

ARIEL Y. PANGANIBAN, COMPLAINANT, VS. JUDGE MA. VICTORIA N. CUPIN-TESORERO, PRESIDING JUDGE, SECOND MUNICIPAL CIRCUIT TRIAL COURT, SILANG-AMADEO, CAVITE, RESPONDENT.

A.M. No. MTJ-02-1454. August 27, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint against Judge Ma. Victoria N. Cupin-Tesorero, Presiding Judge of the Second Municipal Circuit Trial Court, Silang-Amadeo, Cavite, for gross ignorance of the law, grave misconduct, and conduct prejudicial to the best interest of the service in connection with her grant of bail to Jayson Toledo Marte, the accused in Crim. Case No. TG-3266-00 for rape.

The facts are undisputed:

On July 26, 1999, Maricel Toledo-Panganiban, wife of complainant Ariel Panganiban, filed a complaint against Jayson Toledo Marte for violation of R.A. No. 7610 for allegedly inserting his finger into the private parts of Peewai Panganiban, their two-year old minor daughter.[1] The said criminal complaint was filed with the Second Municipal Circuit Trial Court of Silang-Amadeo, Cavite for preliminary examination by respondent Judge Ma. Victoria N. Cupin-Tesorero. Respondent judge issued an order, dated August 9, 1999, finding probable cause for the continued detention of the accused Jayson Marte for violation of R.A. No. 7610.[2]

After conducting a preliminary investigation, respondent judge issued a resolution, dated October 27, 1999, finding probable cause for the filing of criminal charges against the accused Jayson Marte for violation of Art. 266-A, par. 2 of the Revised Penal Code, as amended by R.A. No. 8353, otherwise known as the Anti-Rape Law of 1997. She recommended bail of P120,000.00 for the provisional liberty of the accused and ordered the transmittal of the entire records of the case to the Office of the Provincial Prosecutor in Cavite City.[3] Hence, on November 17, 1999, the records of the said case were forwarded to the Provincial Prosecutor of Cavite for appropriate action.[4]

On January 6, 2000, an information was filed against the accused Jayson Marte for rape in violation of Art. 266-A of the Revised Penal Code, as amended by R.A. No. 8353 in relation to R.A. No. 7610, before the Regional Trial Court, Branch 18, Cavite City. No bail was recommended for the provisional liberty of the accused.[5]

The present administrative complaint alleges that on February 26, 2000, despite the fact that an information had already been filed against the accused Jayson Marte in the RTC and no bail had been recommended for his provisional liberty, respondent judge nevertheless issued an order approving the bail bond of Jayson Marte in the amount of P120,000.00 and directing the provincial jail warden of Trece Martirez City to cause his release from custody.[6] Complainant alleges that, in so doing, respondent judge committed grave misconduct, conduct grossly prejudicial to the best interest of the service, dishonesty, and violation of R.A. No. 3019.[7]

In her comment, dated July 10, 2000, respondent judge does not deny that she issued the questioned order. She

states, however, that after the accused Marte was released on bail as a result of her February 26, 2000 order, the Hon. Alfonso S. Garcia, the Presiding Judge of the RTC, Branch 18, Tagaytay City, issued an order directing her to explain why she approved the said bail and ordered the release of the accused considering that she no longer had jurisdiction over the case[8] and that Judge Garcia had cancelled the bail bond, previously approved, of the accused Jayson Marte and had ordered the accused to be remanded to the custody of the provincial jail warden of Cavite City.[9]

Respondent judge maintains that her grant of bail to Jayson Marte was proper because he was charged with a non-capital offense as the penalty for rape committed under Art. 266-A, par. 2, in relation to Art. 266-B, of the Revised Penal Code, as amended by R.A. No. 8353, was only prision mayor. Thus, respondent judge claims that the accused Jayson Marte is entitled to bail as a matter of right. She alleges that the Office of the Provincial Prosecutor and the Presiding Judge of the Regional Trial Court, Branch 18, Tagaytay City violated the constitutional rights of the accused Jayson Marte as the information against him failed to specify which particular provision of R.A. No. 8353 was violated by him and no bail was recommended for his provisional liberty. Respondent judge likewise relies on Rule 114, §17 of the Revised Rules of Criminal Procedure in support of her position that she had authority to issue an order granting bail even though a case has already been filed in court considering that the judge was unavailable at that time or was unable to act on the request. She says that she was the only judge present on February 26, 2000, a Saturday, when Melito Cuadra, the process server of the Regional Trial Court, Tagaytay City, came to her for the approval of the accused Jayson Marte's bail bond. She claims that Melito Cuadra represented to her that Judge Garcia, Presiding Judge of the RTC, Branch 18, Tagaytay City, was absent and that she was the only judge who could approve the bail bond. She disclaims knowledge of the fact that, at the time she issued her order granting bail to the accused Jayson Marte, the information filed by the Office of the Provincial Prosecutor made no recommendation for bail. She pleads good faith in approving the bail bond in question.[10]

For his part, Melito Cuadra, process server of the RTC, Branch 18, Tagaytay City, executed an affidavit admitting that he approached respondent judge on February 26, 2000 to seek the approval of a bail bond involving a case filed in RTC, Branch 18, Tagaytay City. However, he claimed that he did so at the instance of a bondsman who requested his assistance. He also claimed that, upon seeing the application for bail in question in the amount of P120,000.00, respondent judge remarked, "Dapat P40,000.00 lang. Sabagay, mas malaki sa akin sa 2%. Ibalik na lang ninyo sa akin sa next working day ang balanse sa aking 2%." ("It should only have been P40,000.00. In any event, my 2% is bigger. Just return to me on the next working day the remaining balance from my 2%.") Cuadra said that respondent judge never mentioned anything about any documents he was supposed to bring her nor did she inquire about any changes that may have been made in the case. He also pointed to several cases wherein respondent judge granted bail even when the judge before whom the said cases were pending were not absent.[11]

This case was referred to Executive Judge Manuel M. Mayo, RTC, Cavite City, for investigation, report, and recommendation.[12]

After due investigation, Executive Judge Manuel Mayo recommended that respondent judge be reprimanded for granting bail without authority in the following cases: (1) Jayson Marte y Toledo in Criminal Case No. TG-3266-00; (2) Joselito Borja in Criminal Case No. TG-3085-99; (3) Rodelio Guardo in Criminal Case Nos. TG-3186-99 and TG-3187-99; (4) Rodolfo Sangalang Borja in Criminal Case No. TG-3210-99; (5) Modesto Javier y Roxas in Criminal Case No. TG-3214-99; and (6) Elmer B. Daan in Criminal Case No. TG-3131-99.[13]

Respondent judge invokes Rule 114, §17(a) of the Revised Rules of Criminal Procedure[14] to justify the issuance by her on February 26, 2000 of an order approving the accused Jayson Marte's bail bond and directing his immediate release from custody. She says that Melito Cuadra, process server of the RTC of Cavite, Branch 18,

Tagaytay City, told her that the judge before whom the case of Jayson Marte was pending was unavailable on February 26, 2000, a Saturday, so that she was compelled to act on Jayson Marte's bail bond. She claims she was unaware that no bail was recommended by the Provincial Prosecutor with respect to Jayson Marte's case.

These contentions are without merit. Under Rule 114, §17(a) of the then Rules of Criminal Procedure:

SEC. 17. 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.

The case of *Cruz v. Yaneza*[15] has explained this provision in this wise:

The foregoing provision anticipates two (2) situations. First, the accused is arrested in the same province, city or municipality where his case is pending. Second, the accused is arrested in the province, city or municipality other than where his case is pending. In the first situation, the accused may file bail in the court where his 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. In the second situation, the accused has two (2) options. First, he may file bail with any regional trial court in the province, city or municipality where he was arrested. When no regional trial court judge is available, he may file bail with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein.

Jayson Marte was not arrested in a province, city, or municipality other than where his case is pending. To the contrary, it appears that the accused Jayson Marte, a resident of Silang, Cavite,[16] was detained at the Municipal Jail of Silang, Cavite[17] and later transferred to the Cavite Provincial Jail, Trece Martires City.[18] He was thus arrested in the province of Cavite and detained there. At the time of the issuance of respondent judge's order to release him on bail, his case was pending before the Regional Trial Court of Cavite, Branch 18, Tagaytay City. Applying Rule 114, §17 (a) to the foregoing circumstances, the accused Jayson Marte could file a petition for bail only in the court where his case is pending, that is, in Branch 18 of the RTC of Cavite, or with another branch of the same court within the province or city, that is, with any other branch of the RTC of Cavite. Certainly, the said provision does not allow the accused to apply for bail before a municipal circuit trial court judge. Hence, respondent judge did not have authority to issue an order approving the bail bond of Jayson Marte. Respondent judge's reliance on Rule 114, §17(a) is clearly misplaced.

More importantly, however, is the fact that respondent judge had already lost her jurisdiction over the case of the accused Jayson Marte. At the conclusion of the preliminary investigation and after she had recommended the filing of the corresponding information against Jayson Marte and had forwarded the records of the case to the Provincial Prosecutor, her court had lost its preliminary jurisdiction over the said case.[19] Having been divested of her jurisdiction over the said case, respondent judge no longer had authority to issue any order or directive in connection therewith, specially such as would involve the liberty of the accused. The case of Jayson Marte had been filed with the Regional Trial Court of Cavite. Indeed, respondent judge even admitted that she was aware that an information had already been filed against the accused Jayson Marte. Whether or not she also knew that no bail had been recommended by the Provincial Prosecutor is irrelevant. The fact remains that she had lost her jurisdiction over the said case and, hence, any matter that required resolution in the said case had come within the exclusive domain of the RTC.

Respondent judge claims good faith in issuing her February 26, 2000 order and makes much of the fact that she is a relatively new judge who was appointed to her position only in December 1998. This plea is likewise

unavailing. It bears emphasis that a judge, as an advocate of justice and a visible representation of the law, is expected to keep abreast with and be proficient in the interpretation of our laws. A judge should exhibit more than a cursory acquaintance with the basic legal norms and precepts as well as with statutes and procedural rules. Having accepted her exalted position as a member of the judiciary, respondent judge owes it to the public and to the court over which she presides to maintain professional competence at all times and to have the basic rules at the palm of her hands.[20] In the case at bar, respondent judge failed to live up to these standards. Not only did she approve the bail bond of the accused without the requisite authority to do so, but her manner of doing so shows a flagrant disregard for the very laws that she had sworn to uphold and serve.

First, it appears that no application for bail was in fact made by the accused Jayson Marte before respondent judge. Respondent judge herself admitted that it was only Melito Cuadra, the process server of the court where the accused Jayson Marte's case was pending, who saw her on that day, seeking approval of the bail bond posted by the said accused. She also admitted that she merely relied on Cuadra's representations that no other judge was in court to act on the bail petition. She did not inquire whether or not bail was in fact recommended by the Provincial Prosecutor for the provisional liberty of the accused, which, as it turned out, he did not.

Second, respondent judge did not give notice to the prosecutor of such request to approve the bail bond of the accused Jayson Marte, in violation of Rule 114, §18 which provides that "the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation." Whether bail is a matter of right or a matter of discretion, the prosecutor must be given reasonable notice of the hearing or he must be asked to submit his recommendation before the judge may grant an application for bail.[21]

Third, respondent judge did not conduct a hearing to afford the prosecution an opportunity to present its side. Jayson Marte was accused of rape, in violation of Article 266-A of the Revised Penal Code, as amended, in relation to R.A. No. 7610, a crime punishable by reclusion perpetua to death, which is not a bailable offense. Respondent judge should thus have conducted a hearing, whether summary or otherwise, to give the prosecution the chance to prove that the evidence of guilt against the accused is strong.[22] This she did not do. Instead, she approved the bail bond of the accused on the same day that she was approached by Melito Cuadra to do the same.

Respondent judge contends, however, that the accused Jayson Marte was entitled to bail as a matter of right because he was being charged with a non-capital offense as the penalty for rape committed under Art. 266-A, par. 2, in relation to Art. 266-B, of the Revised Penal Code, as amended by R.A. No. 8353, was only prision mayor. Suffice it to say that a municipal judge conducting the preliminary investigation has no legal authority to determine the character of the crime and, regardless of his belief as to the nature of the offense committed, his only duty after conducting the preliminary investigation is to transmit to the Provincial Prosecutor his resolution of the case together with the entire records of the same.[23] Jayson Marte was accused of rape by the Provincial Prosecutor. Although she was the one who conducted the preliminary investigation, respondent judge was not authorized to change the designation of the offense charged against him in order to justify her grant of bail in his favor.[24] The rationale for this is simple. After the preliminary investigation by the municipal judge, it could very well happen that the prosecution may have gathered such other evidence, in addition to or in connection with that which he already has, which, when taken together, are sufficiently strong to prove the guilt of the accused of a capital offense.[25] The fact remains that, in the case of the accused Jayson Marte, he was accused of a capital offense and no bail was recommended for his provisional liberty.

Fourth, respondent judge granted bail and ordered the release of the accused in several cases pending before the RTC of Cavite, Branch 18, Tagaytay City, namely: (1) Joselito Borja in Criminal Case No. TG-3085-99; (2) Rodelio Guardo in Criminal Case Nos. TG-3186-99 and TG-3187-99; (3) Rodolfo Sangalang Borja in Criminal Case No. TG-3210-99; (4) Modesto Javier y Roxas in Criminal Case No. TG-3214-99; and (5) Elmer B. Daan in

Criminal Case No. TG-3131-99.[26]

These circumstances belie respondent judge's protestations of good faith. It is an imperative for a judge to remain conversant with basic legal principles, and errors on this score deserve administrative sanction.[27] A judge presiding over a court of law must not only apply the law but must also live by it and render justice without resorting to shortcuts clearly uncalled for. A judge, by the very nature of his office, should be circumspect in the performance of his duties. He should not only apply the law, but must also be conscientious and thorough in doing so.[28] Respondent judge has certainly been remiss in performing her duties in accordance with these precepts.

With respect to the charge of Melito Cuadra that respondent judge had a pecuniary interest in granting bail in favor of the accused Jayson Marte, this Court cannot lend credence to the same. Although Melito Cuadra executed a sworn statement before Investigating Judge Manuel A. Mayo on July 18, 2002, he never appeared at the trial nor was he subjected to cross-examination by the counsel for respondent judge. Thus, his affidavit can only be considered hearsay which cannot be given probative value.[29] Indeed, the counsel for complainant simply dispensed with Cuadra's testimony when he failed to attend the hearings conducted before the Investigating Judge despite due notice to him.

On the question of penalty to be imposed on respondent judge, in *Depaymaylo v. Brotarlo*,[30] this Court imposed a P20,000.00 fine on an erring judge for her manifest partiality in granting bail in favor of the accused without authority to do so, adamant refusal to grant the prosecution time to study its case, haste in holding the hearing without observing the proper procedure, and her attempt to downgrade the charge against the accused to justify her grant of bail. Similarly, in *Sule v. Biteng*,[31] this Court also fined the respondent judge therein in the amount of P20,000.00 for gross ignorance of the law in granting a petition for bail on the very day it was filed even though the petition contained no notice of hearing to the prosecution. In view of the gravity of the procedural lapses committed by respondent judge in hastily granting bail in favor of the accused, even those charged with capital offenses, we find the same penalty to be appropriate under the circumstances pertaining to this case.

WHEREFORE, respondent Judge Ma. Victoria N. Cupin-Tesorero, of the Second Municipal Circuit Trial Court, Silang-Amadeo, Cavite, is hereby found GUILTY of gross ignorance of the law and conduct prejudicial to the best interest of the service and is FINED in the amount of twenty thousand pesos (P20,000.00), with warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Corona, JJ., concur.

[1] Exh. A-3; Rollo, p. 7.

[2] Exh. A-6; id., p. 15.

[3] Exh. B; id., pp. 20-21.

[4] Rollo, p. 6.

[5] Exh. C; Rollo, p. 4-5.

[6] Rollo, p. 3.

[7] Complaint-Affidavit, dated Mar. 8, 2000; Rollo, pp. 1-2.

[8] Exh. 2-FF; id., p. 68.

[9] Rollo, p. 70.

[10] Comment to the Complaint-Affidavit of Ariel Panganiban, pp. 4-17; Rollo, pp. 35-49.

[11] Rollo, pp. 75-76.

- [12] Id., p. 157.
- [13] Final Report, dated July 24, 2002, p. 22.
- [14] The 1985 Rules of Criminal Procedure was still in effect at that time as the Revised Rules of Criminal Procedure took effect only on December 1, 2000.
- [15] 304 SCRA 285, 294 (1999).
- [16] Rollo, p. 8.
- [17] Id., p. 17.
- [18] Id., p. 19.
- [19] Huggland v. Lantin, 326 SCRA 620 (2000).
- [20] Santiago v. Jovellanos, 337 SCRA 21 (2000).
- [21] Cañeda v. Alaan, A.M. No. MTJ-01-1376, Jan. 23, 2002.
- [22] Basco v. Rapatalo, 269 SCRA 220 (1997).
- [23] Balagapo, Jr. v. Duquilla, 238 SCRA 645 (1994); De Guzman v. Escalona, 97 SCRA 619 (1980); Bais v. Tugaoen, 89 SCRA 101 (1979).
- [24] Depamaylo v. Brotarlo, 265 SCRA 151 (1996).
- [25] Santos v. Ofilada, 245 SCRA 56 (1995).
- [26] Final Report, dated July 24, 2002, p. 22.
- [27] Martin v. Guerrero, 317 SCRA 166 (1999).
- [28] Beso v. Daguman, 323 SCRA 566 (2000).
- [29] People v. Esparas, 292 SCRA 332 (1998).
- [30] 265 SCRA 151 (1996).
- [31] 243 SCRA 524 (1995).

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