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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 11, 2020** *which reads as follows:*

"G.R. No. 246914 (MARK W. DAIGLE v. DENNIS L. CRUZ)

Antecedents

On November 10, 2016, respondent Dennis L. Cruz was charged with qualified theft under Article 310 in relation to Article 309 of the Revised Penal Code under the following Information,[1] *viz.*:

> That on or about 11:20 o'clock in the morning of September 28, 2016, in Villa Maniboc, Lingayen, Pangasinan and within the jurisdiction of the Honorable Court, the above-named accused, with intent to gain and with grave abuse of confidence, being a friend of private complainant Mark W. Daigle (offended party), did then and there willfully, unlawfully, feloniously, take, steal and carry away the money in the amount of US$100,000.00 from the vault of the offended party, without the knowledge and con(s)ent of said offended party, to the damage and prejudice of said Mark W. Daigle.
>
> CONTRARY to Art. 310 in relation to Art. 309 of the Revised Penal Code.

No bail was recommended for the charge.

The case was docketed as Criminal Case No. L-11375 and raffled to Regional Trial Court (RTC) – Branch 39, Lingayen, Pangasinan, presided by Judge Walter O. Junia.

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[1] *Rollo*, pp. 71-72.

On December 6, 2016, the trial court issued an order for the issuance of a warrant of arrest on respondent.[2]

On May 18, 2017, respondent filed before the trial court a Very Urgent Motion to Set Aside "No Bail Recommendation" and to Fix the Amount of Bail with Additional Prayer to Post Bail.[3] Respondent argued that recent jurisprudence dictates that qualified theft is a bailable offense. The Supreme Court had clarified between "prescribed penalty" and "imposable penalty," the latter being determined only after trial and hearing. Here, the prescribed penalty is only *reclusion temporal* in its medium period to *reclusion perpetua* in accordance with Articles 309 and 310 of the RPC. Thus, considering that only those offenses which are punishable by the *reclusion perpetua*, *i.e.*, murder, rape, and the likes, are non-bailable, he should be allowed to post bail as a matter of right.

In his Comment/Opposition[4] dated June 5, 2017, complainant and herein petitioner Mark W. Daigle countered that pursuant to Department of Justice (DOJ) Circular No. 29, series of 2005, no bail shall be recommended for the offense of qualified theft, whether consummated, frustrated, or attempted, where the value of the property exceeded P222,000.00. In any case, considering that the amount involved is US$100,000.00 or P4,900,000.00 on a Php49.00 per dollar conversion, the imposable penalty is *reclusion perpetua*, making the offense non-bailable. Too, respondent had shown his propensity to evade prosecution. He was also a flight risk.

The Trial Court's Ruling

Through Resolution[5] dated July 25, 2017, the trial court granted respondent's Very Urgent Motion to Set Aside "No Bail Recommendation" and to Fix the Amount of Bail with Additional Prayer to Post Bail, *viz.*:

> WHEREFORE, the motion is **GRANTED**. The bail bond for the provisional liberty of the accused pending trial of the case is hereby fixed in the amount of **P400,000.00** in CASH after considering the alleged value of the money stolen and the financial capacity of the accused (as shown by his foreign travel/s and his hiring of different private counsel in this case).
>
> SO ORDERED.[6]

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[2] *Id.* at 74.
[3] *Id.* at 96-101.
[4] *Id.* at 102-109.
[5] *Id.* at 110-112.
[6] *Id.* at 112.

It held that qualified theft cannot be considered as an "inherently grievous, odious and hateful" offense to be made non-bailable like the crimes of rape, robbery with homicide, rape with homicide, and kidnapping with murder. Too, since the prescribed penalty for qualified theft is *reclusion temporal* in its medium period and maximum periods and not *reclusion perpetua* (or life imprisonment), the respondent should be entitled to bail as a matter of right. Lastly, the Supreme Court had upheld the validity of DOJ Circular No. 74 which prior to its amendment, allowed the fixing of bail for qualified theft even if the value of the thing stolen would result in the imposition of the penalty of *reclusion perpetua*.

By Resolution[7] dated November 13, 2017, the trial court denied petitioner's motion for reconsideration.[8]

Proceedings Before the Court of Appeals

Petitioner went to the Court of Appeals *via* Rule 65 of the Revised Rules of Court.[9] He reiterated its position that qualified theft of P4,900,000.00 is a non-bailable offense. He averred that the trial court committed grave abuse of discretion when it granted respondent's motion to set aside no bail recommendation and fixed the amount of bail *sans* a hearing on said motion. He claimed that Judge Junia hastily allowed respondent to post bail without giving the prosecution the opportunity to present, through hearing, that its evidence against respondent is strong. The trial court, therefore, purportedly denied the prosecution of its right to due process.

By Resolution[10] dated May 22, 2018, the Court of Appeals required petitioner to submit his authority to file the petition from the Office of the Solicitor General (OSG) as appellate counsel for the People of the Philippines in all criminal cases.

In his Compliance with Respectful Manifestation[11] dated June 4, 2018, petitioner emphasized that he was the private complainant in the criminal case for qualified theft, as such, he had an interest in the civil aspect of the case. Thus, under the rules, he is allowed to institute the petition. He also beseeched the OSG to give its conformity to the petition.

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[7] *Id.* at 124-125.
[8] *Id.* at 113-123.
[9] See Petition for Certiorari dated March 10, 2018, *id.* at 126-141.
[10] Penned by Associate Justice Pedro B. Corales and concurred in by now Supreme Court Associate Justice Rosmari D. Carandang and Associate Justice Elihu A. Ybañez, *id.* at 143.
[11] *Id.* at 144-150.

Through Resolution[12] dated October 9, 2018, the Court of Appeals ordered the OSG to file its comment on petitioner's manifestation.

In its Comment[13] dated October 25, 2018, the OSG through Assistant Solicitor General Magtanggol M. Castro and Senior State Solicitor Charina A. Soria, manifested that it cannot give its assent to the filing of the petition because in the first place, there was nothing in the records showing that the DOJ had priorly assented thereto. Since the case is still in the trial stage, the authority over the same rested with the assigned public prosecutor. In any case, based on the limited documents attached to the petition, it would seem that respondent's right to bail was aptly respected in conformity with prevailing laws, rules, and jurisprudence.

The Court of Appeals' Ruling

In its first assailed Resolution[14] dated November 28, 2018, the Court of Appeals dismissed petitioner's petition for certiorari.

The Court of Appeals held that petitioner lacked the legal personality to assail the trial court's dispositions. Well-settled is the rule that every action must be prosecuted or defended in the name of the real party in interest. In criminal cases, the parties involved are the People of the Philippines as plaintiff and the accused as respondent. The private offended party is regarded merely as witness for the State. Although there are rare occasions when the offended party may be allowed to pursue the action on his or her own capacity, these occasions are limited to cases where there was denial of due process and the private offended party is pursuing the civil aspect of the case. None of these circumstances is present here.

The Present Petition

Petitioner now invokes the Court's discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals. He reiterates that qualified theft of P4,900,000.00 is a non-bailable offense. Thus, respondent's motion to set aside "no bail recommendation" is in reality a Petition for Bail, which is a contentious motion. As such, the

[12] Penned by Associate Justice Pedro B. Corales and concurred in Associate Justice Edwin D. Sorongon and Associate Justice Ronaldo Roberto B. Martin, *id.* at 153-154.
[13] *Id.* at 155-157.
[14] Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justice Jane Aurora C. Lantion and Associate Justice Rafael Antonio M. Santos, *id.* at 37-40.

motion must be heard, and the prosecution given the chance to show that its evidence against respondent is strong. Too, jurisprudence decrees that in special civil actions for certiorari where it is alleged that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction, the complainant who has an interest in the civil aspect of the case may file such petition in his or her own name.[15]

Under Comment[16] dated September 30, 2019, respondent argues that he is entitled to bail as a matter of right. Only capital offenses are non-bailable, *i.e.*, those offenses which carry with it the penalty of death, *reclusion perpetua*, or life imprisonment, which is not the case here. In any case, DOJ Circular No. 13, series of 2018 or the 2018 New Bail Bond Guide allows the posting of bail for the crime of qualified theft. Thus, no bail hearing is necessary for him to post bail. More importantly, as the Court of Appeals correctly ruled, petitioner had no legal standing to file the petition before it. The same also goes for the present petition. Notably, both the petitions before the Court of Appeals and this Court do not assail the civil aspect of the case, but only his substantive right to post bail.

Issue

Did the Court of Appeals err in dismissing the petition for certiorari on ground of petitioner's lack of legal personality to file the same?

Ruling

We affirm.

In criminal proceedings, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines or represent the People or the State in compliance with the provisions of Section 35(1), Chapter 12, Title III, Book III of the Administrative Code of 1987, as amended, *viz.*:

[15] Petition for Review on *Certiorari* dated June 9, 2019, *id.* at 11-32.
[16] *Id.* at 184-192.

> Section 35. *Power and Functions.* – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the service of a lawyer. It shall have the following specific power and functions:
>
> (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

There are, however, exceptions to this rule, to wit: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, and (2) when the private offended party questions the civil aspect of a decision of a lower court. In these instances, the private complainant may bring the action in his or her own name, even without the OSG's conformity.

In ***Cu v. Ventura***,[17] the Court explained:

> In *Mobilia Products, Inc. v. Umezawa,* the Court ruled that in criminal cases, the State is the offended party and the private complainant's interest is limited to the civil liability arising therefrom, thus:
>
> > Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned.

[17] G.R. No. 224567, September 26, 2018; Also see *Allan S. Cu v. Small Business Guarantee And Finance Corporation*, 815 Phil. 617, 628 (2017).

In *De la Rosa v. Court of Appeals*, citing *People v. Santiago*, the Court held:

> In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in (the) name of said complainant.

Here, petitioner argues that his case falls under the first exception, *i.e.*, he was denied due process of law when respondent's motion for bail was granted *sans* a hearing thereon.

The Court does not agree.

Primarily, the exception to the rule applies only when the "*State or its agents refuse to act on the case.*" The State cannot be considered to have refused to act on respondent's motion for bail. In fact, Assistant Provincial Prosecutor Nicolas R. Reintar, Jr. even gave his conformity to petitioner's Comment/Opposition to the motion for bail.[18] Nor did the OSG itself refuse to act on the case. Whether the OSG initially said it ought to be the public prosecutor who should act for the People here, the OSG, nonetheless, submitted in the end that in granting respondent's motion for bail, the trial court only respected respondent's constitutional right to bail.

Being the People's sole appellate counsel in criminal cases, only the OSG may act in for the People before the Court of Appeals and even here. The fact that the OSG did not conform with the petition warrants its outright dismissal. ***Cu v. Ventura***[19] ordains:

> Again, jurisprudence holds that if there is a dismissal of a criminal case by the trial court, or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People. The rationale therefor is

[18] *Rollo*, p. 109.
[19] G.R. No. 224567, September 26, 2018.

rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, **the People are deemed as the real parties-in-interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court. In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible**. x x x (Emphasis supplied)

But even on the merits, the petition must fail.

Articles 309 and 310 of the RPC state:

Article 309. *Penalties*. — Any person guilty of theft shall be punished by:

1. The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos, but if the value of the thing stolen exceeds the latter amount the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

x x x x x x x x x

Article 310. *Qualified theft.* — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic erruption, or any other calamity, vehicular accident or civil disturbance.

Article 309 was amended by Republic Act No. 10951[20] (RA 10951) approved August 29, 2017. As amended, Article 309 now reads:

[20] An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as amended.

> Article 309. *Penalties.* - Any person guilty of theft shall be punished by:
>
> 1. The penalty of prisión mayor in its minimum and medium periods, if the value of the thing stolen is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million two hundred thousand pesos (₱2,200,000); but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one (1) year for each additional One million pesos (₱1,000,000), but the total of the penalty which may be imposed shall not exceed twenty (20) years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prisión mayor or reclusion temporal, as the case may be.

In the application of the provision, ***Hernan v. Sandignabayan***[21] and OCA Circular No. 179-2018[22] which decreed:

> On a final note, judges, public prosecutors, public attorneys, private counsels, and such other officers of the law are hereby advised to similarly apply the provisions of RA No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Hence, said recent legislation shall find application in cases where the imposable penalties of the affected crimes such as theft, qualified theft, estafa, robbery with force upon things, malicious mischief, malversation, and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof, have been reduced, as in the case at hand, taking into consideration the presence of existing circumstances attending its commission. For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun. The accused, in these applicable instances, shall be entitled to the benefits of the new law warranting him to serve a lesser sentence, or to his release, if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence. In the latter case, moreover, the Court, in the interest of justice and expediency, further directs the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose.

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[21] 822 Phil. 148, 178-179 (2017).

[22] Decision dated July 31, 2018 in G.R. No. 237721 (In Re: Correction/Adjustment of Penalty Pursuant to Republic Act No. 10951, In Relation to *Hernan v. Sandiganbayan* - Rolando Elbanbuena y Marfil).

> Indeed, when exceptional circumstances exist, such as the passage of the instant amendatory law imposing penalties more lenient and favorable to the accused, the Court shall not hesitate to direct the reopening of a final and immutable judgment, the objective of which is to correct not so much the findings of guilt but the applicable penalties to be imposed.

Verily, for purposes of determining whether respondent is entitled to bail as a matter of right, the prescribed penalty follows the computation as provided under Article 309 as amended.

The value of the money allegedly stolen here is US$100,000.00 or P4,900,000.00 based on a P49.00 per U.S. dollar conversion at the time of the incident.

Applying Article 309, as amended, if the value of the thing stolen is more than P1,200,000.00 but does not exceed P2,200,000.00, the prescribed penalty is *prision mayor* in its minimum and medium periods. In case the value of the thing stolen exceeds P2,200,000.00, the penalty shall be the maximum period of *prision mayor* in its minimum and medium period. To this amount, one (1) year for each P1,000,000.00 exceeding the P2,200,000.00 threshold shall be added.

Since the amount allegedly stolen is P4,900,000.00, which clearly exceeded P2,200,000.00, the prescribed base penalty in accordance with Article 309, as amended, is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, *i.e*, eight (8) years, eight (8) months, and one (1) day to ten (10) years. Considering that the value of the stolen money further exceeded P2,200,000.00, an additional one (1) year for each P1,000,000.00 in excess of the P2,200,000.00 shall be added to the prescribed base penalty, *disregarding any remainder amount*.[23] Thus:

Amount	**Penalty**
The First P2,200,000.00	Maximum: Ten (10) years
Additional P1,000,000.00	One (1) year
Additonal P1,000,000.00	One (1) year
TOTAL: P4,200,000.00	**Twelve (12) years**

[23] See *Celestial v. People*, 767 Phil. 534, 544 (2015).

The prescribed penalty for stealing P4,900,000.00, therefore, is twelve (12) years of *prision mayor*, the designation of which is *prision mayor* in its maximum period. This is the prescribed penalty for simple theft. Under Article 310 of the RPC, the prescribed penalty for qualified theft is two (2) degrees higher than that prescribed for simple theft. The penalty two (2) degrees higher than *prision mayor* maximum is *reclusion temporal* in its medium period, *i.e.*, fourteen (14) years, eight (8) months, and one (1) day to seventeen years (17) and four (4) months.

Under Section 7, Rule 114 of the Revised Rules of Court, only those accused charged with offenses punishable by death, *reclusion perpetua,* or life imprisonment are not entitled to bail as a matter of right, *viz.*:

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

Too, Section 4 of the same Rule states that all persons charged with an offense not punishable by death, *reclusion perpetua*, or life imprisonment shall be entitled to bail as a matter of right, thus:

> Section 4. *Bail, a matter of right; exception.* – All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or 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.

To repeat, the prescribed penalty for the offense charged against respondent is *reclusion temporal* in its medium period. Respondent, therefore, is entitled to bail as a matter of right.

As for the hearing on bail, the same is required where the offense charged is punishable by death, reclusion perpetua, or life imprisonment pursuant to Section 8, Rule 114 of the Revised Rules of Court states:

> Section 8. *Burden of proof in bail application.* – At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*,

> or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.

The case here does not fall under the afore-quoted provision. This, nowithstanding, the fact that the trial court allowed into the records the Comment/Opposition of petitioner with the conformity of the public prosecutor to the motion for bail, negates the lack of due process argument of petitioner.

In sum, petitioner's case does not fall under the exception to the rule that only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines or represent the People or the State in criminal proceedings. Thus, the Court of Appeals did not err when it denied petitioner's petition for certiorari for lack of legal standing or personality to file the same.

WHEREFORE, the petition is **DENIED**. The Resolutions dated November 28, 2018 and April 26, 2019 of the Court of Appeals in CA-G.R. SP No. 154909 are hereby **AFFIRMED**.

SO ORDERED."

Very truly yours,

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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(CA-G.R. SP No. 154909)

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