

ANNALYN GIMENO, PETITIONER, VS. JUDGE CELSO A. ARCUENO, SR., 6TH MCTC, CATAINGAN – PIO V. CORPUS, MASBATE, RESPONDENT.

A.M. No. MTJ-94-981. November 29, 1995

Ponente: VITUG, J.

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VITUG, J.:

In a sworn complaint, dated 20 July 1994, Annalyn Gimeno charged Judge Celso A. Arcueno, Sr., with grave abuse of discretion and ignorance of the law.

Complainant averred that on 20 March 1994, at their residence in Barangay Taboan, Cataingan, Masbate, she and her husband became unfortunate victims of robbery committed by a group of armed men. During the robbery, her husband was killed. A criminal complaint for "Robbery in Band with Homicide" was filed, and set for preliminary investigation, against SPO1 Ronilo Hermosa (the alleged mastermind), Rogelio Gimeno, Clarito Arizobal, Eduardo Banda, Dodong David and John Doe. Finding probable cause against the several accused, respondent Judge ordered the issuance of a warrant for their arrest and fixed the bailbond at P100,000.00. Respondent Judge granted bail to accused Hermosa and ordered his release after posting a property bond without allegedly affording the prosecution an opportunity to be heard thereon.

In his comment, dated 27 October 1994, respondent Judge explained that he issued an order for the hearing of the motion to fix bail but the public prosecutor simply filed, instead, a comment which respondent Judge thought was adequate compliance with the law. Furthermore, respondent Judge asserted, the evidence of guilt of the accused, disclosed by the records, was not so strong as to deny the application for bail. Indeed he continued accused Rogelio Gimeno, Ronilo Hermosa, Eduardo Banda and Dodong David were later dropped by the Office of the Provincial Prosecutor from the information for failure of witnesses to positively identify them. Respondent Judge surmised that complainant would appear to only want Hermosa and Gimeno implicated because of a land dispute among them.

In its memorandum, dated 07 April 1995, the Office of the Court Administrator ("OCA"), through Deputy Court Administrator Reynaldo L. Suarez, found respondent Judge's explanation unsatisfactory and recommended thusly:

"WHEREFORE, it is respectfully recommended that respondent Judge be found guilty of gross ignorance of the law and grave abuse of discretion and be meted a penalty of FINE of P20,000.00 (Twenty Thousand Pesos) with WARNING to exercise more care and diligence in the performance of his duties as a Judge, otherwise commission of the same or similar offense in the future will be dealt with more severely."[1]

In the Court's resolution dated 07 June 1995, the parties were required to manifest whether they were submitting the case for resolution based on the pleadings filed. Respondent Judge submitted his manifestation, dated 14 July 1995, responding in the affirmative but complainant failed to comply with the Court's directive. In its resolution dated 13 November 1995, the Court resolved to dispense with the manifestation by complainant.

The 1987 Constitution, on the right to bail, 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. 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."[2]

The grant of bail is a matter of right except in cases involving capital offenses where the matter is left to the sound discretion of the court. That discretion lies, not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the prosecution's evidence of guilt against the accused.[3] It is exercised in accordance with the applicable procedure set therefor[4] after a motion for bail is filed by an accused and a hearing thereon is conducted. The burden of proof lies with the prosecution which must be given ample opportunity to show the strength of its evidence against the accused.[5] In *Borinaga vs. Tamin*,[6] recently reiterated in *Baylon vs. Sison*,[7] the Court has ruled:

"x x x The prosecution must first be accorded an opportunity to present evidence because by the very nature of deciding applications for bail, it is on the basis of such evidence that judicial discretion is weighed against in determining whether the guilt of the accused is strong. In other words, discretion must be exercised regularly, legally and within the confines of procedural due process, that is, after evaluation of the evidence submitted by the prosecution. Any order issued in the absence thereof is not a product of sound judicial discretion but of whim and caprice and outright arbitrariness.

"Accordingly, while the determination of whether or not the evidence of guilt is strong is a matter of judicial discretion, this discretion, by the nature of things, may rightly be exercised only after the evidence is submitted to the court at such hearing. Whether the motion for bail of an accused who is in custody for a capital offense be resolved in a summary proceeding or in the course of a regular trial, the prosecution must be given an opportunity to present, within a reasonable time, all the evidence that it may desire to introduce before the court may resolve the motion for bail. If the prosecution should be denied such an opportunity, there would be a violation of procedural due process, and the order of the court granting bail should be considered void on that ground."

A hearing is plainly indispensable before a Judge can aptly be said to be in a position to determine whether the evidence for the prosecution is weak or strong.[8]

Respondent Judge explained that he set the case for hearing in order precisely to accord the public prosecutor with an opportunity to contest the application for bail. Since the public prosecutor merely filed his comment, thus leaving the matter to the sound discretion of the judge, respondent Judge felt that he could forthwith act on the incident.

Although the explanation is not enough to completely exculpate respondent Judge, the circumstances, coupled with his sincere belief in the propriety of his order, warrant a mitigation of the usual sanction this Court metes in cases of this nature. We reduce, accordingly, OCA's recommended penalty to a P5,000.00 Fine.

WHEREFORE, Judge Arcueno, Sr., is directed to pay a FINE in the amount of P5,000.00. He is further WARNED that a repetition of the same or similar act in the future will be severely dealt with by this Court.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Panganiban, JJ., concur.

[1] Rollo, p. 59.

[2] Article III, 1987 Constitution.

[3] BayIon vs. Sison, AM. No. 92-7-360-0, 06 April 1995.

[4] Sec. 5, Rule 114, of the Rules of Court states:

Sec. 5. Burden of proof in bail application. — At the hearing at an application for admission to bail filed by any person who is in custody for the commission of an offense punishable by reclusion perpetua or death, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearings 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 witness is dead outside of the Philippines or otherwise unable to testify.

Sec. 15. Notice of application to fiscal. — In the application for bail under the preceding section, the court must give reasonable notice of the hearing to the fiscal or require him to submit his recommendation.

[5] Lardizabal vs. Reyes, 238 SCRA 640; Sule vs. Biteng, A.M. No. MTJ-95-1018, 18 April 1995.

[6] 226 SCRA 206, 216.

[7] Supra.

[8] Aurillo, Jr., vs. Francisco, 235 SCRA 283; People vs. Dacudao, 170 SCRA 489.

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