

**LEONORA BITOON, FLORENCIO CANTADA, ANITA MENDOZA, CAEL GLORIOSO AND ATTY. MIRIAM S. CLORINA-RENTROY,
COMPLAINANTS, VS. JUDGE LORINDA B. TOLEDO-MUPAS,
MTC-DASMARIÑAS, CAVITE, RESP...**

A.M. NO. MTJ-05-1598. August 09, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This administrative matter stems from a complaint filed on September 17, 2001, against respondent Judge Lorinda B. Toledo-Mupas of the Municipal Trial Court of Dasmariñas, Cavite, for (a) gross ignorance of the law, (b) manifest bias and partiality, and (c) conduct prejudicial to the best interest of the service.

The records reveal that on August 23, 2001, complainants Leonora Bitoon, Florencio Cantada, Anita Mendoza and Cael Glorioso filed three criminal complaints with the Municipal Trial Court of Dasmariñas, Cavite, for preliminary investigation. The complaints, docketed as Criminal Cases Nos. 01-1485, 01-1486 and 01-1487, charged Eva Malihan, Sister Trinidad Sinagbulo, Mely Vargas, Geraldine Baldovino, Belen Liwanag, Juanita Sanchez, and Nelia Tizon with syndicated estafa under Articles 315 and 316 of the Revised Penal Code, as amended by Presidential Decree No. 1689.[1] According to complainants, the accused, who represented themselves as officers of the Rapasedala Parents and Community Association Phase I and Phase II, Inc., induced said complainants to become members of the association under promise that if they did, they could buy at a discount, lands owned by the association. Complainants Bitoon and Cantada agreed to buy lots in Pielá, Sampaloc, Dasmariñas, while complainants Mendoza and Glorioso agreed to buy lots in Brgy. San Jose, Dasmariñas. However, after paying several installments on their chosen lots, said complainants discovered that none of the lands sold to them was owned by the association. They also learned that the accused only misappropriated their money.

On August 24, 2001, respondent issued a warrant of arrest against all the accused, with no bail recommended. Accused Eva Malihan, a Barangay Kagawad, was arrested on the same day at the session hall of the Sangguniang Bayan of Dasmariñas, Cavite. She was committed to the municipal jail of Dasmariñas upon respondent's order.

Complainants allege that Malihan was not incarcerated, but was allowed by the police to roam the municipal building and to buy food from nearby stores. They claim that repeated requests with the police station to transfer Malihan to the Bureau of Jail Management and Penology or the provincial jail went unheeded because of the interference of Valeriano Encabo, a Sangguniang Bayan member. Hence, on August 28, 2001, complainants filed a motion in respondent's sala praying for Malihan's transfer. They furnished copies of their motion to the Chief of Police and Judge Dolores Español, Executive Judge of the Regional Trial Court of Dasmariñas, Cavite. Judge Español had a pending administrative case against respondent. Complainants claim that when respondent learned that they had furnished Judge Español a copy of the motion, respondent felt insulted and while in Valeriano Encabo's house during a town fiesta, respondent scolded complainant Atty. Miriam Clorina-Rentoy.

Complainants further claim that respondent intentionally delayed action on the motion and let herself be influenced by Encabo and Mayor Elpidio Barzaga, Jr. They cite that respondent's only action on the motion was to order the Chief of Police to file a comment, which order was not even served until September 3, 2001, or five days after its issuance, and only by chance when a police officer happened to go to the courthouse. They also claim that in the morning of August 29, 2001, complainant Atty. Clorina-Rentoy's secretary, Jesselyn Hayag, allegedly heard respondent instruct a court personnel to tell the Chief of Police not to transfer Malihan if he did not wish Mayor Barzaga to punish him for it.

Later, on September 2, 2001, complainant Atty. Clorina-Rentoy received a copy of an Urgent Petition for Bail[2] that Malihan had filed two days earlier. The petition was set for hearing on September 3, 2001, but on the said date, respondent did not conduct a hearing. She simply ordered complainant Atty. Clorina-Rentoy to file her comment or opposition to the petition, which was received seven days later. On September 14, 2001, respondent granted the petition on the ground that the crime committed was only simple estafa and thus, bail was a matter of right.

Complainants add that although a copy of respondent's Resolution was received by Malihan's counsel only at 4:30 p.m. on September 14, 2001, Malihan managed to file a motion to reduce bail, as well as post the necessary bail bond, as early as 4:00 p.m. The signature appearing on the court's files also showed that a copy of the Resolution was released simultaneously with the order of release to Malihan's brother, Germiniano Diana, at 4:00 p.m. The bail bond, for its part, was released around 3:45 p.m., based on the certification from the bonding company. Complainants surmise that respondent informed Malihan of the Resolution hours before she issued it.

In her comment,[3] respondent insists that she acted properly. She explains that a hearing on Malihan's application for bail was unnecessary because Malihan was entitled to bail as a matter of right. According to respondent, the allegations from both parties showed that Rapasedala Parents and Community Association Phase I and Phase II, Inc., is not a rural bank, cooperative, samahang nayon or farmer's association, nor is it a corporation or association operating on funds solicited from the public. Also, it appeared that accused Eva Malihan acted alone in swindling complainants Bitoon, Cantada, Mendoza and Glorioso. Hence, it was clear that the crime of syndicated estafa was not committed.

Respondent adds that although bail was a matter of right, complainants were nonetheless sufficiently heard. Respondent points out that she ordered complainants to file their opposition to the petition for bail and even granted their request for five days extension within which to file said opposition, over the objections of Malihan's counsel.

Respondent alleges that complainants' other allegations are totally unfounded. She denies (1) that she slandered complainant Atty. Clorina-Rentoy at Valeriano Encabo's house during a town fiesta; (2) that she was irked by the fact that complainants furnished Judge Español a copy of the motion to transfer Malihan to the provincial jail; (3) that she instructed a court personnel to tell the Chief of Police not to transfer Malihan to the provincial jail; (4) that she willfully delayed action on the motion to transfer; and (5) that she informed Malihan in advance of the resolution granting bail. Respondent explains that she took no further action on complainants' motion to transfer Malihan besides ordering the Chief of Police to comment on the motion because Judge Español granted the motion on September 4, 2001, and there was no more action to take on the motion.

With respect to Malihan's seemingly precipitous release, respondent explains that Malihan was released on the same day the resolution granting bail was issued not because of any bias or preferential treatment given under the influence of certain politicians, but because of the efforts of Malihan's relatives.

On April 24, 2002, the Office of the Court Administrator recommended to the Court that the complaint be

dismissed for lack of sufficient evidence to hold respondent administratively liable for manifest bias and partiality and conduct prejudicial to the best interest of the service.[4] On July 8, 2002, the Court adopted the recommendation.

Aggrieved, complainants filed a motion for reconsideration on September 13, 2002.

According to complainants, the OCA erred in classifying their complaint as one for manifest bias and partiality and conduct prejudicial to the best interest of the service. They assert that it was for gross ignorance of the law, first for granting bail without hearing in a non-bailable offense, and second, for changing the designation of the offense from syndicated estafa to simple estafa despite the clear absence of authority on her part. Complainants clarify that the manifest bias and partiality were only part of respondent's offense.[5]

On June 28, 2004, the Court required respondent to comment on the motion and referred the case back to the OCA for re-evaluation, report and recommendation.

On September 14, 2004, respondent submitted her comment as directed.

On March 7, 2005, the OCA submitted its compliance. In its memorandum to the Court, the OCA found respondent liable for gross ignorance of the law and manifest bias and partiality, and recommended that a fine of P10,000 be meted against respondent.

We find respondent administratively liable. It is basic that in the preliminary investigation of a criminal offense, the municipal trial judge has no legal authority to determine the character of the crime. His authority is limited to determining whether the evidence presented supports prima facie the allegations of facts in the complaint.[6] It is the prosecutor who has the power to determine the character of the crime or to change the designation of the crime as may be warranted by the facts.[7]

Likewise, every judge should know by heart that in indictments for capital offenses like syndicated estafa, bail shall not be granted when the evidence of guilt is strong.[8] Though the determination of whether or not the evidence of guilt is strong is a matter of judicial discretion, this 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. A hearing is absolutely necessary and indispensable because the judge may rightly exercise this discretion only after the evidence is submitted to the court at the hearing.[9] The prosecution must be given an opportunity to present, within a reasonable time, all the evidence necessary for its opposition to the grant of bail.[10] Evidence of guilt must be submitted to the court, the petitioner having the right of cross-examination and to introduce his own evidence in rebuttal, because the discretion is directed to the weight of the evidence.[11] In turn, evidence cannot properly be weighed if not duly exhibited or produced before the court.[12]

Here, it is beyond dispute that respondent changed the designation of the crime from a non-bailable offense to a bailable one, that is, from syndicated estafa to simple estafa. She then granted bail to accused Malihan without hearing on the ground that Malihan is entitled to bail as a matter of right.[13] In so doing, respondent exceeded her authority in the conduct of preliminary investigations, and failed to observe the elementary procedural rules on bail.

It is settled that one who accepts the exalted position of a judge owes the public and the court the ability to be proficient in the law and the duty to maintain professional competence at all times. Basic rules must be in the palm of his hand. He must be acquainted not only with legal norms and precepts, but with procedural rules as well. Gross ignorance of the law and incompetence are characteristics impermissible in a judge. He is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with elementary rules of procedure as well as settled authoritative doctrines. Failure to follow the basic

laws and rules on preliminary investigations and on bail is inexcusable and renders the erring judge susceptible to administrative sanction for gross ignorance of the law.[14]

However, nothing in the records suggests that respondent was motivated by malice or corrupt motives to favor Malihan. Complainants failed to substantiate their other allegations with competent proof besides their own bare allegations. Hence, respondent could not be held liable for manifest bias and partiality.

On the matter of penalty, we deem the OCA's recommendation of a fine of P10,000 inadequate. The fine should be in the maximum amount of P40,000. In addition, the additional penalty of suspension for three months should also be imposed, without salary and benefits. The questioned act was committed on September 14, 2001. Even before its amendment by A.M. No. 01-8-10-SC,[15] Rule 140 of the Rules of Court classified gross ignorance of the law as a serious charge, punishable under Section 10 as follows:

Section 10. Sanctions.-A. If the respondent is found culpable of a serious charge, any of the following sanctions may be imposed:

- Dismissal from the service with forfeiture of benefits (except accrued leaves) and disqualification from reinstatement or appointment to any public office including a government-owned and controlled corporation;
- Suspension for three (3) months without salary and benefits; or
- A fine of not less than P20,000.00 but not more than P40,000.00. (Underscoring supplied.)

Further, respondent has been penalized for acts, which, although committed much later than the act subject of this case, showed that she lacks the necessary competence required of every magistrate. On November 11, 2004, in *Español v. Judge Mupas*,[16] respondent was meted a fine of P21,000 for violation of the Code of Judicial Conduct and gross ignorance of the law. In that case, respondent ordered the arrest of the accused in six criminal cases before the expiration of the ten-day period she gave them to file their counter-affidavits and without any finding of probable cause. Again, on June 8, 2005, in *Loss of Court Exhibits at MTC-Dasmariñas, Cavite*,[17] respondent was suspended for three months for gross misconduct and gross ignorance of the law. In that case, respondent refused to turn over to the National Bureau of Investigation (NBI) for ballistics examination a firearm that a court employee surreptitiously took from the court's steel cabinet and used to commit suicide. We likewise found respondent grossly ignorant of the provisions of Section 5, Rule 112 of the Rules of Criminal Procedure, which requires her to transmit to the provincial prosecutor her resolution of the case within 10 days after the preliminary investigation. Considering that respondent has thrice exhibited deplorable ignorance of truly elementary rules of procedure, we deem it proper to suspend her for three months without salary and benefits and to also impose on her the maximum fine of P40,000, as the penalty provided in Rule 140.

The records of the OCA further disclose that respondent has other similar administrative complaints[18] still pending against her. Such an unflattering service record erodes the people's faith and confidence in the judiciary. It is the duty of every member of the bench to avoid any impression of impropriety to protect the image and integrity of the judiciary.[19] Thus, considering all the circumstances in this case, we have no hesitation in imposing the penalty of 3 months suspension, without salary and benefits together with the fine of P40,000, on respondent.

WHEREFORE, for gross ignorance of the law and incompetence, respondent Judge Lorinda B. Toledo-Mupas is hereby **SUSPENDED** for three months without salary and benefits and **FINED** in the maximum amount of FORTY THOUSAND (P40,000) PESOS, with a warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Entitled "Increasing the Penalty for Certain Forms of Swindling or Estafa."

[2] Rollo, pp. 69-78.

[3] Id. at 164-196.

[4] Id. at 199-205.

[5] Id. at 208-209.

[6] *People v. Gorospe*, No. 29423, 29 December 1928, 53 Phil. 960, 963; *Bais v. Tugaoen*, Adm. Mat. No. 1294-MJ, 23 March 1979, 89 SCRA 101, 110; *Depamaylo v. Brotarlo*, A.M. No. MTJ-92-731, 29 November 1996, 265 SCRA 151, 157.

[7] *Bais v. Tugaoen*, id. at 110; *Depamaylo v. Brotarlo*, *ibid.*

[8] See Rules of Criminal Procedure, Rule 114, Section 7.

[9] *Docena-Caspe v. Bugtas*, A.M. No. RTJ- 03-1767 (Formerly OCA-IPI No. 01-1314-RTJ), 28 March 2003, 400 SCRA 37, 42-43.

[10] *Marzan-Gelacio v. Flores*, A.M. No. RTJ-99-1488 (Formerly OCA-IPI No. 98-591-RTJ), 20 June 2000, 334 SCRA 1, 16.

[11] *Basco v. Rapatalo*, A.M. No. RTJ-96-1335, 5 March 1997, 269 SCRA 220, 225.

[12] *Fortuna v. Penaco-Sitaca*, A.M. No. RTJ-01-1633 (Formerly A.M. No. OCA-IPI-00-883-RTJ), 19 June 2001, 358 SCRA 615, 622.

[13] Rollo, p. 187.

[14] *Contreras v. Monserate*, A.M. No. MTJ-02-1437 (Formerly OCA IPI No. 01-1094-MTJ), 20 August 2003, 409 SCRA 376, 384.

[15] Effective October 1, 2001.

[16] A.M. Nos. MTJ-01-1348, MTJ-01-1352, 01-2-100-RTC and MTJ-01-1358, 442 SCRA 13.

[17] A. M. No. MTJ-03-1491 (Formerly A.M. No. 02-9-228-MTC), p. 19.

[18]

1. 03-1489-MTJ for Violation of Section 3, Rule 112 of the Revised Rules of Criminal Procedure;
2. 04-1646-MTJ for Grave Abuse of Discretion;
3. 04-1651-MTJ for Grave Misconduct and Gross Ignorance of the Law.

[19] See *Office of the Court Administrator v. Sardido*, A.M. No. MTJ-01-1370, 25 April 2003, 401 SCRA 583, 593.

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