

**ALBINA BORINAGA, COMPLAINANT, VS. JUDGE CAMILO E. TAMIN,
REGIONAL TRIAL COURT, BRANCH 23, MOLAVE, ZAMBOANGA DEL
SUR, RESPONDENT.**

A.M. No. RTJ-93-936. September 10, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

In a sworn letter-complaint[1] dated November 20, 1992 filed by Albina Borinaga, herein respondent Judge Camilo E. Tamin of the Regional Trial Court of Molave, Zamboanga del Sur, Branch 23, was charged with grave incompetence and ignorance of the law in connection with Criminal Case No. 92-10-300 for murder, entitled “People vs. Antonio Ruaya, et al.,” which is now pending before said court.

On January 26, 1993, this Court required respondent judge to file his comment and, upon receipt thereof, the matter was referred to the Office of the Court Administrator for evaluation, report and recommendation. On July 28, 1993, Deputy Court Administrator Juanito A. Bernad submitted a memorandum[2] with the corresponding evaluation and recommendation, duly approved by the Court Administrator.

The records show that an amended criminal complaint for murder[3] dated March 4, 1992, for the killing of herein complainant’s husband, Regino Borinaga, was filed by the Chief of Police of Dumingag, Zamboanga del Sur against Antonio Ruaya, alias Tony Ruaya; Roberto J. Rada, alias Totoy; Edwin Rada, alias Negger; and Jojo Valenzuela before the 27th Municipal Circuit Trial Court of Dumingag-Mahayag, Zamboanga del Sur, for preliminary investigation.

It appears that while the case was pending with the said lower court, a petition for bail[4] dated March 25, 1992 was filed by one of the accused, Antonio Ruaya, before respondent Judge Camilo E. Tamin in Branch 23 of the Regional Trial Court of Molave where it was docketed as Special Civil Case No. 92-50,005. In said petition, accused Ruaya averred that he was a detention prisoner at the Municipal Jail of Dumingag, Zamboanga del Sur; that he was charged with murder; that no bail was fixed by the investigating judge who issued a warrant of arrest against him; that he had waived the second stage of the preliminary investigation, with a reservation to challenge the criminal action against him; and that the evidence of guilt against him was not strong, hence he was entitled to bail as a matter of right. Accused Ruaya prayed that the bail be fixed at P20,000.00.

In an order[5] dated March 25, 1992, respondent judge ordered the public prosecutor “to appear on March 30, 1992 at 8:30 in the morning to present evidence that the guilt of the petitioner for the crime charged (is) strong.” At the scheduled hearing, the public prosecutor failed to appear, by reason of which respondent judge issued an order[6] dated March 30, 1992, granting bail to accused Ruaya in the amount of P20,000.00 and holding that:

Under Section 13 of Article III of our Constitution it (is) provided that - “All persons, except those charged with offenses punishable by Reclusion Perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties.”

Under this provision of law, if the prosecutor fails to present evidence that the guilt of the accused is strong, then the accused would be entitled to the constitutional right to bail. No evidence have (sic) been introduced by the prosecution to prove that the guilt of the accused of the crime charged is strong. Necessarily, this court find (sic) that the accused is entitled to bail under Section 13, Article III of our Constitution.

WHEREFORE, finding that the accused has the right to bail, the provisional liberty of the accused is set at P20,000.00 bail (sic) as prayed for in the petition.

On the same day, March 30, 1992, Judge Diosdado C. Arriesgado of the 27th Municipal Circuit Trial Court of Dumingag-Mahayag, who conducted the preliminary investigation, issued a resolution recommending the filing of an information for murder against, among others, Antonio Ruaya, after said accused failed to file his counter-affidavit and other evidence in his defense. The resolution was affirmed by the Provincial Prosecutor, as a consequence of which an information for murder was later filed against all the accused with no bail recommended.

Subsequently, the public prosecutor, together with complainant's counsel, filed a "Motion to Cancel Bailbond (sic) and to Arrest the Accused," on the ground that said accused is charged with a capital offense, the evidence of guilt is strong, and no bail was recommended in the information. However, on October 7, 1992, respondent judge issued an order denying said motion without conducting a hearing thereon.

In his comment, wherein he essayed his position on the controversy and which we quote at length to demonstrate his line of thought and mode of ratiocination, respondent judge averred:

1. That on March 25, 1992, accused Antonio Ruaya filed a petition for bail with the court of respondent in SPL Civ. Case No. 40,013 (sic), a true copy of which, together with the annexes, are hereto attached as Annexes "1" to "1-I", based on the ground that the evidence of guilt is not strong.

2. That on the date of receipt of said petition, the respondent issued an order, a true copy whereof is attached as annex "2", requiring the public prosecutor to appear on March 30, 1992 at 8:30 in the morning to present evidence that the guilt of the petitioner-accused for the crime charged is strong. A copy of this order was actually received by the Office of the Public Prosecutor on March 27, 1992. The respondent also noted that the office of the Public Prosecutor was likewise served with a copy of the said petition for bail, on March 25, 1992 by the petitioner-accused;

3. That on March 30, 1992, at the hearing of the petition for bail, the Public Prosecutor did not appear. It did not also send any public prosecutor, despite the fact that the office of the Provincial Prosecutor of Zamboanga del Sur had plenty of public prosecutors. Neither was there also any request to reset the hearing of the petition for bail to another date;

4. That for failure to present any evidence of guilt against the petitioner-accused, the respondent issued his order, dated March 30, 1992, a true copy of which is hereto attached as annex "3", finding that the petitioner-accused has the constitutional right to bail, and set the bail bond for his provisional liberty at P20,000, as prayed for in the petition;

5. That on the same day, March 30, 1992, the petitioner-accused posted a cash bond of P20,000 for his provisional liberty;

6. That before proceeding further with his comment, the respondent would like first to state the following relevant facts:

6.1) That the accused Antonio Ruaya has not jump (sic) bail but has been present in court every time his case is called and is asking for a speedy hearing of the criminal charge against him;

6.2) That the only evidence against the accused Antonio Ruaya is the extra-judicial statement of his co-accused

Roberto J. Rada, alias “Totoy” who, when duly arraigned in open court with the assistance of counsel, entered a plea of not guilty;

6.3) That as the co-accused Roberto J. Rada cannot be compelled to testify in court, the prosecutor (both the public and private prosecutor) admitted in open court that the prosecution does not have any admissible evidence against the accused Antonio Ruaya;

6.4) That the co-accused Roberto J. Rada, the only witness against the accused Antonio Ruaya, is a prisoner convicted for life for the commission of robbery with homicide (a crime involving moral turpitude) in Valencia, Bukidnon, and presently serving sentence at the Davao Prison and Penal Farm, Panabo, Davao del Norte;

6.5) That the respondent is particularly wary of uncorroborated statements of prisoners, specially of those convicted for life, because it is notoriously easy to let a prisoner sign any document for a fee as low as P100;

6.6) That considering the prevailing depressed economic condition in his judicial district, the respondent has adopted as a standard for granting bail at the rate of P1,000 for every year of probable imprisonment for common crimes, except when the offenses involved kidnapping for ransom, rebellion and prohibited drugs, in which cases, the respondent set the bail bond at P10,000 for every probable years (sic) of imprisonment. The respondent has consistently adhered to this standard in other cases similarly situated, which standard is also followed by other Regional Trial Courts in the area;

6.7) That co-accused Edwin Rada, alias “Negger”, subsequently also filed a similar petition for bail which was not opposed by the prosecution, and so the respondent likewise granted bail to said accused, also in the amount of P20,000;

7. That when the petition for bail was filed by accused Ruaya with the court of the respondent, the said accused has already waived his right to the second stage of the preliminary investigation, leaving nothing further to be done by the municipal trial court but the performance of the ministerial duty to forward the case to the office of the Provincial Prosecutor with its recommendations;

8. That as alleged in the ninth paragraph of the letter-complaint, the case against the accused Ruaya was forwarded to the Office of the Provincial prosecutor on March 30, 1992, with the recommendation to file an information for murder against said accused. In other words, the case against accused Ruaya was no longer pending preliminary investigation in the municipal court on March 30, 1992, when the respondent granted bail to said accused in his order on the same day (Annex “3”);

9. That the prosecution is making much of its argument in paragraph 4 and 9 of the complaint that the respondent granted bail when the case against the accused Ruaya was “still under preliminary investigation” in the Municipal Trial Court. The prosecution was given the opportunity to put up said argument on March 30, 1992 when it was ordered by the respondent to appear and present evidence that the guilt of the accused was strong. But despite due notice, the prosecution did not appear and thereby forfeit (sic) the opportunity to invoke said argument. The failure of the prosecution to invoke the aforesaid argument at the proper opportunity given to it constitute (sic) a waiver on its part to invoke the said argument and it is legally already under estoppel to rely on the same;

10. That not only did the prosecution not file a written opposition to, or a request to postpone the hearing of the application for bail, it did not even honor the hearing of the petition with its presence, despite the fact that there are plenty of prosecutors in the office of the Provincial Prosecutor. Clearly, the prosecution was remiss (sic) in the performance of its duty and now it is asking the respondent to be punished because it (prosecution) failed to do its duty properly;

11. That it is now too late and unfair for the prosecution to invoke the argument that the respondent granted bail when the case was still under preliminary investigation in the lower court. It is too late because the

prosecution is under estoppel and has already effectively waived to invoke (sic) said argument when it chose not to appear in the hearing of the petition for bail despite due notice given to it. The said argument is clearly an afterthought and the prosecution should be the one to suffer the consequences of its own negligence and not pass the matter unfairly to the respondent. It is unfair, because after the court has conferred upon the accused the right to bail at the proper hearing with due notice, the right to bail becomes thereafter a vested constitutional right which is already beyond the power and authority of the respondent to recall unless there is a violation of the condition of the bail. The respondent, therefore, cannot recall the right already vested, even if he wants to, without violating the right of the accused to due process. The prosecution did not then give the respondent an opportunity to rule upon said argument at the proper time before the right to bail became irrevocably vested upon (sic) the accused. The actuations of the prosecution is (sic) nothing else but laying (sic) in ambush at and stabbing the respondent at the back after the prosecution neglected to perform its duty properly.

12. That contrary to the misrepresentation in paragraph 8 of the complaint, the MOTION TO CANCEL BAILBOND AND TO ARREST THE ACCUSED, dated September 22, 1992 was properly heard by the respondent on September 22, 1992, and the prosecution even submitted its MEMORANDUM, dated October 5, 1992. However, since the motion involved purely a question of law, particularly, as to whether or not, the right to bail given to an accused charged for murder, pursuant to the provisions of sections 5, 6, 7 and 8 of Rule 114 of the Rules, can still be recalled by the court after its conferral, - the respondent resolved the same in the negative under its order of October 7, 1992, and which is attached as Annex "A" to the instant complaint;

13. That judicial remedy exists to correct any error of judgment committed by the respondent;

14. That it is unkind for the counsel of the complaint (sic) to make the gratuitous, barb (sic) and snipping (sic) remark that the respondent is the counsel of the accused. Respondent vehemently denies it. The respondent only acted in accordance with what he then saw as the right and proper thing to do under the circumstances. (Italics supplied.)[7]

The 1987 Constitution provides that all persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong shall, before conviction, be bailable by sufficient sureties or be released on recognizance as may be provided by law. Corollarily, the Rules of Court, under Section 3, Rule 114 thereof, provides that all persons in custody shall, before final conviction, be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by reclusion perpetua, when evidence of guilt is strong.

As now revised in the 1985 Rules of Criminal Procedure and provided in Rule 114 thereof, the rules on availability of bail to an accused may be restated as follows:

1. Admission to bail is a matter of right at any stage of the action where the charge is not for a capital offense or is not punishable by reclusion perpetua;[8]
2. Regardless of the stage of the criminal prosecution, no bail shall be allowed if the accused is charged with a capital offense or of an offense punishable by reclusion perpetua and the evidence of guilt is strong;[9]
3. Even if a capital offense is charged and the evidence of guilt is strong, the accused may still be admitted to bail in the discretion of the court if there are strong grounds to apprehend that his continued confinement will endanger his life or result in permanent impairment of health,[10] but only before judgment in the regional trial court; and
4. No bail shall be allowed after final judgment, unless the accused has applied for probation and has not commenced to serve sentence,[11] the penalty and offense being within the purview of the probation law.

On the foregoing bases, it is evident that bail is a matter of discretion where the accused is charged with a capital offense or an offense punishable by reclusion perpetua and the evidence of guilt is strong. This precept gains added significance from the fact that the situation it envisages determines the particular court where an application for bail should be filed.

Section 14 of Rule 114 pertinently provides:

Sec. 14. 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.

(b) Whenever the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application therefor may be filed only in the particular court where the case is pending, whether for preliminary investigation, trial, or on appeal.

(c) 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. (*Italics ours.*)

Paragraph (a) allows the accused to post bail in certain specified courts, other than that where his case is pending, under the circumstances stated therein. On the other hand, paragraph (c) allows the detainee to post bail with any court in the province, city or municipality where he is held, if no complaint or information has as yet been filed against him. The situations contemplated under these two provisions of the rules clearly do not obtain in the case at bar.

In the present case, accused Ruaya, who applied for bail, was charged with murder in an amended complaint filed before the municipal circuit trial court where he was named as the mastermind, which in all probability is the reason why no bail was recommended by the investigating judge who issued the warrant of arrest against him, in addition to the fact that murder is a capital offense, punishable by reclusion perpetua. Perforce, bail in this case is a matter of discretion and the application therefor should have been filed in the court where the preliminary investigation was then pending, that is, before the Municipal Circuit Trial Court of Dumingag-Mahayag, Zamboanga del Sur, pursuant to paragraph (b), Section 14 of Rule 114 above quoted. The reason for the rule is that the court wherein the case against the accused is pending is assumed to be in a better position to pass upon the propriety and conditions for granting bail to the accused, since it is more conversant with the facts of said case and the representations of the prosecution therein. Furthermore, should the accused jump bail, the primary responsibility rests with the court where his case is pending.

Although, as alleged by respondent judge, the order granting the petition for bail was issued on the same day that the preliminary investigation was supposedly terminated in the lower court, this did not cure the infirmity which attended the issuance thereof. Of greater import is the fact that the petition for bail was filed with the regional trial court, as a so-called "special civil case," while the preliminary investigation was still pending before the municipal circuit trial court. Hence, respondent judge had no jurisdiction to entertain the same, as the situation of the accused definitely did not fall under any of those contemplated in paragraphs (a) and (c), Section 14 of Rule 114. Further, respondent judge acted without jurisdiction in taking cognizance of and eventually granting the petition for bail there having been no information filed in his court against the accused-applicant. Actually, it was only on March 30, 1992 when the records of the criminal case were forwarded by the lower court to the Office of the Provincial Prosecutor with the recommendation that an information for murder be filed against accused Ruaya.

On the other hand, even assuming *arguendo* that respondent judge had jurisdiction to hear the petition for bail, under the circumstances attendant to the case he should nonetheless be held liable for granting the same without benefit of a hearing. This requirement is so basic and fundamental that it would amount to judicial apostasy for any member of the judiciary to disclaim knowledge or awareness thereof.

It is true that at the hearing of an application for admission to bail, where admission to bail is a matter of discretion, the prosecution has the burden of showing that evidence of guilt is strong.[12] However, we have held that admission to bail as a matter of discretion presupposes the exercise thereof in accordance with law and guided by the applicable legal principles. The prosecution must first be accorded an opportunity to present evidence because by the very nature of deciding applications for bail, it is on the basis of such evidence that judicial discretion is weighed against in determining whether the guilt of the accused is strong. In other words, discretion must be exercised regularly, legally and within the confines of procedural due process, that is, after evaluation of the evidence submitted by the prosecution. Any order issued in the absence thereof is not a product of sound judicial discretion but of whim and caprice and outright arbitrariness.[13]

Accordingly, while the determination of whether or not the 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.[14] 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.[15]

Consequent to the foregoing considerations, an order granting or refusing bail must contain a summary of the evidence offered by the prosecution. On the basis thereof, the judge should then formulate his own conclusion as to whether the evidence so presented is strong enough as to indicate guilt and thereby cause the continued detention of the accused. Otherwise, the accused must be released on bail.[16]

In the case at bar, the petition for bail was granted by respondent judge on the simple reason that the prosecution failed to appear and present evidence despite due notice. Forthwith, he concludes that by reason of the failure of the prosecution to appear at the scheduled hearing, the applicant is entitled to bail as a matter of right. He aggravated this flagrant error when in his aforequoted comment, he justified his subsequent denial of the prosecution's motion for the cancellation of the bail bond and the arrest of the accused on the incredible theory that the prosecution's failure to appear was a "waiver on its part x x x and it is legally already in estoppel" to challenge the grant of bail since that right to bail "became irrevocably vested" in the accused who had thereby acquired "a vested constitutional right beyond the power and authority of the respondent to recall."

In the first place, respondent judge did not have the authority to set the petition for bail for hearing in view of the fact that he had not even acquired jurisdiction over the criminal case since the information therefor had not yet been filed in the trial court. In doing so, he acted with grave abuse of discretion and in wanton disregard of established rules and jurisprudence. Secondly, it has been held that even 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.[17] Here, the non-appearance of the prosecution at the hearing scheduled by respondent judge on March 30, 1992 was obviously justified since, to repeat, respondent had no authority to schedule and/or conduct the same.

It is at once apparent even from a cursory glance of the assailed order of respondent judge that, to say the least, there is much to be desired. It is utterly defective in form and substance; there is no recital of any evidence

presented by the prosecution, much less a conclusion therefrom or a pronouncement therein that the requisite proof of guilt of the accused is not evident. As such, the challenged order of respondent judge cannot be sustained or be given a semblance of validity.[18] Parenthetically, the “vested constitutional right” theory of respondent judge does not merit judicial review and is best disregarded.

It is apropos to repeat here what we explicated in the aforecited case of *Libarios vs. Dabalos*:

x x x Generally, a judge cannot be held liable to account or answer criminally, civilly or administratively, for an erroneous judgment or decision rendered by him in good faith. However, good faith may be negated by the circumstances on record.

In the absence of fraud, dishonesty or corruption, the acts of a judge done in his judicial capacity are not subject to disciplinary action, even though such acts may be erroneous. But, 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.

In every case, a judge should endeavor diligently to ascertain the facts and the applicable law unswayed by partisan or personal interests, public opinion or fear of criticism. Respondent judge should not have allowed himself to be swayed into issuing an order fixing bail for the temporary release of the accused charged with murder, without a hearing, which is contrary to established principles of law. A judge owes it to the public and the administration of justice to know the law he is supposed to apply to a given controversy. He is called upon to exhibit more than just a cursory acquaintance with the statutes and procedural rules. There will be faith in the administration of justice only if there be a belief on the part of litigants that the occupants of the bench cannot justly be accused of a deficiency in their grasp of legal principles. (Emphases ours.)

In resumé, what stamps this case with a unique feature and makes the actuations of respondent judge more distressing is the fact that, aside from granting bail without a hearing and denying the prosecution procedural due process, such irregularity was committed in connection with a criminal case over which respondent judge had not at that instance acquired jurisdiction. Furthermore, through that unauthorized procedure which he had adopted, respondent judge illegally granted bail not only to accused Ruaya but also to the latter’s co-accused, Edwin Rada. On these environmental facts, the sanction to be imposed on respondent judge should not be less than that which we approved in *Libarios*.

WHEREFORE, respondent Judge Camilo A. Tamin is hereby ordered to pay a fine of P20,000.00, with a stringent warning that the commission of a similar offense in the future will be dealt with more severely. This decision is without prejudice to whatever action the public prosecutor may deem appropriate with respect to Criminal Case No. 92--10-300 and Special Civil Case No. 92-50,005.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Griño-Aquino, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, Puno, and Vitug, JJ., concur.
Feliciano, J., on leave.

[1] Rollo, 2.

[2] *Ibid.*, 40.

[3] Annex 1-I, Comment; Rollo, 33.

[4] Annex 1, *id.*; *ibid.*, 15.

- [5] Annex 2, id.; ibid., 34.
- [6] Annex 3, id.; ibid., 35.
- [7] Rollo, 6-13.
- [8] Section 3.
- [9] Idem.
- [10] De la Rama vs. People's Court, 43 O.G. No. 10, 4107 (1947).
- [11] Section 21.
- [12] Section 5, Rule 114.
- [13] People vs. Nano, etc., et al., 205 SCRA 155 (1992).
- [14] Ocampo vs. Bernabe, et al., 77 Phil. 55 (1946).
- [15] People vs. San Diego, et al., 26 SCRA 522 (1968).
- [16] People vs. Nano, et al., supra.
- [17] Libarios vs. Dabalos, 199 SCRA 48 (1991).
- [18] People vs. Nano, et al., supra, Fn 15.

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