ROMULO SJ TOLENTINO, STATE PROSECUTOR, COMPLAINANT, VS. JUDGE POLICARPIO S. CAMANO, JR., REGIONAL TRIAL COURT, BRANCH 58, TIGAON, CAMARINES SUR, RESPONDENT.

A.M. No. RTJ-00-1522. January 20, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint filed by State Prosecutor and Acting Provincial Prosecutor of Camarines Sur Romulo SJ Tolentino against Judge Policarpio S. Camano, Jr. of the Regional Trial Court, Branch 58, Tigaon, Camarines Sur, for gross ignorance of the law, grave abuse of discretion, grave abuse of authority, violation of Canons 1, 2 and 3 of the Canons of Judicial Ethics, and incompetence in connection with the granting of bail to the accused in Criminal Case No. T-1468.

The facts are as follows:

The Office of the Provincial Prosecutor of Camarines Sur filed an information against Roderick Odiaman for allegedly engaging in sexual intercourse with a child in violation of §5(b) of the Child Abuse Act (R.A. No. 7610). The case was filed in the RTC at Tigaon, Camarines Sur and was later assigned to respondent judge of that court. The defense moved to quash the information on the ground that no preliminary investigation had been conducted before the case was filed, whereupon respondent judge on November 15, 1995 ordered complainant state prosecutor to conduct a preliminary investigation. Pending the holding of a preliminary investigation, the accused filed a petition for bail which respondent judge scheduled for hearing on January 9, 1996. However, both complainant state prosecutor and private complainant in the criminal case failed to appear before the court despite due notice. The hearing was reset to January 16, 1996, but, on the said date, complainant state prosecutor again failed to appear despite due notice to him. Just the same, the hearing was postponed to January 24, 1996. The notice of hearing was personally served on complainant state prosecutor, but on the scheduled date, he again failed to appear. Instead, the assistant provincial prosecutor entered a special appearance in the case and moved for another postponement of the hearing. Respondent judge denied the motion, and, on January 30, 1996, granted the petition for bail which he fixed at P50,000.00. Respondent judge stated in pertinent parts in his order:

> In resolving the Motion to Quash, the court in its Order dated November 13, 1995 denied said Motion finding merit however, on the question of lack of preliminary investigation and as a consequence remanded the case to the prosecutor for preliminary investigation.
>
> Pending preliminary investigation, the accused filed the instant Petition for Bail which were set for hearings on January 9, 16, and 24, 1996, during which settings the prosecution failed to appear and to adduce evidence to oppose the Petition.
>
> From the foregoing antecedent facts, it can be discerned that the accused is not yet charged in court for violation of Art. III, Section 5(b) of R.A. 7610, his case being under preliminary investigation, [but he] is behind bars.

> The issue to be resolved by the court is whether or not a Petition for Bail can be entertained by this court at this stage of the proceedings and under the attendant circumstances.
>
> The court applying Sec. 17(c) of Rule 114 as Amended by Administrative Circular No. 12-94 and adhering to applicable doctrine, resolves the issue in the affirmative.
>
> Sec. 17(c) Rule 114 provides, thus:
>
> "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."
>
> EXPLANATIONS: (Taken from the Book, entitled "Remedial Law" by O. Herrera, vol. 4, 1994 ed.)
>
> In the case of Go vs. Court of Appeals, G.R. No. 101837, Feb. 11, 1992, the court ruled, thus:
>
> "Where the accused was charged for murder without the benefit of a preliminary investigation and trial had already began over his objections, the accused remains entitled to be released on bail as a matter of right pending the preliminary investigation."
>
> "The filing of the Petition for Bail does not constitute a waiver of accused[‘s] right to preliminary investigation."
>
> WHEREFORE, premises considered, the Petition for Bail is hereby granted and the bail for the provisional liberty of the accused is hereby fixed at P50,000.00.
>
> SO ORDERED

However, on motion of complainant state prosecutor, respondent judge set aside his order and set the petition for bail on March 4, 1996, "if only to afford the prosecution another chance to present evidence to show that the evidence of guilt is strong."

Complainant state prosecutor again failed to appear although he filed a manifestation questioning the hearing set on the ground that it was premature to consider the question of bail as there was a pending "reinvestigation" of the case before the provincial prosecutor’s office. On May 9, 1996, respondent judge issued an order granting bail to the accused in the increased amount of P100,000.00. His order stated:

> Any person in custody who is not yet charge[d] in court may apply for bail with any [court] in the province, city, or municipality where [he] is held. (Remedial Law by O. Herrera, Vol. 4, 1994 edition).
>
> In the case at bench, it can be said that the accused is not yet charge[d] in court for Violation of Art. 3, Sec. 5(B) of Republic Act 7610, this case being under preliminary investigation and/or reinvestigation.
>
> The court takes into consideration the health of the accused who is sick with diabetes and lung ailment needing medical attention.
>
> Since the case is still under preliminary investigation and/or reinvestigation, it is needless for the court to make a conclusion of facts or assessment of the prosecution’s evidence whether it is strong or not in order not to preempt the outcome of the reinvestigation. Although from a perusal of the Complaint and affidavit executed by Cecille Buenafe and the witnesses, the court could not find any allegations that said Cecille Buenafe is a minor who for money, profit, or any other consideration or due to the coercion of any adult, syndicate or group indulge[s] in sexual intercourse for a fee to be deemed a child exploited in prostitution.
>
> WHEREFORE, premises considered, the Petition for Bail is GRANTED for the temporary liberty of the accused and the same is hereby fixed at P100,000.00.
>
> SO ORDERED.

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Complainant state prosecutor filed a motion for reconsideration and a notice of appeal, both of which were denied by respondent judge. In his order, dated May 30, 1996, respondent judge ruled:

> Invoking denial of due process as a ground, the prosecution moves for the reconsideration of the May 9, 1996 Order of this court granting bail to the accused. The inaccuracy of the allegations so advanced in support of the Motion is readily emphasized by no less than the sequence of the dates of hearing with explicit order to adduce evidence to oppose the Petition for Bail as recited in detail in the questioned Order, thus, evincing the evident effort of the court towards observance of due process for both the defense and the prosecution.
>
> It is basic in law that actual hearing is not an indispensable requisite of due process, but mere opportunity to be heard would suffice. Thus:
>
> "There is no denial of due process where a party is given an opportunity to be heard and to present his case. (Development Bank of the Philippines vs. National Labor Relations Commission, 218 SCRA 183)."
>
> "It is not the denial of the right to be heard but the deprivation of the opportunity to be heard which constitutes a violation of the due process clause. (Imperial Textile Mills Inc. vs. National Labor Relations Commission, 217 SCRA 237)."
>
> Corollarily, the prosecution cannot feign ignorance of the physical condition of the accused considering his medical records, all certified copies, furnished to this court by Mr. Norberto P. Villamor, Administrative Officer IV of the Bicol Medical Center, Naga City at the instance of Atty. Romulo SJ. Tolentino, Prosecutor on Case which medical records now form part of the record of this case. It cannot be gainsaid that the production of his medical records was the necessary consequence of Atty. Tolentino's previous insistence for the hospital to produce the same. The X-ray result confirms that the accused is suffering from tuberculosis, right upper lobe. Briefly stated, the records of the case strongly rebuff the contention of the prosecution in the Motion for Reconsideration.
>
> Interlocutory orders are not appeallable in this jurisdiction. The Order granting bail subject of the instant Motion falls within the ambit of Interlocutory Order.
>
> WHEREFORE, the Motion for Reconsideration is hereby DENIED and the Notice of Appeal incorporated therein is likewise DENIED, both for LACK of MERIT.
>
> SO ORDERED.

On May 31, 1996, respondent judge approved the property bond filed by the accused and ordered his immediate release. Hence, the instant complaint.

Complainant claims that the prosecution was not given an opportunity to adduce evidence to show that the guilt of the accused was strong, and that the bail, which was fixed at P100,000.00, was 50% less than the recommended amount in the Bail Bond Guide of 1996. Complainant also claims that respondent judge acted on the petition for bail notwithstanding a pending "reinvestigation" of the case.

In its resolution of November 18, 1996, the Court required respondent judge to comment on the complaint. In addition, it ordered that a copy of the complaint furnished the Department of Justice for possible disciplinary action against complainant state prosecutor for deliberately delaying the administration of justice.

In his comment, dated January 24, 1997, respondent judge alleges:

> - This incident could have not reached this far, if State Prosecutor Romulo SJ. Tolentino cooperated and obeyed the series of Orders issued by this court requiring him to appear and adduce evidence of strong guilt, during the bail hearing.
>
> The petition for bail was filed on December 26, 1995. Said petition was set for hearing by the court on January

9, 1996 where the prosecution and the offended party, Cecile Buenafe, were personally served with subpoenas. The prosecutor and the offended party failed to appear in this scheduled bail hearing. The court in its Order on January 9, 1996, reset the bail hearing to January 16, 1996 and ordered the prosecution to adduce evidence of strong guilt. The bail hearing was again reset to January 24, 1996, and State Prosecutor Romulo SJ. Tolentino was again ordered to adduce evidence of strong guilt, a copy of the Order was personally served upon him. On [the] January 24, 1996 bail hearing, State Prosecutor Romulo SJ. Tolentino again failed to appear and adduce evidence of strong guilt and instead requested Assistant Provincial Prosecutor Victor de la Cruz to appear in his behalf and to ask for a postponement of the bail hearing. The bail hearing was again reset to March 4, 1996, by the court and subpoenas were served [on] the State Prosecutor Romulo SJ. Tolentino and the offended party Cecile Buenafe and their witnesses. [At the] March 4, 1996 bail hearing, the prosecution again failed to appear and adduce evidence of strong guilt.

From the foregoing chronology of events of the bail hearing, it is crystal clear that the prosecution was afforded reasonable notice and all the opportunities to adduce evidence of strong guilt in adherence to requirements of procedural due process.

. . . .

- The Order of this court granting and fixing the bail for the accused in the amount of P50,000.00 contained in its Order [of] January 30, 1996 was reconsidered thru his application and at the same time the court set the bail application for hearing and ordering State Prosecutor Romulo SJ. Tolentino to appear and adduce evidence which he likewise failed to comply. After all these series of failures to appear and adduce evidence, the court granted the petition for bail fixing the same in the amount of P100,000.00. State Prosecutor Tolentino contends that the P100,000.00 bail is only 50% of the recommendable amount. Your Respondent, in fixing the amount of P100,000.00 relied on Administrative Circular No. 12-94, Sec. 9 as basis, and because of the consistent failure to appear and adduce evidence of the prosecutor and make known his recommendation as to the fixing of the bail. For his repeated failure to appear and adduce evidence despite the repeated orders of this court, the Respondent should not be faulted nor punished administratively.

- A petition for bail can be entertained by the court while the preliminary investigation or re-investigation is going [on] for as long as the accused is under detention. In fact, it is advantageous for the prosecution because with one stone it is shooting two birds. It will abbreviate the proceedings in the trial on the merits that would eventually result [in] the early disposition of the case.

- Your Respondent is still human, although a judge. It being so, he is not exempted from the danger of falling into the path holes [sic] of legal error or errors just like his peers. That is why in several decisions of the Supreme Court, it was ruled, thus:

"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." (Alvarado vs. Laquindanum, 245 SCRA 501)

"A judge may not be administratively charged for mere errors of judgment in the absence of a showing of any bad faith, malice or corrupt purpose on his part." (Heirs of the Late Nasser D. Yasin vs. Felix, 250 SCRA 545)

"If respondent judge committed any error at all it was a legal error rectifiable by appeal not by administrative sanction." (State Prosecutor vs. Muro, 251 SCRA 111)

"A judge cannot be held administratively liable for an erroneous ruling on first impression, and malice cannot be inferred from his having rendered a decision rectifying an earlier impression without proof beyond doubt of a conscious and deliberate intent on his part to commit an injustice by such acts." (Castaños vs. Escaño, Jr., 251 SCRA 174)

"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." (Chin vs. Gustillo,

247 SCRA 175).

- Your Respondent acted in this case honestly and in good faith, and his actuations not tainted with graft and corruption.

Subsequently, respondent judge filed an application for optional retirement, which the Court approved on November 17, 1998. The amount of P50,000.00 was withheld from his retirement benefits pending resolution of the complaint in this case and another complaint against him in OCA-I.P.I.-96-250-RTJ.

The Office of the Court Administrator, to which the complaint in this case was referred, finds respondent judge guilty of gross ignorance of law and grave abuse of authority in granting bail without hearing, and recommends that he be fined and sternly warned. Its report states in pertinent parts:

> In the first place, respondent Judge should not have acted on the petition for bail as there is still a pending reinvestigation of the cases at the Regional State Prosecutor's Office. Secondly, in granting bail to the accused respondent violated the fundamental law of procedural due process. In doing so he acted with grave abuse of authority and in wanton disregard of established rules and jurisprudence. In Petition for admission to bail the Judge is under legal obligation to receive evidence from the prosecution with the view of determining whether the evidence of guilt is so strong as to warrant the denial of bail. For this purpose therefore a hearing must be conducted to give opportunity for the prosecution to present evidence that the guilt of the accused is so strong before resolution of the motion (Sec. 5, Rule 114, Revised Rules on Criminal Procedure).
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> . . . .
>
> While it may be argued that the granting of bail is an exercise of judicial discretion, the Court has delineated a clear guideline on the exercise thereof to thwart any abuse, in the case of Borinaga vs. Tamin, thus:
>
> "x x x (w)hile the determination of whether or not 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 x x x x (E)ven where the prosecutor refuses to adduce evidence in opposition to the application to grant and fix bail, the court may ask the prosecution such questions as would ascertain the strength of the state's evidence or judge the adequacy of the amount of bail x x x x." (Cited in Mamolo, Sr. vs. Narisma, 252 SCRA 613).
>
> Respondent Judge tried to absolve himself with the established dictum that a judge cannot be held administratively liable for every erroneous ruling or decision he renders and that no one is infallible in his judgment.
>
> Respondent Judge must not hide behind that fundamental rule for what he has violated is the basic principle of procedural due process. While the Court does not require perfection and infallibility, it reasonably expects a faithful and intelligent discharge of duty by those who are selected to fill the position of administrators of justice (Lardizabal v. Reyes, A.M. No. MTJ-94-897, 5 December 1994, 238 SCRA 640). While judges should not be disciplined for inefficiency on account merely of occasional mistakes or errors of judgment, yet it is highly imperative that they should be conversant with basic legal principles (Libarios vs. Dabalos, 199 SCRA 48). A judge is called upon to exhibit more than just a cursory acquaintance with the statutes and procedural rules. He is required to continuously study the law and jurisprudence. For it is in the Judge's industry in keeping abreast with the recent law and court rulings that the faith of the people in the administration of justice will be restored since the litigants will be confidently and invariably assured that the occupants of the bench are in full grasp of legal principles.

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> As to the amount of bail which is allegedly 50% less of the recommendable amount, it is noted that the information filed is for violation of Section 5 of R.A. 7610. Under Justice Department Circular No. 4, RE: The 1996 Bailbond Guide, which became effective [on] 1 February 1996 and the law enforceable at the time the Petition for Bail was filed by the defense, the penalty for violation of Section 5 of R.A. 7610 (Law on Child Abuse), is reclusion temporal medium to reclusion perpetua and the amount of bail to be posted by the accused is P40,000.00. Hence, the amount of P100,000.00 fixed by the respondent Judge is even excessive.
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> . . . .
>
> WHEREFORE, for his failure to afford procedural due process to the prosecution in the grant of bail to the accused in Criminal Case No. T-1462, [it is hereby recommended that] respondent Judge Policarpio S. Camano, Jr. [be] found guilty of gross ignorance of the law and grave abuse of authority, and be FINED P20,000.00 payable within thirty days from notice with a STERN WARNING that a commission of the same act or offense will be dealt with more severely.

We find the complaint in this case to be without any basis.

First. Art. III, §13 of the Constitution provides that, before conviction, all persons shall be allowed bail, except those charged with offenses punishable by reclusion perpetua (or higher) when the evidence of guilt is strong. On the other hand, Rule 114, §4 of the Revised Rule on Criminal Procedure, provides that "all persons in custody shall, before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment, be admitted to bail as a matter of right." Thus, when the charge against an accused is for an offense punishable by death, reclusion perpetua, or life imprisonment, there must be a hearing with the participation of the prosecution and the defense, in order to determine whether the evidence of guilt against the accused is strong, and ultimately to determine whether he should be granted bail. The burden of proof is on the prosecution to show that the evidence meets the required quantum. For this purpose, the prosecution must be given an opportunity to present within a reasonable time all evidence that it may want to adduce before the court. The State has a right to due process as much as the accused. And even if the prosecutor refuses to adduce evidence in opposition to the motion for bail, the court must nevertheless endeavor to ascertain the strength of the State’s evidence in order to determine whether bail should be granted.[1]

In this case, however, it was not necessary to hold a hearing so that the prosecution could show that evidence of the guilt of the accused was strong, because a preliminary investigation had been ordered by the court. At that point, bail was still a matter of right. Thus, in Go v. Court of Appeals,[2] it was held that an accused, who was charged in court with murder without the benefit of a preliminary investigation, was entitled to be released on bail as a matter of right pending the preliminary investigation, reserving to the prosecutor, after the preliminary investigation, the right to ask the trial court for the cancellation of the bail should he believe the evidence of guilt of the accused to be strong. It would then be up to the trial court to grant or deny the motion for cancellation of bail after considering the evidence on record. Indeed, if the propriety of charging the accused was yet to be resolved in the preliminary investigation, it cannot be claimed that the evidence of guilt of the accused was strong so as to justify the denial of bail to him.

Be that as it may, respondent judge set the hearing on the bail petition at least four times: on January 9, 1996, January 16, 1996, January 24, 1996, and March 4, 1996, in order to allow complainant prosecutor present his evidence, because the accused was charged with having "sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse." Under §5(b) of R.A. No. 7610, the penalty for such an offense is reclusion temporal in its medium period to reclusion perpetua. But complainant failed to present his evidence. It thus appears that it was the complainant prosecutor who was remiss in the performance of his duties. Respondent judge should not have granted bail based simply on the failure of the prosecution to prove that the

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evidence of guilt of the accused was strong but should have endeavored to determine the existence of such evidence. Considering, however, the fact that the case was referred to the Office of the Provincial Prosecutor for preliminary investigation, the accused could be considered entitled to bail as a matter of right.

Second. As to the allegation that the amount of bail required by respondent judge is 50% less than the amount recommended in the 1996 Bailbond Guide of the Department of Justice, the Office of the Court Administrator correctly finds that the amount of the bail under the Bailbond Guide is P40,000.00 only, so that, in requiring the accused to post bail in the amount of P100,000.00, respondent judge exceeded the limits. It appears, however, that respondent judge was led to his error by the prosecutor who moved for a reconsideration of respondent judge's order originally fixing the amount of bail at P50,000.00. At all events, the remedy was for either the accused or the prosecution to ask for a reduction of the amount of bail. Not all errors of a judge can be the subject of disciplinary action, but only those tainted by fraud, dishonesty, corruption or malice, of which none has been shown in this case.

WHEREFORE, finding no merit in the instant complaint, the same is hereby DISMISSED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] See Borinaga v. Tamin, 226 SCRA 206 (1993); Herras Teehankee v. Director of Prisons, 76 Phil. 756 (1946).

[2] 206 SCRA 138 (1992).

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