the purpose of taking advantage of a lenient attitude on bail pending appeal. Even more significantly, this comports with the very strong presumption on appeal that the lower court's exercise of discretionary power was sound,[36] specially since the rules on criminal procedure require that no judgment shall be reversed or modified by the Court of Appeals except for substantial error.[37]

Moreover, to limit the bail-negating circumstances to the five situations mentioned in the third paragraph of Section 5, Rule 114 is wrong. By restricting the bail-negating circumstances to those expressly mentioned, petitioner applies the *expressio unius est exclusio alterius*[38] rule in statutory construction. However, the very language of the third paragraph of Section 5, Rule 114 contradicts the idea that the enumeration of the five situations therein was meant to be exclusive. The provision categorically refers to "the following **or other similar circumstances**." Hence, under the rules, similarly relevant situations other than those listed in the third paragraph of Section 5, Rule 114 may be considered in the allowance, denial or revocation of bail pending appeal.

Finally, laws and rules should not be interpreted in such a way that leads to unreasonable or senseless consequences. An absurd situation will result from adopting petitioner's interpretation that, where the penalty imposed by the trial court is imprisonment exceeding six years, bail ought to be granted if none of the

listed bail-negating circumstances exists. Allowance of bail pending appeal in cases where the penalty imposed is more than six years of imprisonment will be more lenient than in cases where the penalty imposed does not exceed six years. While denial or revocation of bail in cases where the penalty imposed is more than six years' imprisonment must be made only if any of the five bail-negating conditions is present, bail pending appeal in cases where the penalty imposed does not exceed six years imprisonment may be denied even without those conditions.

Is it reasonable and in conformity with the dictates of justice that bail pending appeal be more accessible to those convicted of serious offenses, compared to those convicted of less serious crimes?

PETITIONER'S THEORY DEVIATES FROM HISTORY AND EVOLUTION OF RULE ON BAIL PENDING APPEAL

Petitioner's interpretation deviates from, even radically alters, the history and evolution of the provisions on bail pending appeal.

The relevant original provisions on bail were provided under Sections 3 to 6, Rule 110 of the 1940 Rules of Criminal Procedure:

Sec. 3. *Offenses less than capital before conviction by the Court of First Instance*. -- After judgment by a municipal judge and before conviction by the Court of First Instance, the defendant shall be admitted to bail as of right.

Sec. 4. *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.

Sec. 5. *Capital offense 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.

Sec. 6. *Capital offense not bailable*. -- No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong.

The aforementioned provisions were reproduced as Sections 3 to 6, Rule 114 of the 1964 Rules of Criminal Procedure and then of the 1985 Rules of Criminal Procedure. They were modified in 1988 to read as follows:

Sec. 3. *Bail, a matter of right; exception*. -- All persons in custody, shall **before final conviction** be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by *reclusion perpetua*, when evidence of guilt is strong.

Sec. 4. *Capital offense, defined*. -- A capital offense, as the term is used in this Rules, 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. (emphasis supplied)

The significance of the above changes was clarified in Administrative Circular No. 2-92 dated January 20, 1992 as follows:

The basic governing principle on the right of the accused to bail is laid down in Section 3 of Rule 114 of the 1985 Rules on Criminal Procedure, as amended, which provides:

Sec. 3. Bail, a matter of right; exception. -- All persons in custody, shall before final conviction, be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by *reclusion perpetua*, when evidence of guilt is strong.

Pursuant to the aforecited provision, an accused who is charged with a capital offense or an offense punishable by *reclusion perpetua*, shall no longer be entitled to bail as a matter of right even if he appeals the case to this Court since his conviction clearly imports that the evidence of his guilt of the offense charged is strong.

Hence, for the guidelines of the bench and bar with respect to future as well as pending cases before the trial courts, this Court *en banc* lays down the following policies concerning the effectivity of the bail of the accused, to wit:

1) When an accused is charged with an offense which under the law existing at the time of its commission and at the time of the application for bail is punishable by a penalty lower than *reclusion perpetua* and is out on bail, and after trial is convicted by the trial court of the offense charged or of a lesser offense than that charged in the complaint or information, he may be allowed to remain free on his original bail pending the resolution of his appeal, unless the proper court directs otherwise pursuant to Rule 114, Sec. 2 (a) of the Rules of Court, as amended;

2) **When an accused is charged with a capital offense or an offense which under the law at the time of its commission and at the time of the application for bail is punishable by *reclusion perpetua* and is out on bail, and after trial is convicted by the trial court of a lesser offense than that charged in the complaint or information, the same rule set forth in the preceding paragraph shall be applied**;

3) When an accused is charged with a capital offense or an offense which under the law at the time of its commission and at the time of the application for bail is punishable by *reclusion perpetua* and is out on bail and after trial is convicted by the trial court of the offense charged, his bond shall be cancelled and the accused shall be placed in confinement pending resolution of his appeal.

As to criminal cases covered under the third rule abovecited, which are now

pending appeal before his Court where the accused is still on provisional liberty, the following rules are laid down:

1) This Court shall order the bondsman to surrender the accused within ten (10) days from notice to the court of origin. The bondsman thereupon, shall inform this Court of the fact of surrender, after which, the cancellation of the bond shall be ordered by this Court;

2) The RTC shall order the transmittal of the accused to the National Bureau of Prisons thru the Philippine National Police as the accused shall remain under confinement pending resolution of his appeal;

3) If the accused-appellant is not surrendered within the aforesaid period of ten (10) days, his bond shall be forfeited and an order of arrest shall be issued by this Court. The appeal taken by the accused shall also be dismissed under Section 8, Rule 124 of the Revised Rules of Court as he shall be deemed to have jumped his bail. (emphasis supplied)

Amendments were further introduced in Administrative Circular No. 12-94 dated August 16, 1994 which brought about important changes in the said rules as follows:

SECTION 4. *Bail, a matter of right.* -- All persons in custody shall: (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, be admitted to bail as a matter of right, with sufficient sureties, or be released on recognizance as prescribed by law of this Rule. (3a)

SECTION 5. *Bail, when discretionary*. -- **Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, the court, on application, may admit the accused to bail.**

The court, in its discretion, may allow the accused to continue on provisional liberty under the same bail bond during the period of appeal subject to the consent of the bondsman.

If the court imposed a penalty of imprisonment exceeding six (6) years but not more than twenty (20) years, the accused shall be denied bail, or his bail previously granted shall be cancelled, upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That the accused is found to have previously escaped from legal

confinement, evaded sentence or has violated the conditions of his bail without valid justification;

(c) That the accused committed the offense while on probation, parole, under conditional pardon;

(d) That the circumstances of the accused or his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that during the pendency of the appeal, the accused may commit another crime.

The appellate court may review the resolution of the Regional Trial Court, on motion and with notice to the adverse party. (n)

SECTION 6. *Capital offense, defined*. -- A capital offense, as the term is used in these Rules, 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, maybe punished with death. (4)

SECTION 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. (emphasis supplied)

The above amendments of Administrative Circular No. 12-94 to Rule 114 were thereafter amended by A.M. No. 00-5-03-SC to read as they do now.

The development over time of these rules reveals an orientation towards a more restrictive approach to bail pending appeal. It indicates a faithful adherence to the bedrock principle, that is, bail pending appeal should be allowed not with leniency but with grave caution and only for strong reasons.

The earliest rules on the matter made all grants of bail after conviction for a non-capital offense by the Court of First Instance (predecessor of the Regional Trial Court) discretionary. The 1988 amendments made applications for bail pending appeal favorable to the appellant-applicant. Bail before final conviction in trial courts for non-capital offenses or offenses not punishable by *reclusion perpetua* was a matter of right, meaning, admission to bail was a matter of right at any stage of the action where the charge was not for a capital offense or was not punished by *reclusion perpetua*.[39]

The amendments introduced by Administrative Circular No. 12-94 made bail pending appeal (of a conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment) discretionary. Thus, Administrative Circular No. 12-94 laid down more stringent rules on the matter of post-conviction grant of bail.

A.M. No. 00-5-03-SC modified Administrative Circular No. 12-94 by clearly identifying which court has authority to act on applications for bail pending appeal under certain conditions and in particular situations. More importantly, it reiterated the "tough on bail pending appeal" configuration of Administrative Circular No. 12-94. In particular, it amended Section 3 of the 1988 Rules on Criminal Procedure which entitled the accused to bail as a matter of right before final conviction.[40] Under the present rule, bail is a matter of discretion upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment. Indeed, pursuant to the "tough on bail pending appeal" policy, the presence of bail-negating conditions mandates the denial or revocation of bail pending appeal such that those circumstances are deemed to be as grave as conviction by the trial court for an offense punishable by death, *reclusion perpetua* or life imprisonment where bail is prohibited.

Now, what is more in consonance with a stringent standards approach to bail pending appeal? What is more in conformity with an *ex abundante cautelam* view of bail pending appeal? Is it a rule which favors the automatic grant of bail in the absence of any of the circumstances under the third paragraph of Section 5, Rule 114? Or is it a rule that authorizes the denial of bail after due consideration of all relevant circumstances, even if none of the circumstances under the third paragraph of Section 5, Rule 114 is present?

The present inclination of the rules on criminal procedure to frown on bail pending appeal parallels the approach adopted in the United States where our original constitutional and procedural provisions on bail emanated.[41] While this is of course not to be followed blindly, it nonetheless shows that our treatment of bail pending appeal is no different from that in other democratic societies.

In our jurisdiction, the trend towards a strict attitude towards the allowance of bail pending appeal is anchored on the principle that judicial discretion -- particularly with respect to extending bail -- should be exercised not with laxity but with caution and only for strong reasons.[42] In fact, it has even been pointed out that "grave caution that must attend the exercise of judicial discretion in granting bail to a convicted accused is best illustrated and exemplified in Administrative Circular No. 12-94 amending Rule 114, Section 5."[43]

Furthermore, this Court has been guided by the following:

The importance attached to conviction is due to the underlying principle that bail should be granted only where it is uncertain whether the accused is guilty or innocent, and therefore, where that uncertainty is removed by conviction it would, generally speaking, be absurd to admit to bail. **After a person has been tried and convicted the presumption of innocence which may be relied upon in prior applications is rebutted, and the burden is upon the accused to show error in the conviction**. From another point of view it may be properly argued that the probability of ultimate punishment is so enhanced by the conviction that

the accused is much more likely to attempt to escape if liberated on bail than before conviction.[44] (emphasis supplied)

As a matter of fact, endorsing the reasoning quoted above and relying thereon, the Court declared in *Yap v. Court of Appeals*[45] (promulgated in 2001 when the present rules were already effective), that **denial of bail pending appeal**is "**a matter of wise discretion**."

A FINAL WORD

Section 13, Article II of the Constitution provides:

SEC. 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, **before conviction**, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. x x x (emphasis supplied)

After conviction by the trial court, the presumption of innocence terminates and, accordingly, the constitutional right to bail ends.[46] From then on, the grant of bail is subject to judicial discretion. At the risk of being repetitious, such discretion must be exercised with grave caution and only for strong reasons. Considering that the accused was in fact convicted by the trial court, allowance of bail pending appeal should be guided by a stringent-standards approach. This judicial disposition finds strong support in the history and evolution of the rules on bail and the language of Section 5, Rule 114 of the Rules of Court. It is likewise consistent with the trial court's initial determination that the accused should be in prison. Furthermore, letting the accused out on bail despite his conviction may destroy the deterrent effect of our criminal laws. This is especially germane to bail pending appeal because long delays often separate sentencing in the trial court and appellate review. In addition, at the post-conviction stage, the accused faces a certain prison sentence and thus may be more likely to flee regardless of bail bonds or other release conditions. Finally, permitting bail too freely in spite of conviction invites frivolous and time-wasting appeals which will make a mockery of our criminal justice system and court processes.

WHEREFORE, the petition is hereby **DISMISSED**.

The Court of Appeals is hereby directed to resolve and decide, on the merits, the appeal of petitioner Jose Antonio Leviste docketed as CA-G.R. CR No. 32159, with dispatch.

Costs against petitioner.

SO ORDERED.

Velasco, Jr., Nachura, Peralta, and *Mendoza, JJ.,* concur.

[1] Section 1, Rule 114, RULES OF COURT.

[2] Verilli, Donald, *The Eighth Amendment and the Right to Bail: Historical Perspectives*, 82 Columbia L.Rev. 328 (1982).

[3] Id.

[4] *See* Section 5, Rule 114, RULES OF COURT.

[5] Keller, Doug, *Resolving A "Substantial Question": Just Who Is Entitled to Bail Pending Appeal Under the Bail Reform Act of 1984?,* 60 Fla. L. Rev. 825 (2008).

[6] Leibowitz, Debra, *Release Pending Appeal: A Narrow Definition of `Substantial Question' Under the Bail Reform Act*, 54 FDMLR 1081 (1986).

[7] Keller, *supra*.

[8] Leibowitz, *supra* note 6.

[9] Keller, *supra*.

[10] *Yap v. Court of Appeals*, 411 Phil. 190, 202 (2001).

[11] Decision dated January 14, 2009 in Criminal Case No. 07-179 penned by Judge Elmo M. Alameda. *Rollo*, pp. 198-235.

[12] Notice of Appeal dated January 14, 2009. Id., p. 238-241.

[13] Resolution dated April 8, 2009 in CA-G.R. CR No. 32159 penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro of the third Division of the Court of Appeals. Id., pp. 36-45.

[14] Id., p. 43.

[15] Id., p. 47.

[16] *See* Section 1, Rule 65, RULES OF COURT.

[17] *See* Petition, p. 14. *Rollo*, p. 16.

[18] *Dueñas, Jr. v. House of Representatives Electoral Tribunal*, G.R. No. 185401, 21 July 2009, 593 SCRA 316, 344.

[19] Id.

[20] Id, p. 345.

[21] *Fortich v. Corona*, 352 Phil. 461 (1998).

[22] 441 Phil. 705 (2002).

[23] Id.

[24] Regalado, Florenz, II REMEDIAL LAW COMPENDIUM 417 (Tenth Revised Edition [2004]).

Justice Regalado was Vice-Chairman and, later, Co-Chairman of the Committee on Revision of the Rules of Court which proposed the present (2000) rules on criminal procedure (Rules 110-127 of the Rules of Court).

It should be noted, however, that Justice Regalado speaks of application for bail pending appeal in cases "wherein a penalty of imprisonment exceeding 6 years **but not more than 20 years** is imposed." (Emphasis supplied) A careful reading of the third paragraph of Section 5, Rule 114 does not impose the limit of "not more than 20 years."

[25] Herrera, Oscar, IV REMEDIAL LAW 455-456 (2007).

Justice Herrera was Consultant to the Committee on Revision of the Rules of Court which proposed the present (2000) rules on criminal procedure (Rules 110-127 of the Rules of Court).

[26] These circumstances are herein referred to as "bail-negating" because the presence of any of them will negate the allowance of bail.

[27] Discretion implies that, in the absence of a positive law or fixed rule, the judge is to decide by his view of expediency or by the demands of equity and justice. (*Negros Oriental Planters Association, Inc. v. Presiding Judge of RTC-Negros Occidental, Branch 52, Bacolod City ,* G.R. No. 179878, 24 December 2008, 575 SCRA 575 and *Luna v. Arcenas*, 34 Phil. 80 [1916] both citing *Goodwin v. Prime* [92 Me., 355]).

[28] Rosenberg, Maurice, *Judicial Discretion of the Trial Court, Viewed from Above*, 22 Syracuse L. Rev. 635, 659 (1971) cited in Painter, Mark and Welker, Paula, *Abuse of Discretion: What Should It Mean in Ohio Law?,* 29 Ohio N.U. L. Rev. 209 (2002).

[29] Steven Alan Childress & Martha S. Davis, 2 Standards of Review § 15.8, at 296 (1986) cited in Painter and Welker, *supra*.

[30] *Negros Oriental Planters Association, Inc. v. Presiding Judge of RTC-Negros Occidental, Branch 52, Bacolod City*, *supra* note 21.

[31] *Morada v. Tayao*, A.M. No. RTJ-93-978, 07 February 1994, 229 SCRA 723.

[32] *Reyes v. Court of Appeals*, 83 Phil. 658 (1949).

[33] Id.

[34] *United States v. Motlow*, 10 F.2d 657 (1926) (Butler, Circuit Justice).

[35] *See D'Aquino v. United States*, 180 F.2d 271, 272 (1959) (Douglas, Circuit Justice).

Justice Douglas of the United States Supreme Court, in his capacity as a Circuit Justice, was one of the first judges to discuss the definition of "substantial question." He equated the phrase with an issue that is "fairly debatable." Later, he provided additional guidance to district courts trying to determine whether a defendant's appeal would raise a fairly debatable issue:

[T]he first consideration is the soundness of the errors alleged. Are they, or any of them, likely to command the respect of the appellate judges? It is not enough that I am unimpressed. I must decide whether there is a school of thought, a philosophical view, a technical argument, an analogy, an appeal to precedent or to reason commanding respect that might possibly prevail.(*Herzog v. United States*, 75 S. Ct. 349, 351 (1955) (Douglas, Circuit Justice)

See also *United States v. Barbeau, 92 F. Supp. 196, 202 (D. Alaska 1950)*, *aff'd*, 193 F.2d 945 (9th Cir. 1951), *cert. denied*, 343 U.S. 968 (1952); *Warring v. United States*, 16 F.R.D. 524, 526 (D. Md. 1954); *United States v. Goo*, 10 F.R.D. 337, 338 (D. Hawaii 1950).

[36] *Luna v. Arcenas*, *supra* note 21 quoting 2 Encyclopedia of Pleading and Practice 416, 418.

Thus, the general rule and one of the fundamental rules of appellate procedure is that decisions of a trial court which "lie in discretion" will not be reviewed on appeal, whether the case be civil or criminal, at law or in equity (*Cuan v. Chiang Kai Shek College, Inc*, G.R. No. 175936, 03 September 2007, 532 SCRA 172, 187-188).

[37] Section 10, Rule 114, RULES OF COURT.

[38] The express mention of one implies the exclusion of all others not mentioned.

[39] Regalado, Florenz, II REMEDIAL LAW COMPENDIUM 273 (Fifth Revised Edition [1988]).

[40] *See* Herrera, *supra* note 19, p. 457.

[41] In particular, in the United States, the history of bail pending appeal has been divided by one scholar on the matter into four distinct periods: (1st period) 1879 to

1934, (2nd period) 1934 to 1956, (third period) 1956 to 1984 and (post-1984 period) 1984 to present. The first period, during which the rules on the matter were just being developed, showed liberality in the grant of bail pending appeal. The second period produced a more restrictive rule, one which limited bail to defendants who could prove that their appeal would raise "a substantial question which should be determined by the appellate court." The third period saw the enactment of the Bail Reform Act of 1966 establishing a standard wherein bail may be allowed pending appeal unless it appears that the appeal is frivolous or taken for delay. Under that standard, the court could deny bail if the defendant was a flight risk or a danger to the community. Hence, bail pending appeal was again favored. The post-1984 period is determined by the enactment and implementation of the Bail Reform Act of 1984. The law was purposely designed to make restrictive the allowance of bail pending appeal. As the Act's legislative history explains, prior law had "a presumption in favor of bail even after conviction" and Congress wanted to "eliminate" that presumption. (Keller, *supra* note 5.)

[42] *Obosa v. Court of Appeals*, G.R. No. 114350, 16 January 1997, 266 SCRA 281.

[43] Id.

[44] Id. See also *Yap v. Court of Appeals*, *supra* note 10.

[45] Id.

[46] *See Obosa v. Court of Appeals* and *Yap v. Court of Appeals*, *supra*. *See* also Bernas, Joaquin, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, p. 492 (2009).

DISSENTING OPINION

PERALTA, *J.*:

The denial of an application for bail pending appeal on a case where the accused was charged with Murder but was convicted with Homicide seriously poses some important questions.

By denying the application for bail pending appeal of an accused who was charged with the crime of Murder but was convicted of the crime of Homicide, is this Court, in effect, saying that the evidence of guilt for the crime of Murder is strong despite the lower court's finding of proof beyond reasonable doubt of the crime of Homicide, a bailable offense?

By denying the application for bail pending appeal on the ground that the evidence of guilt for the crime of Murder is strong, is this court, in a way, unknowingly

preempting the judgment of the Court of Appeals as to the main case?

In the event that the Court of Appeals sustains the conviction of the accused of the crime of Homicide, a bailable offense and the accused decides to file a Petition for Certiorari before this Court, will the denial of the application for bail of the accused still be effective?

With due respect to the present *ponencia*, an affirmative response to the above questions would bring about some absurdities.

Section 13, Article III of the 1987 Philippine Constitution provides the following:

Sec. 13. ALL PERSONS, EXCEPT THOSE CHARGED WITH OFFENSES PUNISHABLE BY *RECLUSION PERPETUA*WHEN EVIDENCE OF GUILT IS STRONG, SHALL, BEFORE CONVICTION, BE BAILABLE BY SUFFICIENT SURETIES, OR BE RELEASED ON RECOGNIZANCE AS MAY BE PROVIDED BY LAW. THE RIGHT TO BAIL SHALL NOT BE IMPAIRED EVEN WHEN THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IS SUSPENDED. EXCESSIVE BAIL SHALL NOT BE REQUIRED.

The Philippine Constitution itself emphasizes the right of an accused to bail with the sole exception of those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong. Cases, like in the present case, when an accused is charged with Murder but was convicted with Homicide, mean only one thing, that the lower court found the evidence for the crime charged not strong, hence, the accused's conviction of a lesser offense. Therefore, the denial of the same accused's application for bail pending appeal on the ground that the evidence of his guilt for the crime charged is strong, would unintentionally be suggestive of the outcome of the appealed decision of the lower court. The discretion whether to grant the application for bail or not is given to the CA in cases such as the present one, on the reason that the same appellate court can review the factual findings of the lower court. However, this will no longer be the case if a Petition for Certiorari is filed with this Court as it is not a trier of facts. Hence, the existence of those queries brought about by the majority opinion casts confusion rather than an enlightenment on the present case.

The following discussion, in my opinion, should shed light on the matter:

Before this Court is a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure which seeks to nullify and set aside the Resolutions[1] dated April 8, 2009 and July 14, 2009 of the Court of Appeals (CA).

The antecedent facts are the following:

Arising from a shooting incident that happened on January 12, 2007 at petitioner Jose Antonio Leviste's office where Rafael de las Alas died of gunshot wounds, petitioner was charged with murder under the Amended Information dated March 15, 2007 in Criminal Case No. 07-179 of the Regional Trial Court (RTC) of Makati City, Branch 150.

Petitioner, on February 23, 2007, filed an Urgent Application for Admission to Bail *Ex Abundanti Cautela*[2] on the ground that the evidence of the prosecution was not strong. The trial court, in its Order[3] dated May 21, 2007, granted petitioner's application for bail.

Subsequently, trial ensued and, on January 14, 2009, the trial court rendered its Decision[4] finding petitioner guilty beyond reasonable doubt of the crime of homicide, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, accused Jose Antonio Leviste y Casals is hereby found guilty beyond reasonable doubt of the crime of homicide and is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum, to twelve (12) years and one (1) day of *reclusion temporal* as maximum. Accused is further ordered to pay the heirs of the victim, Rafael de las Alas, the amount of Php50,000.00 as death indemnity and Php50,000.00 as moral damages.

Accused Jose Antonio Leviste y Casals shall be credited in the service of his sentence consisting of deprivation of liberty, with the full time during which he had undergone preventive imprisonment at the Makati City Jail from February 7, 2007 up to May 22, 2007 up provided that he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.
Consequently, in its Order[5] dated January 14, 2009, the trial court canceled petitioner's bail bond, ruling that:

Accused Jose Antonio Leviste y Casals was charged with the crime of Murder, a capital offense or an offense which under the law at the time of its commission and at the time of the application for bail is punishable by *reclusion perpetua* to death. The accused is presently out on bail. After trial, the accused was however convicted of Homicide, a lesser offense than that charged in the Information. Accused was accordingly sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum, to twelve (12) years and one (1) day of *reclusion temporal* as maximum.

Sec. 5, Rule 114 of the Rules on Criminal Procedure which is deemed to have modified SC Administrative Circular No. 2-92 dated January 20, 1992, provides:

Bail, when discretionary. - Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

In *Obosa v. Court of Appeals*, G.R. No. 114350, January 16, 1997, 266 SCRA 281, 78 SCAD 17, the Supreme Court, speaking thru the Third Division, stated:

x x x that bail cannot be granted as a matter of right even after an accused, who is charged with a capital offense, appeals his conviction for a non-capital crime. Courts must exercise utmost caution in deciding applications for bail considering that the accused on appeal may still be convicted of the original capital offense charged and that the risk attendant to jumping bail still subsists. In fact, trial courts would be well advised to leave the matter of bail, after conviction for a lesser crime than the capital offense originally charged, to the appellate court's sound discretion.

In view of the aforecited rules and prevailing jurisprudence on the matter, the bailbond posted by the accused for his provisional liberty is deemed cancelled. Accused being considered a national prisoner is ordered committed to the Makati City Jail, Makati City, pending his transfer to the New Bilibid Prison at Muntinlupa City.

SO ORDERED.
Petitioner filed a Notice of Appeal[6] dated January 14, 2009 and on January 15, 2009, filed with the CA an Urgent Application for Admission to Bail Pending Appeal and an Urgent *Ex Parte* Motion for Special Raffle and to Resolve the Attached Application for Admission to Bail. The CA, in its Resolution dated April 8, 2009, denied petitioner's application for bail pending appeal, the disposition reading:

IN VIEW OF THE FOREGOING REASONS, "the Urgent Application for Admission to Bail Pending Appeal" is hereby DENIED.

SO ORDERED.
The CA also denied petitioner's Motion for Reconsideration dated April 14, 2009 in its Resolution[7] dated July 14, 2009.

Hence, the present petition.

Petitioner states the following arguments:

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S APPLICATION FOR BAIL PENDING APPEAL DESPITE THE FACT THAT NONE OF THE CONDITIONS TO JUSTIFY THE DENIAL THEREOF UNDER RULE 114, SECTION 5 ARE PRESENT, MUCH LESS PROVEN BY THE PROSECUTION.

THE COURT OF APPEALS GRAVELY ERRED IN IGNORING THE FACT THAT PETITIONER WAS CONVICTED OF HOMICIDE, A BAILABLE OFFENSE, AND THAT AS TWICE SHOWN IN THE PROCEEDINGS BELOW, THE EVIDENCE THAT PETITIONER COMMITTED THE CRIME OF MURDER IS NOT STRONG. THE COURT OF APPEALS UNJUSTLY PREJUDGED PETITIONER'S APPEAL BY CONCLUDING THAT THE EVIDENCE OF GUILT FOR MURDER IS STRONG, DESPITE THE FINDINGS OF THE TRIAL COURT TO THE CONTRARY.

THE COURT OF APPEALS SHOWED UNJUST BIAS IN ALLOWING PROSECUTOR VELASCO TO PARTICIPATE IN THE APPELLATE PROCEEDINGS.[8]

According to petitioner, the CA should have granted bail in view of the absence of any of the circumstances enumerated under paragraphs (a) to (e), Section 5, Rule 114. He adds that he is neither a recidivist, a quasi-recidivist or habitual delinquent, nor a flight risk; and there is no undue risk that he would commit another crime during the pendency of his appeal.

Petitioner further argues that the CA committed a grave error and prejudged the appeal by denying his application for bail on the ground that the evidence that he committed a capital offense was strong. He points out that the records show that the trial court already granted him bail, since it found that the prosecution had failed to demonstrate that the evidence of his guilt for the crime of murder was strong; and this was further confirmed when the trial court convicted him of the crime of homicide instead of murder. Hence, petitioner insists that the trial court's determination that he is not guilty of a capital offense should subsist even on appeal.

Anent the third issue, petitioner claims that the CA allowed Prosecutor Emmanuel Velasco to delay his application for bail by filing mere manifestations requesting the CA to provide him with copies of petitioner's motions and written submissions.

In its Comment dated November 20, 2009, the Office of the Solicitor General (OSG) contends that the CA committed no grave abuse of discretion in denying petitioner's application for bail pending appeal. Although the grant of bail is discretionary in non-capital offenses, if, as in this case, imprisonment has been imposed on the petitioner in excess of six (6) years and circumstances point to a considerable likelihood that he may flee if released on bail, then he must be denied bail, or his bail previously granted should be canceled. The OSG also reiterates the ruling in *Obosa v. Court of Appeals,*[9] which was relied upon by the CA in denying the application for bail, stating that after an accused has been tried and convicted, the presumption of innocence, which may be relied upon if prior application is rebutted, the burden is upon the accused to show error in the conviction. As to the claim of petitioner that the CA gravely abused its discretion in allowing Prosecutor Velasco to participate in the appellate proceedings, the OSG dismissed the said argument as without merit.

In his Manifestation and Motion dated December 9, 2009, petitioner contends that the OSG's arguments in its Comment are a mere rehash of the baseless justifications and arguments made by the CA in denying his application for bail, arguments which have already been tackled and refuted by him in the present petition.

Petitioner, in a Manifestation dated November 25, 2009, notified this Court that he had filed a Very Urgent Motion for a Medical Pass before the CA, as he had to undergo medical treatment at the soonest possible time.

In his December 21, 2009 Reply [to Respondent People of the Philippines' Comment dated 20 November 2009], petitioner reiterated the arguments he raised in his petition.

In a letter dated November 25, 2009, which was received by the Office of the Chief Justice on December 7, 2009, Mrs. Teresita C. de las Alas (wife), Ms. Dinna de las Alas-Sanchez (daughter), and Ms. Nazareth H. de las Alas (daughter) expressed consent to the grant of bail to the petitioner.

The petition is impressed with merit.

Sections 5 and 7, Rule 114 of the 2000 Revised Rules on Criminal Procedure, as amended, provide that:

Sec. 5. *Bail, when discretionary*. - Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua,* or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. **However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.**

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be canceled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification;
(c) That he committed the offense while under probation, parole, or conditional pardon;
(d) That the circumstances of his case indicate the probability of flight if released on bail; or
(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu propio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case.

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, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.**

Prior to the affectivity of the above provisions, the governing rule in the granting or cancellation of bail was encapsulated in Administrative Circular No. 12-94,[10] stating that:

Sec. 3. *Bail, a matter of right; exception*. - All persons in custody shall, before final conviction, be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by *reclusion perpetua*, when evidence of guilt is strong.

x x x x

SEC. 5 *Bail, When Discretionary*. - Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, the court, on application, may admit the accused to bail.

The court, in its discretion, may allow the accused to continue on provisional liberty under the same bail bond during the period of appeal subject to the consent of the bondsman.

If the court imposed a penalty of imprisonment exceeding six (6) years but not more than twenty (20) years, the accused shall be denied bail, or his bail previously granted shall be canceled, upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
(b) That the accused is found to have previously escaped from legal confinement, evaded sentence, or has violated the conditions of his bail without valid justification;
(c) That the accused committed the offense while on probation, parole, or under conditional pardon;
(d) That the circumstances of the accused or his case indicate the probability if flight of released on bail; or
(e) That there is undue risk that during the pendency of the appeal, the accused may commit another crime.

The appellate court may review the resolution of the Regional Trial Court, on motion and with notice to the adverse party.

As can be gleaned above, the set of circumstances appearing in Section 5, Rule 114 of the Rules of Court brought about by Administrative Circular No. 12-94 has been

retained in the present Rules. Notably, it was after the ruling of this Court in *Obosa v. Court of Appeals*[11] that the present provisions of Secs. 5 and 7, Rule 114 of the 2000 Revised Rules of Criminal Procedure became effective.

In canceling petitioner's bail bond and denying his application for bail pending appeal, the trial court and the CA, as well as the OSG in its Comment to the petition, relied on *Obosa v. CA,*[12] where this Court ruled that bail cannot be granted as a matter of right even after an accused, who is charged with a capital offense, appeals his conviction for a non-capital crime. The said case, however, is not applicable. In *Obosa*, the petitioner therein was convicted and applied for bail pending appeal prior to the affectivity of the amendments brought about by Administrative Circular No. 12-94; thus, the set of circumstances, as now seen in the present Rules, was yet to be present. Granting *arguendo* that the present provisions of Section 5, Rule 114 can be made applicable to petitioner Obosa, this Court, in that same case, still deemed him to be disqualified from the grant of bail on the basic reason that, aside from Obosa being convicted of two counts of homicide, circumstances a, b, d and e of Section 5, Rule 114 of the Rules of Court were present. In the present case, as will be discussed later, not one of the circumstances that would warrant the denial of bail is present.

Incidentally, magnified in the denial of petitioner's application for bail pending appeal was the reliance of the CA on the judgment of conviction rendered by the trial court. According to the CA, the evidence of guilt of the petitioner, as found by the trial court, was strong, therefore, the provisions of Section 7 of Rule 114 of the 2000 Revised Rules of Criminal Procedure were applicable, the crime charged being murder.

However, it must be remembered that although petitioner was charged with the crime of murder, he was convicted of the crime of homicide. Prior to the said conviction, the trial court, after bail hearing, granted bail to petitioner, thus:

Accordingly, **for failure of the prosecution to demonstrate that the evidence of guilt of the accused Jose Antonio J. Leviste for the crime of Murder is strong** to foreclose his right to bail, the court hereby grants the motion and, allows the accused to post bail in the amount of P300,000.00 for his provisional liberty. Accused shall be discharged or released only upon the approval of his bail by the Court.

SO ORDERED.[13]

Ultimately, after the trial of the case, the trial court found petitioner guilty beyond reasonable doubt of the crime of homicide, not murder as originally charged, demonstrating the consistency of the trial court's findings in the bail hearing and in the actual trial of the said case. Nevertheless, the CA, in denying petitioner's application for bail, relied on Section 7, Rule 114 of the Rules of Court insisting that the evidence of guilt of the petitioner was strong. By ruling thus, the CA has not accorded respect to the factual findings of the trial court. It is a time-honored legal precept, in this regard that the findings of fact of the trial court are accorded great

respect by appellate courts and should not be disturbed on appeal unless the trial court has overlooked, ignored, or disregarded some fact or circumstance of sufficient weight or significance which, if considered, would alter the situation.[14] Moreover, there seems to be a disparity between the pronouncement of the CA that the trial court found the evidence of guilt of the petitioner strong and the explanation of why the former considered it to be so. The CA ruled that:

From the judgment of conviction rendered by the trial court, **the prosecution had demonstrated that appellant's guilt is strong, after finding that accused failed to satisfy the requirements of self-defense to justify the shooting of the victim**. Said court carefully and meticulously evaluated the evidence on record and ruled that the claim of appellant that the victim was the agressor deserves disbelief considering that evidence at the scene of the crime indicated that the victim could not have fired the gun apparently placed in his hand; appellant's conduct in refusing to be subjected to paraffin test is not the natural tendency of a person claiming self-defense; and neither was appellant threatened or intimidated by the victim's averred pugnacious, quarrelsome or trouble-seeking character of the victim. And even assuming *arguendo* that there was unlawful aggression, the trial court found that the five (5) gunshot wounds (four) [4] shots even aimed at head, a vital organ) were not reasonable means to repel the same, and the evidence demonstrated a determined effort on the part of the appellant to kill the victim and not just to defend himself. **However, appellant was convicted of the lesser offense (homicide) since the qualifying circumstances of treachery, evident premeditation and cruelty or ignominy, alleged in the Amended Information, were not duly proven at the trial.**[15]

The above observation of the CA serves nothing but to bolster the earlier finding of the trial court that the prosecution was not able to present evidence that would prove that the guilt of the petitioner as to the crime charged (murder) was strong. Section 7, Rule 114 of the Rules of Court, clearly mandates that no person **charged** with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong. The provision distinctly refers to the crime charged and not the crime proven. The failure then of the prosecution to prove the existence of the circumstances to qualify the crime committed to murder, the crime charged, necessarily means that the evidence of his guilt of the said crime is not strong.

Ideally, what the CA should have done was to consolidate the application for bail with the petition filed before it because it is only in that manner by which the appellate court may ascertain whether the evidence of guilt of the accused for the crime charged is indeed strong, or in reverse, whether the lower court was right in convicting the accused of a lesser offense.

Above all else, the CA should have applied the provisions of Section 5, Rule 114 of the Rules of Court, wherein the appellate court is given the discretion to grant bail to the petitioner after considering the enumerated circumstances, the penalty imposed by the trial court having exceeded six years. Although this Court has held that the discretion to extend bail during the course of the appeal should be

exercised with grave caution and for strong reasons, considering that the accused has been in fact convicted by the trial court,[16] the set of circumstances succinctly provided in Section 5, Rule 114 of the Rules of Court should be considered.

The said set of circumstances has been provided as a guide for the exercise of the appellate court's discretion in granting or denying the application for bail, pending the appeal of an accused who has been convicted of a crime where the penalty imposed by the trial court is imprisonment exceeding six (6) years. Otherwise, if it is intended that the said discretion be absolute, no such set of circumstances would have been necessarily included in the Rules. Thus, if the present ruling of the CA is upheld, anyone who has been charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment but convicted by the trial court of a lesser offense, would no longer be able to apply for bail pending one's appeal. And by that premise, the discretion accorded to the appellate court in granting or denying applications for bail for those who have been convicted by the trial court with imprisonment exceeding six (6) years as penalty would have to be rendered nugatory and the provisions of Section 5, Rule 114 of the 2000 Revised Rules of Criminal Procedure would also be rendered useless.

Therefore, applying the provisions of Section 5, Rule 114 of the 2000 Revised Rules of Criminal Procedure and after a careful perusal of the records and a learned consideration of the arguments of the parties, this Court finds no reason to deny petitioner his application for bail pending appeal. Petitioner is indisputably not a recidivist, quasi-recidivist, or habitual delinquent, or has he committed the crime aggravated by the circumstance of reiteration. He has also not previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification. He did not commit the offense charged while under probation, parole, or conditional pardon. Lastly, as shown by his previous records and pointed out by petitioner,[17] considering his conduct while out on bail during the trial of his case, his advanced age,[18] and his current health condition,[19] the probability of flight is nil and there is no risk that he may commit another crime during the pendency of the appeal.

Also noted by this Court is the letter of the heirs of Rafael de las Alas giving their consent and stating that they have no objection to petitioner's application for bail. Although the said letter or consent can never be a basis for the grant of the application for bail, it serves as a reference for the petitioner's improbability to evade whatever negative result the grant of his appeal might bring. Nonetheless, what governs in this case is the discretion of the appellate court as guided by the provisions of Section 5, Rule 114 of the 2000 Revised Rules of Criminal Procedure.

Necessarily, due to the above discussion, I humbly dissent.

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[1] *Rollo*, pp. 36-45.

[2] *Id.* at 150-154.

[3] *Id*. at 164-197.

[4] *Id*. at 198-235.

[5] *Id*. at 236-237.

[6] *Id*. at 238-239.

[7] *Id*. at 47.

[8] *Id.* at 16.

[9] 334 Phil. 253 (1997).

[10] Dated October 1, 1994, amending the 1985 Rules of Criminal Procedure.

[11] *Supra* note 9.

[12] *Id.*

[13] *Rollo,* p. 197. (Emphasis supplied.)

[14] *People of the Philippines v. Dizon*, 329 Phil. 685, 695 (1996), citing *People v. Gomez*, 229 SCRA 138 (1994).

[15] *Rollo*, p. 44. (Emphasis supplied.)

[16] *Yap, Jr. v. Court of Appeals,* 411 Phil. 190, 202 (2001), citing *Obosa v. Court of Appeals*, *supra* note 9.

[17] *Rollo*, p. 22.

[18] 69 years and 7 months old upon the filing of his petition.

[19] Manifestation dated November 25, 2009; *rollo*, pp. 327-328.