

REYMUALDO BUZON, JR., COMPLAINANT, VS. JUDGE TIRSO D.C. VELASCO, RESPONDENT.

A.M. No. RTJ-94-1209. February 13, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In a letter dated May 6, 1994,[1] Reymualdo Buzon, Jr. charged respondent Judge Tirso D.C. Velasco of Branch 88, Regional Trial Court of Quezon City with gross ignorance of the law and alleged “illegal acts” and/or irregularity in granting bail to the accused

amounting to gross partiality in Criminal Case No. Q-89-1707 entitled “People of the Philippines vs. Fernando Tan,” alias ‘Ding’ for murder, which was pending in the said court.

After receipt of the respondent’s Comment, the Court on June 6, 1995, referred this case to Associate Justice Conrado M. Vasquez, Jr. of the Court of Appeals for investigation, report and recommendation.

In his report dated December 11, 1995, Justice Vasquez narrated the facts as follows:

“After a preliminary investigation, the Office of the City Prosecutor of Quezon City filed the Information (Exhibits 1 and 2, Formal Offer) for Murder in Criminal Case No. Q-89-1707 against accused Fernando Tan @ ‘Ding’ for the death of Reymualdo Buzon, Sr. Apparently, the corresponding warrant of arrest was issued against the accused but could not be served. On May 31, 1989, the case was ordered archived (Exhibit 3, supra) and an alias warrant of arrest (Annex 2, complaint) issued. Notably, no bail was recommended in the warrant.

Sometime in February of 1991, accused Tan surfaced and filed a motion that he be granted bail on the ground that the City Prosecutor recommended in the criminal charge sheet against him a P50,000.00 bail for his provincial (sic) liberty. Acting on the motion, on February 20, 1991, the respondent judge granted bail to the accused in the amount of P50,000.00 (Exhibit 4, Formal Offer) and accordingly recalled the warrant of arrest (Exhibit 5) on February 25, 1991 after the accused had posted the required bond. It is worthwhile stating that the Motion for Bail was granted without a hearing nor comment from the prosecution.

Accused was subsequently arraigned on March 8, 1991 (Exhibit 6, supra) and trial was set for several postponed hearings at the instance of both the prosecution and the accused (Exhibits 7, 7-a, 8, and 8-a, supra).

On February 10, 1992, the prosecution submitted a Motion to Cancel Bail Bond (Exhibit 10, supra) alleging, inter alia, that the Information filed was tampered because the Information originally stated ‘No Bail Recommended.’ However, the word ‘No’ was snowpaked and the figures P50,000.00 added after the word ‘recommended,’ to read: ‘BAIL RECOMMENDED: P50,000.00.’ The prosecution went further asserting that the offense of Murder is punishable by Reclusion Perpetua where bail is not a matter of right.

Accused initially filed his opposition through his lawyer H. J. Pablo, III (Exhibit 11, supra). Later, Atty. Moises A. Samson posted a Notice of Appearance (Exhibit 12, supra) as co-defense counsel simultaneously requesting for time to submit supplemental opposition to the Motion To Cancel Bail and the postponement of

the scheduled hearings of the case.

The supplemental opposition was not at all filed (,) neither was the Motion to Cancel Bail Bond resolved by the respondent even until after the prosecution had rested its case on September 23, 1992 (Exhibit 24, supra).

Alongside with (sic) the prosecution's resting its case, in open court the accused was granted leave of court to file a Demurrer to Evidence. Nonetheless, on October 5, 1992, what the accused filed was a formal Motion For Leave to File Motion to Dismiss By Way of Demurrer To Evidence (Exhibit 25, supra) which surprisingly was met by the prosecution with an 'Opposition to Demurrer to Evidence'. Adding to the miscommunication, the respondent denied the Demurrer to Evidence in its Order of October 15, 1992 (Exhibit 27, supra).

Anyway, on November 12, 1992, the accused filed a Motion for Reconsideration (Exhibit 29, supra) stating that: 1) he has not yet filed a Demurrer to Evidence as what he had submitted was only a simple Motion For Leave to file one (Demurrer to Evidence); and 2) that the evidence presented by the prosecution is insufficient to convict the accused. The prosecution opposed the motion claiming that the accused tried to put one over the court when he stated that he has not yet filed a Demurrer to Evidence and that the defense allegation that the prosecution's evidence is insufficient to prove the guilt of the accused beyond reasonable doubt is contrary to the facts on record. On December 2, 1992, (Exhibit 32, supra) the Motion for Reconsideration was granted in such a way that the accused was given ten (10) days to file a Demurrer to Evidence which was ultimately filed on December 19, 1992 (Exhibit 33, supra).

Eventually, the Demurrer to Evidence together (with) its Motion for Reconsideration were respectively denied on January 21, 1993 (Exhibit 36, supra) and on March 5, 1993, (Exhibit 43, supra). In the meantime, previous settings for defense evidence were cancelled for failure of receipt of the denial of the Demurrer to Evidence.

On May 11, 1993, the reception of defense evidence was held in abeyance (Exhibit 46, supra) pending final resolution by the Court of Appeals on the Petition for Certiorari and Mandamus filed by the accused in CA-G.R. SP No. 30667, assailing the denial of the Demurrer to Evidence. On August 23, 1993, CA-G.R. SP No. 30667 was dismissed (Exhibit 50, supra) and its Motion for Reconsideration denied on January 5, 1994 (Exhibit 57).

The accused did not stop there. The matter was elevated to the Supreme Court under G.R. No. 11355 (Exhibit 58, supra). On September 26, 1994 (Exhibit 67, supra) the Supreme Court denied with finality the Motion for Reconsideration of the resolution dated August 3, 1994 denying the Petition for Review.

In the meanwhile, on November 23, 1993, prior to the denial of the Motion for Reconsideration in CA-G.R. SP No. 30677 and the filing of G.R. No. 11355 before the Supreme Court, the prosecution submitted before the respondent Judge a Motion to Cancel Bail (To Reiterate Motion dated February 7, 1992) (Exhibit 52, supra) duly opposed by the accused (Exhibit 54, supra) and met with a Reply (Exhibit 55, supra) by the prosecution. On December 20, 1993, the Motion to Cancel Bail was denied (Exhibit 56, supra) by the respondent, ruling:

'For resolution before this Court is the MOTION TO CANCEL BOND filed (by) plaintiff thru the Assistant City Prosecutor, the Opposition (To Motion to Cancel Bail) filed by accused thru counsel, the REPLY TO OPPOSITION TO MOTION TO CANCEL BAIL and the reasons relied upon by the parties which this Court DENIES for lack of merit.

'The bail bond which the accused has posted was pursuant to the recommendation of the prosecution which the Rules of Court allows to be posted as long as it is in accord with the amount fixed by the court or recommended by the fiscal who investigated or filed the case. The amount recommended was P50,000.00 which this Court finds as appropriate for purposes of the motion in question and under the present circumstances, and since the foregoing is in accord with Section 11, Rule 114, Rules of Court, ACCORDINGLY this Court finds no merit in the aforesaid MOTION TO CANCEL BOND and must perforce DENY the same.

‘SO ORDERED.’

On June 23, 1994, the private complainant filed a Motion for Inhibition (Exhibit 62, *supra*) of the respondent Judge because of this Administrative case.

In the Order of August 9, 1994 (Exhibit 65, *supra*) the Motion for Reconsideration of the Order denying the Motion to Cancel Bail Bond was denied while the Motion for Inhibition was granted. Said the respondent:

‘In the instant case, the posting of the bail bond was approved pursuant to the recommendation of the filing Prosecutor. Sec. 2, Rule 114 of the Rules of Court provides for the conditions imposed on the bailbond which upon approval remains in force at all stages of the case until its final determination, unless the proper court directs otherwise. Considering that the accused has not violated any condition imposed therein and has submitted himself to the jurisdiction of the court by regularly appearing at the hearings of the case, this Court finds no cogent reason to reconsider the questioned order.

‘With regards the Motion for Inhibition, likewise filed by the private complainant, finding that he has clearly lost his trust and confidence in the Presiding Judge of this Court in the impartial disposition of this case, for the peace of mind of the complainant, this Court grants the motion and the Presiding Judge hereby voluntarily inhibits himself from hearing this case.’

To complete the picture, the case was re-raffled to Judge Agustin S. Sison of Branch 80 of the same court but who likewise inhibited himself due to close family relations with a member of the law firm appearing as private prosecutor.

Re-raffled to Judge Godofredo L. Legaspi of Branch 79 the Motion To Cancel Bail was granted in an Order dated March 20, 1995 (Exhibit 68-a, *supra*). Then again, after issuing the Order, Judge Legaspi voluntarily inhibited himself from hearing the case without acting on the Motion for Reconsideration filed by the accused to the Order cancelling his bail bond.

The case was reassigned to Judge Lucas P. Bersamin ‘of Branch 96 who, on April 20, 1995 (Exhibit 68-b, *supra*), who (sic) reconsidered Judge Legaspi’s Order cancelling the bail bond of the accused increasing, however, the bail to P100,000.00 for the provisional liberty of the accused.

Ultimately, on June 1, 1995, complainant Romualdo (sic) Buzon, Jr. showed his disgust by filing a motion to inhibit Judge Bersamin (Exhibit 68-c, *supra*). After favorably acting on the motion, Judge Bersamin sent the records of the case to the Office of the Executive Judge of the Regional Trial Court of Quezon City for re-affle to another branch.

Under the aforementioned environmental facts, respondent Judge is now administratively charged with gross partiality and gross ignorance of the law.”

Justice Vasquez found no basis for the charge of gross partiality, reasoning out that:

“The procedural facts of the case as earlier chronologically listed down in this report betrays the accusation of partiality. All proceedings were apparently conducted in the most usual and regular manner. While there maybe some delays, the same are equally attributable to both the accused and to the prosecution and, more importantly in the observance of due process of law. When specifically the respondent ordered for the suspension of the defense evidence in deference to whatever resolution the Court of Appeals or the Supreme Court will issue on the pending certiorari proceedings, it was only cordially exercising judicial courtesy to a higher court. And that is not partiality.”

On the charge of gross ignorance of the law, Justice Vasquez stated “that respondent judge committed an error in granting bail to the accused without a hearing” and recommended the imposition of a fine of one (1) month’s salary. Said Justice Vasquez:

“The law on bail mandates that all persons in custody are entitled to bail as a matter of right except those charged with capital offense or an offense which under the law at the time of its commission and at the time of the application to bail is punishable by Reclusion Perpetua when evidence of guilt is strong (Section 3 Rule 114, Revised Rules on Criminal Procedure). And in the event of an application for admission to bail, the prosecution has the burden of showing that the evidence of guilt is strong (Section 5, supra).

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“Ironically, in the administrative case at bench, the respondent judge not only committed the mistake of granting bail to the accused without hearing. He likewise practically reversed the original and alias warrants of arrest issued by him against the accused where no bail was recommended. Furthermore, despite his denial of the Demurrer to Evidence submitted by the accused, respondent judge insistingly refused to cancel the bail of the (accused,) taking refuge and shelter from a mere recommendatory statement (of) the Office of the City Prosecutor that accused maybe admitted to a P50,000.00 bail. It is therefore imperative to find guilty (sic) against the respondent in this respect.”

We agree with the foregoing findings. It is basic that in indictments for capital offenses like murder, bail shall not be granted when the evidence of guilt is strong. When admission to bail is a matter of discretion, the judge is required to conduct a hearing and to give notice of such hearing to the fiscal or require him to submit his recommendation.

In *concerned Citizens vs. Elma*,^[2] we emphasized the extreme necessity of conducting hearings in applications for bail, especially in capital offenses:

“x x x It is a rule of long standing that bail is not a matter of right in cases involving capital offenses or where the offense for which the accused stands charged is punishable by reclusion perpetua when evidence of guilt is strong. It is true that the weight of the evidence adduced is addressed to the sound discretion of the court. However, such discretion may be exercised only after the hearing called to ascertain the degree of guilt of the accused for the purpose of determining whether or not he should be granted provisional liberty. At the hearing, the court should assure that the prosecution is afforded the opportunity to adduce evidence relevant to the factual issue, with the applicant having the right of cross-examination and to introduce his own evidence in rebuttal. In the case at bench, however, no formal hearing was conducted by respondent judge. He could not have assessed the weight of the evidence against accused Gatus before granting the latter’s application for bail.

“The necessity of hearing an application for bail has been stressed by this Court in the early case of *People vs. San Diego*, (No. L-29676, December 24, 1968, 26 SCRA 522) thus:

‘The court’s discretion to grant bail in capital offenses must be exercised in the light of a summary of the evidence presented by the prosecution; otherwise, it would be uncontrolled and might be capricious or whimsical. Hence, the court’s order granting or refusing bail must contain a summary of the evidence for the prosecution followed by its conclusion whether or not the evidence of guilt is strong. x x x’”

Truly, a judge would not be in a position to determine whether the prosecution’s evidence is weak or strong unless a hearing is first conducted:^[3]

“To appreciate the strength or weakness of the evidence of guilt the prosecution must also be consulted or heard. It is equally entitled as the accused to due process. *People vs. Dacudao*, 170 SCRA 489). Further, the court’s discretion to grant bail in capital offenses might (sic) be exercised in the light of a summary of the evidence presented by the prosecution, otherwise, it could be uncontrolled and might be capricious or whimsical. Hence, the court’s order granting or refusing bail must contain a summary of the evidence for the prosecution followed by its conclusion whether or not the evidence of guilt is strong. (Resolution issued in A.M. No. 92-10-884-RTC - Re: Report of Pasig RTC Judges about the case of Judge Armie Elma, RTC,

Branch 153, Pasig, M. M.).’

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“It is indeed regrettable how respondent Judge Francisco ignored the clear import in *People vs. Dacudao* where we clearly stated that ‘a hearing is absolutely indispensable before a judge can properly determine whether the prosecution’s evidence is weak or strong. Hence, a denial of the prosecution’s request to adduce evidence, deprives it of procedural due process, a right to which it is equally entitled as the defense. A hearing is required to afford the judge a basis for determining the existence of those factors set forth under Rule 114, Sec. 6.’”

And failure to conduct such hearing is inexcusable:

“Respondent cannot grant an application for admission to bail in a capital offense without hearing, on the ground that the opposition thereto was based merely on the affidavit of the defense witnesses (See *Medina vs. De Guia*, 219 SCRA 153 [1993], in connection with A.M. No. RTJ-89-306). The hearing is precisely to give the prosecution the opportunity to present these witnesses in court to affirm the contents of their affidavits. By granting the bail application on such a flimsy reason, respondent effectively denied the prosecution the opportunity to be heard and to establish that the evidence of the accused’s guilt was strong.

“His failure to conduct the hearing required is inexcusable and reflects either gross ignorance of the law or a cavalier disregard of its requirements (*Pico vs. Combong, Jr.*, 215 SCRA 421 [1992]), thus, warranting severe sanction.”[4]

In the face of this established rule on bail hearings, respondent judge, citing *Lim, Sr. vs. Felix*,^[5] averred that “a judge may rely upon the fiscal’s certification of the existence of a probable cause and on the basis thereof issue a warrant of arrest.” This argument is misplaced and totally unacceptable. The cited case involves the issuance of warrants of arrest, NOT the grant of bail. We held in *Aurillo, Jr. vs. Francisco*^[6] that:

“Verily, it was patent error for him [trial judge] to base his order granting bail merely on the supporting affidavits attached to the information since those were merely intended to establish probable cause as basis for the issuance of an arrest warrant, and not to control his discretion to deny or grant bail in all situations -i.e., with or without a motion from the accused and even without conducting a hearing on the matter. Such error cannot be characterized as mere deficiency in prudence, discretion and judgment, but a patent disregard of well-known rules and, therefore, constitutive of gross ignorance of the law.”

In the Code of Judicial Conduct (Rule 1.01), a “judge should be the embodiment of competence, integrity and independence.” Respondent judge fell short of this basic canon and, by his conduct, did not inspire confidence on the part of the litigants in his competence and knowledge of the law. In fine, we are of the firm conviction that respondent is guilty as found by Justice Vasquez.

In *Bay/on vs. Sison*,^[7] where the judge therein granted bail with neither notice to the prosecution nor hearing on the application for bail, this Court imposed “a FINE of P20,000.00 with a STERN WARNING that the commission of the same or similar offense in the future will definitely be dealt with more severely.”

Similarly, in *Aurillo, Jr. vs. Francisco*,^[8] this Court imposed on the respondent judge a fine of P20,000.00 with stern warning, etc.

ACCORDINGLY, the Court finds respondent Judge GUILTY of IGNORANCE OF THE LAW and hereby imposes upon him a FINE of twenty thousand pesos (P20,000.00), with the STERN WARNING that commission of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Narvasa, C.J. (Chairman), Padilla, Regalado, Romero, Bellosillo, Melo, Puno, Vitug, Francisco, and Hermosisima, Jr., JJ., concur.

Davide, Jr., Kapunan, and Mendoza, JJ., no part. Close relation to a party.

[1] Rollo, pp. 1-3.

[2] 241 SCRA 84, 88 (February 6, 1995); see also Baylon vs. Sison, 243 SCRA 284, 293 (April 6, 1995); Sule vs. Biteng, 243 SCRA 524, 528 (April 18, 1995); Guillermo vs. Reyes, Jr., 240 SCRA 154, 159-160 (January 18, 1995); Aurillo, Jr. vs. Francisco, 235 SCRA 283,288 (August 12, 1994); Re: Report on the Judicial Audit and Physical Inventory of the Record of Cases in the RTC, Br. 43, Roxas, Mindoro Oriental, 236 SCRA 631, 639 (September 22, 1994); Aguirre vs. Belmonte, 237 SCRA 778. 789 (October 27, 1994); Lardizabal vs. Reyes, 238 SCRA 640,642 (December 5, 1994); Medina vs. de Guia, 219 SCRA 153, 171-172 (March 1, 1993); Borinaga vs. Tamin, 226 SCRA 206,216 (September 10, 1993).

[3] Aurillo, Jr. vs. Francisco, *supra*, at pp. 287-288.

[4] Re: Report on the Judicial Audit and Physical Inventory of the Record of Cases in the RTC, Branch 43, Roxas, Mindoro Oriental, *supra*, at p. 639.

[5] 194 SCRA 292 (February 19, 1991); Rollo, p. 70.

[6] *Supra*, at p. 289.

[7] *Supra*, at p. 298.

[8] *Supra*, at p. 289.

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