

LORNA M. VILLANUEVA, COMPLAINANT, VS. JUDGE APOLINARIO M. BUAYA, RESPONDENT.

A.M. No. RTJ-08-2131 (Formerly OCA IPI No. 05-2241-RTJ). November 22, 2010

Ponente: BRION, J.

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BRION, J.:

In a verified affidavit-complaint^[1] dated March 15, 2005, complainant Lorna M. Villanueva, assisted by her father Pantaleon Villanueva, charged respondent Acting Presiding Judge Apolinario M. Buaya of the Regional Trial Court (RTC), Branch 17, of Palompon, Leyte, with Gross Ignorance of the Law and Abuse of Authority.

In an affidavit-complaint executed on June 5, 2004,^[2] Villanueva accused then Vice-Mayor Constantino S. Tupa of Palompon, Leyte, (of the crime of Qualified Seduction. She later filed another complaint against the same accused for violation of Section 5, paragraph (b), Article III of Republic Act (R.A.) No. 7610 (otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act)^[3] with the Municipal Trial Court (MTC) of Palompon, Leyte.

MTC Judge Delia Noel-Bertulfo forwarded the case to the Office of the Assistant Provincial Prosecutor after finding probable cause for two counts of violation of Section 5, paragraph (b), Article III of R.A. No. 7610, allegedly committed on October 29, 2002 and December 16, 2002. Judge Noel-Bertulfo allowed Tupa to post bail in the amount of one hundred thousand pesos (P100,000.00) for each case.

On September 27, 2004, Assistant Provincial Prosecutor Prudencio O. Borgueta, Jr. issued a Joint Resolution on Review,^[4] recommending the filing of two separate informations for violation of Section 5(b) in relation with Section 31,^[5] of R.A. No. 7610 against the accused. He likewise recommended the cancellation of the bail bond of P100,000.00 (per case) posted by Tupa as, under Section 31, Article XII of R.A. No. 7610, if the offender is a public officer or employee, the penalty provided in Section 5, Article III of R.A. No. 7610^[6] is imposed in the maximum period, i.e., reclusion perpetua. Thus, bail is not a matter of right. He also added that the cancellation of the bail bond was all the more appropriate since there was strong evidence of guilt against the accused based on Villanueva's affidavit-complaint and her material declarations during the preliminary investigation. The accused did not refute these declarations and, in fact, even admitted the alleged sexual acts in his counter-affidavit and through his statements during the clarificatory hearing.

Based on the above recommendation, the Provincial Prosecutor of Leyte filed two separate Informations^[7] for violation of Section 5 (b), Article III of R.A. No. 7610, in relation with Section 31, Article XII of the same law, against Tupa before RTC, Branch 17, of Palompon, Leyte. No bail was recommended in both cases.

Judge Eric F. Menchavez, then Presiding Judge of the RTC, Branch 17, of Palompon, Leyte, issued a warrant for the arrest of Tupa.^[8] However, the warrant was not served because Tupa went into hiding and could not be located. Meanwhile, Judge Menchavez was reassigned to the RTC in Cebu City. This led to the designation of Judge Apolinario M. Buaya as Acting Presiding Judge of the RTC, Branch 17 on December 8, 2004.

On the very same day (December 8, 2004), Tupa allegedly surrendered voluntarily to SPO2 Charito Daau of the Ormoc City Police Station and filed with the RTC, Branch 17 an Urgent Ex-Parte Motion to Grant Bail (ex-parte motion).[9] Tupa argued that the Prosecutor, in recommending the denial of bail, erred in considering the special aggravating circumstance provided in Section 31, Article XII of R.A. No. 7610 in the computation of the penalty to be used as basis in determining his right to bail. Citing *People of the Philippines v. Intermediate Appellate Court*,[10] Tupa contended that for purposes of the right to bail, the criterion to determine whether the offense charged is a capital offense is the penalty provided by the law, regardless of the attendant circumstances.

In an Order[11] issued on the same day the ex-parte motion was filed, without hearing and without notice to the prosecution, Judge Buaya granted the ex-parte motion and ordered the release of Tupa on bail.

On December 16, 2004, Villanueva moved to reconsider the order granting the ex-parte motion. She argued that an application for bail should be heard and cannot be contained in a mere ex-parte motion. Judge Buaya noted that Villanueva's motion for reconsideration was submitted by the private prosecutor without the conformity of the public prosecutor, as required under the Rules on Criminal Procedure. Without acting on the merits of the said motion, Judge Buaya issued an order allowing the accused to submit his comment or opposition within ten days; thereafter, the matter would be submitted for resolution.

Judge Buaya's differing treatment of the ex-parte motion and her motion for reconsideration apparently irked Villanueva, prompting her to file the present administrative complaint against the RTC judge. She observed the seeming bias and unfairness of Judge Buaya's orders when he granted the ex-parte motion without the required notice and hearing; on the other hand, he did not act on her motion for reconsideration because it was not in the proper form, but allowed the accused to comment on her motion.

In an Indorsement dated May 4, 2005,[12] then Court Administrator Presbitero J. Velasco, Jr. required Judge Buaya to comment on the administrative complaint filed against him. The Court Administrator likewise required the Judge to explain why no disciplinary action should be taken against him for violation of his professional responsibility as a lawyer, pursuant to the Court's En Banc Resolution dated September 17, 2002 in A.M. No. 02-9-02-SC.[13]

Judge Buaya vehemently denied the charges against him in his Comment.[14] He argued that the crime charged against Tupa was a bailable offense; when bail is a matter of right, no hearing of the motion to grant bail is required. Thus, he stood by his order granting the accused temporary liberty, through bail, without a hearing. His assailed order, reiterated in his comment, held that a hearing would be superfluous and unnecessary given the peculiar and special circumstances attendant to the case. During the preliminary examination, the investigating judge already passed upon and fixed the amount of bail for the temporary liberty of the accused. In fact, the accused had availed of and exercised his constitutional right to bail by posting the necessary bond. In his view, the prosecution, in canceling the bail bond in its joint resolution for review, acted to the prejudice of the accused's paramount right to liberty. Judge Buaya, therefore, asked for the dismissal of the present administrative complaint for lack of merit.

Villanueva filed a Reply[15] contending that Judge Buaya's assailed order on the ex-parte motion was contrary to the Rules of Court requirement that a motion to grant bail must be set for hearing to afford the State and the prosecutor their day in court. She further accused Judge Buaya of being manifestly partial as evidenced by the two temporary restraining orders (TROs) he issued in favor of the accused in another case for quo warranto,[16] then pending before the RTC, Branch 17. She observed that the first TRO read more like a decision on the merits even though the case had not yet reached the pre-trial stage. The second TRO, on the other hand, was allegedly issued without a hearing and was antedated.

Prior to the Office of the Court Administrator's (OCA's) action on the administrative complaint, the Court of Appeals (CA), in CA-G.R. SP No. 00449,[17] rendered its decision[18] on the bail issue, granting the petition for certiorari and prohibition filed by Villanueva, thus annulling and setting aside Judge Buaya's order granting bail to Tupa. Villanueva furnished the OCA with a copy of the CA decision.

On May 9, 2008, then Court Administrator Zenaida N. Elepaño further evaluated the merits of the case and opined that the issue of whether or not bail was a matter of right in the present case is judicial in nature. She preferred not to resolve the administrative complaint based on the CA decision (which found the offense non-bailable) since the decision was not yet final and executory at that time. However, she found Judge Buaya's precipitate haste in granting the accused bail to be unjust. She reasoned out that since there was doubt on whether the offense was bailable, basic considerations of fair play should have compelled Judge Buaya, at the minimum, to consult with the prosecution and the other judge (who issued the warrant of arrest) on the reason for not recommending bail. Court Administrator Elepaño, therefore, recommended that the present administrative complaint be re-docketed as a regular administrative case and that Judge Buaya, for lack of prudence, be reprimanded, with a warning that a repetition of the same or similar acts in the future would be dealt with more severely.

By Resolution of July 9, 2008,[19] this Court required the parties to manifest, within ten days from notice, whether they were submitting the matter for resolution on the basis of the pleadings filed.

In his Manifestation,[20] Judge Buaya maintained his position that the offense at issue is a bailable offense, therefore, bail is a matter of right and a hearing is not required. He further alleged that the investigating prosecutor (who recommended that no bail should be granted to Tupa) was pressured to reverse the investigating MTC judge's recommendation for bail during the preliminary investigation stage. The prosecutor allegedly asked for a transfer of assignment from Palompon, Leyte to Tacloban, but his request was denied, prompting him to resign and work in a private bank.

As added proof of the lack of merit of the present administrative case filed against him, Judge Buaya furnished this Court with the Affidavit of Desistance and Declaration Against Interest[21] executed by Villanueva, together with the Transcript of Stenographic Notes[22] of her October 11, 2007 testimony before Presiding Judge Celso L. Mantua of the RTC, Branch 17, of Palompon, Leyte. In both documents, Villanueva retracted her accusations against Tupa and totally denied the occurrence of the alleged acts of lasciviousness committed against her by the accused. Judge Buaya alleged that Villanueva was merely used by certain political figures in their locality, and was pressured to file the criminal cases against their former vice-mayor and the present administrative case against him.

THE COURT'S RULING

As a preliminary matter, we cannot give any weight to Judge Buaya's unsubstantiated allegation that the prosecutor who had recommended bail was only pressured to make his recommendation. This allegation, aside from being unsubstantiated, is totally irrelevant to the case whose issue is the propriety of the action of the judge in granting bail ex-parte, not the action of the prosecutor in recommending that no bail be granted.

The complainant's desistance is likewise not legally significant. We reiterate the settled rule that administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his own, accept and condone what is otherwise detestable. Neither can the Court be bound by the unilateral act of the complainant in a matter relating to its disciplinary power. Desistance cannot divest the Court of its jurisdiction to investigate and decide the complaint against the respondent. Where public interest is at stake and the Court can act on the propriety and legality of the conduct of judiciary officials and employees, the Court shall act irrespective of any

intervening private arrangements between the parties.[23]

On many occasions, we have impressed upon judges that they owe it to the public and the legal profession to know the very law they are supposed to apply in a given controversy.[24] They are called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules, to be conversant with the basic law, and to maintain the desired professional competence.[25]

With the numerous cases already decided on the matter of bail, we feel justified to expect judges to diligently discharge their duties on the grant or denial of applications for bail. *Basco v. Rapatalo*[26] laid down the rules outlining the duties of a judge in case an application for bail is filed:

- (1) Notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation x x x;
- (2) Conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its discretion x x x;
- (3) Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution x x x; [and]
- (4) If the guilt of the accused is not strong, discharge the accused upon the approval of the [bail bond]. x x x
Otherwise, petition should be denied.

In the present case, Judge Buaya granted the ex-parte motion to grant bail on the same day that it was filed by the accused. He did this without the required notice and hearing. He justified his action on the ex-parte motion by arguing that the offense charged against the accused was a bailable offense; a hearing was no longer required since bail was a matter of right. Under the present Rules of Court, however, notice and hearing are required whether bail is a matter of right or discretion.[27] Likewise, jurisprudence is replete with decisions on the procedural necessity of a hearing, whether summary or otherwise, relative to the grant of bail, especially in cases involving offenses punishable by death, reclusion perpetua or life imprisonment, where bail is a matter of discretion.[28]

Judge Buaya further argued that in granting the ex-parte motion, he was merely correcting a reversible error. Believing that the offense committed was bailable in nature, he opined that when the investigating prosecutor revoked the bail already posted by the accused, the prosecutor gravely violated the accused's constitutional right to bail. Judge Buaya firmly relied on the previous order of the investigating MTC judge who, according to him, correctly fixed the amount of bail. Thus, conducting a bail hearing on the ex-parte motion was no longer necessary. Even assuming, however, that the previous order of the investigating MTC judge was correct in granting bail to the accused, reliance on a previous order granting bail does not justify the absence of a hearing in a subsequent petition for bail.[29]

The Court has always stressed the indispensable nature of a bail hearing in petitions for bail. Where bail is a matter of discretion, the grant or the denial of bail hinges on the issue of whether or not the evidence on the guilt of the accused is strong and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the judge to properly exercise this discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong.[30] 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.

In any event, whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for

the court to consider the guidelines set forth in Section 9, Rule 114 of the Rules of Court in fixing the amount of bail.[31] This Court has repeatedly held in past cases that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require the prosecution to answer questions in order to ascertain, not only the strength of the State's evidence, but also the adequacy of the amount of bail. [32]

One who accepts the exalted position of a judge owes the public and the Court the duty to maintain professional competence at all times.[33] When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge owes the public and the Court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.[34]

WHEREFORE, we find respondent Acting Presiding Judge Apolinario M. Buaya of the Regional Trial Court, Branch 17, of Palompon, Leyte, GUILTY of Gross Ignorance of the Law and Grave Abuse of Authority, and is hereby FINED Twenty Thousand Pesos (P20,000.00), with a WARNING that a repetition of the same or similar acts in the future shall merit a more serious penalty.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Rollo, pp. 2-4.

[2] Id. at 52-57.

[3] Section 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period[.]

[4] Rollo, pp. 18-19.

[5] Section 31. Common Penal Provisions. -

x x x x

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is reclusion perpetua or reclusion temporal, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is prision correccional or arresto mayor, the penalty of suspension shall also be imposed; x x x

[6] The penalty provided is reclusion temporal, in its medium period, to reclusion perpetua.

[7] Rollo, pp. 63-64.

[8] Id. at 23.

[9] Id. at 24-26.

[10] Nos. L-66939-41, January 10, 1987, 147 SCRA 219.

[11] Rollo, pp. 27-28.

[12] Id. at 84.

[13] Through this Resolution, a disciplinary proceeding as a member of the bar is impliedly instituted with the filing of an administrative case against a justice of the Sandiganbayan, Court of Appeals and Court of Tax Appeals, or a judge of a first- or second-level court. This is to avoid the duplication or unnecessary replication of actions by treating an administrative complaint filed against a member of the bench as a disciplinary proceeding against him as a lawyer by mere operation of the rule.

[14] Rollo, pp. 85-89.

[15] Id. at 99-101.

[16] Entitled Constantino S. Tupa v. Harvey Fel C. Piñon, docketed as Sp. Civil Case No. 0037-PN.

[17] Entitled Lorna Villanueva v. Hon. Apolinario Buaya, et al.

[18] Rollo, pp. 125-131.

[19] Id. at 151.

[20] Id. at 154-157.

[21] Id. at 158-159.

[22] Id. at 160-216.

[23] Rodriguez v. Eugenio, A.M. No. RTJ-06-2216 [formerly OCA IPI No. 04-2037-P], April 20, 2007, 521 SCRA 489, 497.

[24] Padua v. Molina, A.M. No. MTJ-00-1248, December 1, 2000, 346 SCRA 592, 599.

[25] Dayawon v. Badilla, A.M. No. MTJ-00-1309, September 6, 2000, 339 SCRA 702, 707.

[26] 336 Phil. 214, 237 (1997).

[27] Cañeda v. Alaan, A.M. No. MTJ-01-1376, January 23, 2002, 374 SCRA 225, 229; Comia v. Antona, A.M. No. RTJ-99-1518, August 14, 2000, 337 SCRA 656; Chin v. Gustillo, A.M. No. RTJ-94-1243, August 11, 1995, 247 SCRA 175; Te v. Perez, A.M. No. MTJ-00-1286, January 21, 2002, 374 SCRA 130; Rule 114, Sec. 18 of the 1985 Rules of Criminal Procedure, reiterated in Rule 114, Sec. 18 of the 2000 Rules of Criminal Procedure.

[28] Dericto v. Bautista, A.M. No. MTJ-99-1205, November 29, 2000, 346 SCRA 223, 227; Basco v. Rapatalo, supra note 26, at 219-220; People v. Cabral, 362 Phil. 697, 708-709 (1999).

[29] Basco v. Rapatalo, supra note 26; citing Baylon v. Sison, 313 Phil. 99 (1995); Tucay v. Domangas, 312 Phil. 135 (1995).

[30] Marzan-Gelacio v. Flores, A.M. No. RTJ-99-1488, June 20, 2000, 334 SCRA 1, 12, citing Aleria, Jr. v. Velez, 359 Phil. 141 (1998); Basco v. Rapatalo, supra note 26; Almeron v. Sardido, 346 Phil. 424 (1997).

[31] Sec. 9. Amount of bail; guidelines. - The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:

- (a) Financial liability of the accused to give bail;
- (b) Nature and circumstance of the offense;
- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;
- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;
- (i) The fact that the accused was a fugitive from justice when arrested; and
- (j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required.

[32] Baylon v. Sison, A.M. No. 92-7-360-0, April 6, 1995, 243 SCRA 284; Borinaga v. Tamin, A.M. No. RTJ-93-936, September 10, 1993, 226 SCRA 206, 216; Santos v. Ofilada, A.M. RTJ-94-1217, June 16, 1995, 245 SCRA 56; Aguirre v. Belmonte, A.M. No. RTJ-93-1052, October 27, 1994, 237 SCRA 778.

[33] Gozun v. Liangco, 393 Phil. 669, 681 (2000).

[34] Dela Paz v. Adiong, A.M. No. RTJ-04-1857, November 23, 2004, 443 SCRA 480, citing Mutilan v. Adiong, 433 Phil. 25, 32-33 (2002).

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