

**ASSISTANT PROVINCIAL PROSECUTOR ANTONIO P. CHIN,
COMPLAINANT, VS. JUDGE TITO G. GUSTILO, AND CLERK OF COURT
DANILO BALAGTAS, RTC, BRANCH 23, ILOILO CITY, RESPONDENTS.**

A.M. No. RTJ-94-1243. August 11, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a case filed against Judge Tito G. Gustilo of the Regional Trial Court of Iloilo City, Branch 23 and his Clerk of Court, Danilo Balagtas, for "gross misconduct, gross and grave abuse of discretion, malfeasance in office and maladministration of justice." The complainant, Assistant Provincial Prosecutor of Iloilo City Antonio P. Chin, was injured during an altercation with a security guard. He complains that respondent judge granted bail to the security guard without notice to the prosecution and fixed the amount of the bond at P8,000.00 only, without taking into consideration that the firearm used was unlicensed.

The facts, based on the police blotter report (Respondent Judge's Comment, Annex A), are as follows:

At about 11:30 a.m. on July 13, 1994, John Girao y Molina, a security guard at the Iloilo Central Commercial High School, was at the entrance of the school discharging his duties as gatekeeper when complainant Antonio Chin asked to be allowed into the premises. Girao informed Chin that he had instructions from the principal not to allow anyone, not even parents, to enter the premises. Girao instead asked Chin to sign his name on the log book so that his children could be paged.

Chin did not comply. Instead, he gave Girao a fist blow in the left eye and then ran inside the compound. Girao pursued him and when he caught Chin, the two had a fist fight. As Chin did not relent, Girao took his side arm from its holster and fired warning shots, hitting Chin, however, on the shoulder and on the forearm.

Sensing that he had injured Chin, Girao ran out of the school compound where he saw some policemen. He surrendered, claiming that he had accidentally shot a man inside the school compound.

Girao was brought to the sala of respondent Judge Tito G. Gustilo at around 4:30 p.m. Upon Girao's motion, respondent judge granted him bail in the amount of P8,000.00 and ordered him released on the same day.

Chin contends that Clerk of Court Danilo Balagtas should not have received Girao's motion for bail while Judge Tito Gustilo should not have acted on the motion without notice to the prosecution. Chin further contends that the amount of bail, which respondent judge fixed at P8,000.00, was insufficient since Girao was eventually charged with frustrated murder and with violation of P.D. 1866 on illegal possession of firearms.

In his comment, respondent Judge Gustilo explained that it was almost 5:00 o'clock p.m. on July 13, 1994 when Girao arrived with a Motion to Admit Bail; that for lack of time, he did not secure the recommendation of the City Prosecutor's Office; and that he fixed the bail bond at P8,000.00, in accordance with the Bail Bond Guide of 1981 (Ministry Circular No. 36, Sept. 1, 1981) for the crime of frustrated homicide.

The respondent judge argues that notice to the fiscal is required only when the charge is for a capital offense. Here the police blotter indicated that Girao's liability, if any, would be for frustrated homicide only. He also claims that the police blotter did not indicate that the gun used by Girao was unlicensed and since it was a service revolver, the presumption was that it was licensed. He emphasizes that as no charge had been filed against Girao, there was no need for him to set a hearing on the motion for bail.

The question is whether on the basis of these facts bail could be granted without first giving notice to the prosecutor. Complainant contends that notice was required. He cites the following provisions of Rule 114 of the 1988 Rules on Criminal Procedure:[1]

Sec. 14. Bail, where filed. — (a) Bail in the amount fixed may be filed with the court where the case is pending, or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may be filed also with any regional trial court of said place, or, if no judge thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein.

(b) Whenever the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application therefor may be filed only in the particular court where the case is pending, whether for preliminary investigation, trial, or on appeal.

(c) Any person in custody who is not yet charged in court may apply for bail with any court in the province, city or municipality where he is held.

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.

On the other hand, respondents contend that no notice was required and cite former Chief Justice Moran's comments as follows:

When admission to bail is, to the defendant, a matter of right, as in non-capital cases before conviction by the Court of First Instance, no notice to the fiscal of his application for bail is required, as the same must forthwith be granted. (Moran Comments on the Rules of Court, p. 134, Vol. 4, 1963 Edition). (Italics added)

Complainant is right that notice of application for bail is required even though no charge has yet been filed in court and even though under the circumstances bail is a matter of right. This is clear from Sec. 15, in relation to Sec. 14(c) of Rule 114, as above quoted. The comments of former Chief Justice Moran were made on the provisions of the Rules of Court as amended in 1958, Rule 110, Sec. 8 of which provided:

Sec. 8. Notice of application to fiscal. — When admission to bail is a matter of discretion, the court must require that reasonable notice of the hearing of the application for bail be given to the fiscal. (Emphasis added)

This rule, with slight modification, was reproduced in Rule 114, Sec. 6 of the 1985 Rules of Court, as follows:

Sec. 6. Notice of application to fiscal. — When admission to bail is a matter of discretion, the court must give reasonable notice of the hearing to the fiscal or require him to submit his recommendation. (Emphasis added)

Thus, notice to the fiscal was required only in cases in which bail was a matter of discretion. The rule was changed effective October 1, 1988, however, so that, as it now stands, Rule 114, Sec. 15 makes no distinction whether bail is a matter of right or of discretion. In all instances, reasonable notice of hearing is required to be given to the prosecutor or fiscal, or at least he must be asked for his recommendation. Respondent judge says that Girao was brought before him after the close of office hours. It may be assumed that there was an inquest fiscal available to whom the judge could have referred the motion for bail for recommendation.

The prosecutor must be heard even in cases where bail is a matter of right because in fixing the amount of bail, the judge is required to take into account a number of factors, such as the applicant's character and reputation, forfeiture of other bonds, or whether he is a fugitive from justice. (Rule 114, Sec. 6) Had the prosecutor been heard on the bail application, he could possibly have informed the court that the gun used was unlicensed if this was the case.

In stressing that in the case before him bail was a matter of right, respondent judge apparently confuses the right to bail with the right not to be arbitrarily detained. The latter merely means that the person detained should not be held beyond the periods prescribed by law (i.e., Revised Penal Code, Art. 125) without charging him in court. It does not mean he has a right to be released on bail within the same period, much less without giving the fiscal or prosecutor the opportunity to be heard. On the other hand, should the prosecutor fail to file the corresponding information, then the person detained should be released. In such a case, the person detained is released not because he has a right to bail but because he has a right not to be arbitrarily detained beyond the period prescribed by law.

Of course the prosecutor's recommendation, although persuasive, is in no way binding upon the court. (Amaya vs. Ordoñez, G.R. No. 80906, res. of Sept. 5, 1988) But he has to be heard as a matter of due process to the state in the same way that even in cases involving capital offenses it has been held that there must be a hearing even though the prosecutor interposes no objection to the grant of bail. (Tucay v. Domagas, A.M. No. RTJ-95-1286, March 2, 1995)

While respondent was in error in believing that notice to the prosecutor is required only where bail is a matter of discretion, nonetheless, we find that his error was not due to any conscious and deliberate intent to commit an injustice. In cases such as this, we have adhered to the view that, as a matter of public policy, in the absence of fraud, dishonesty, or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. (Revita v. Rimando, 98 SCRA 619 (1980); Abad v. Bleza, 145 SCRA 1 (1986))

Nonetheless we have stressed the importance of the duty of members of the judiciary to keep abreast of the laws, rulings and jurisprudence affecting their jurisdiction. (Vasquez v. Malvar, 85 SCRA 10 (1978); Ajeno v. Inserto, 71 SCRA 166 (1976); Aducayen v. Flores, 51 SCRA 78 (1973)) It is not too much to expect that judges show acquaintance with statutes, procedural rules and authoritative doctrines. Respondent judge's failure to comply with this duty resulting in the failure to give notice to the prosecution of pending application for bail merits a reprimand.

WHEREFORE, respondent judge is REPRIMANDED for failure to give notice to the public prosecutor of an application for bail with warning that a repetition of this offense in the future will be dealt with more severely.

Respondent Clerk of Court Danilo Balagtas is ABSOLVED of the charge since he merely carried out the order of the judge.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Francisco, JJ., concur.

[1] Now Rule 114, Sec. 17 and 18, as amended effective October 1, 1994.

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