

**RE: FIRST INDORSEMENT DATED JULY 21, 1992 OF HON. FERNANDO DE LEON, CHIEF STATE PROSECUTOR, DEPARTMENT OF JUSTICE. ALICIA A. BAYLON, CITY PROSECUTOR OF DAGUPAN CITY, COMPLAINA...**

*A.M. No. 92-7-360-0. April 06, 1995*

Ponente: REGALADO, J.

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**REGALADO, J.:**

The present administrative matter was initiated by a sworn letter-request<sup>[1]</sup> of Alicia A. Baylon, City Prosecutor of Dagupan City, dated June 18, 1992, charging Judge Deodoro J. Sison, presiding judge of Branch 40, Regional Trial Court, Dagupan City, with utter disregard of judicial decorum by excessive display of interest in handling a case assigned to and then pending in his branch. The said letter was sent to Chief State Prosecutor Fernando P. de Leon of the Department of Justice who, in turn, indorsed the same to this Court for appropriate action as requested therein.

The records of this case show that on October 24, 1991, the Office of the City Prosecutor in Dagupan City filed an information for double murder against several accused which was docketed as Criminal Case No. D-10678, entitled "People of the Philippines vs. Manolo Salcedo, et al.," and thereafter raffled to respondent judge.

Subsequently, the accused filed on November 8, 1991 a petition for reinvestigation which was granted by the trial court in an order dated November 20, 1991, and the Office of the City Prosecutor was given until December 23, 1991 to resolve the same. The reinvestigation was finally concluded by the said prosecutor on March 31, 1992. A petition for review interposed therefrom by the accused was later dismissed by the Department of Justice in a resolution dated May 8, 1992.

During the pendency of the reinvestigation, however, the accused filed a petition for bail on December 21, 1991, a Saturday, and requested that it be set for hearing on December 23, 1991, the immediately following Monday. On this latter date, according to an order handed down by respondent judge on June 8, 1992<sup>[2]</sup> the prosecution filed an opposition to the petition for bail signed by Third Assistant City Prosecutor Chita Estrella D.N. Bonifacio and noted by First Assistant City Prosecutor Silverio Q. Castillo, alleging inter alia, that the information was filed on the bases of the sworn statements of several eyewitnesses to the incident which constitutes clear and strong evidence of the guilt of all the accused; that to grant the petition for bail would preempt the outcome of the reinvestigation which was then being conducted by the Office of the City Prosecutor at the instance of the accused, and also necessarily defeat the purpose of said reinvestigation; and that the accused should at least wait for the outcome of the reinvestigation, which they themselves sought, before any motion of the same import could be filed.

Nevertheless, on the very day and time specified by the accused, December 23, 1991 at 1:30 P.M., a hearing on the petition was purportedly held by the trial court. Then, reportedly on the basis of a joint counter-affidavit of the accused, an affidavit of one Oscar Villaga, a certification of entry in the police blotter, and the position paper

submitted by the accused, and allegedly because there was no objection on the part of the prosecution which was supposedly represented by Third Assistant Prosecutor Rosita Castro, the court forthwith granted bail for the provisional liberty of each accused in the amount of P40,000.00.

A motion for reconsideration of said order of December 23, 1991 was duly filed by the prosecution but the same was denied by respondent judge on January 10, 1992. In his aforesaid order of June 8, 1992 reiterating his denial of a motion for his inhibition, he maintained that he had granted bail ostensibly "after due hearing and after a careful and deliberate consideration of the pertinent affidavits and counter-affidavit, position papers and arguments advanced by the parties." Respondent judge further stated therein that the prosecution did not ask for an opportunity to show that the evidence of guilt against the accused was strong.

Significantly, the aforesaid orders of respondent judge of December 23, 1991 granting bail, and that dated January 10, 1992 denying reconsideration thereof, became the subject of a petition for certiorari filed by the prosecution and were subsequently annulled and set aside by the Court of Appeals in its judgment handed down in CA-G.R. SP No. 28384 on January 19, 1993.

In the meantime, immediately after the court had issued its order granting bail, Roberto Untalan, the private complainant in Criminal Case No. D-10678, filed with the assistance of counsel on March 11, 1992 a motion for respondent judge to inhibit himself from the case,[3] contending that such act of respondent judge "had invited our serious doubt and less expectation of (an) impartial disposition of this case," and "that the instant case had plunged (sic) into (a) network of intrigue and distrust creating thereby an animosity between us (litigants-complainants) and the judicial system represented by the Honorable Court and in the last analysis, our grievance of justice is in grave peril."

In an order dated March 25, 1991 (sic, should be 1992), respondent judge denied the motion to inhibit on the ground that during the hearing on the petition for bail, the prosecution was represented by Assistant City Prosecutor Rosita Castro who supposedly "interposed no objection to the granting of bail in the amount of P40,000.00 which she considered reasonable." He also argued therein that time was of the essence considering that all of the accused, except for one Joel Doe, had been under detention since October 21, 1991 and that the City Prosecutor had not yet terminated the reinvestigation as of December 23, 1991, hence "without determining whether the proper charge could be double homicide," he granted said bail for the provisional liberty of the accused.[4]

Private complainant moved for the reconsideration of said order contending that, aside from the court's non-observance of the three-day notice rule before the hearing, Assistant City Prosecutor Rosita Castro who happened to be present during said hearing in Branch 40 was not duly authorized to appear for and in behalf of the prosecution in Criminal Case No. D-10678 or to comment on the proceedings for bail, since she actually was sent by her office to Branch 42 to move for the postponement of another case therein.[5] Attached thereto was an affidavit to that effect by said assistant prosecutor.[6]

On June 8, 1992, in an order of respondent judge denying the motion for reconsideration and which has been earlier adverted to, he insisted that in its opposition to the petition for bail and its motion for reconsideration of the order granting bail, the prosecution never asked for an opportunity to show that the evidence of guilt against the accused was strong; that during the hearing on the petition for bail, the assistant prosecutor did not raise any objection and instead left the matter to the sound discretion of the court; that the alleged lack of due process had been cured by the filing of the motion for reconsideration and the motion to inhibit; that the motion to inhibit constituted forum shopping; and that from the narration of facts and events, the prosecution failed to convince the court that the evidence of guilt of the accused was strong.

Respondent Judge Deodoro J. Sison stands charged with the now familiar malfeasance of granting bail in a non-bailable offense without benefit of notice and hearing. Specifically, it is averred that the prosecution was not given notice of at least three days before the scheduled hearing on the petition for bail, in violation of the mandate under Section 4, Rule 15 of the Rules of Court and, worse, with two non-working days between the filing and the hearing of the petition. It is likewise contended that during the controverted hearing on December 23, 1991, the prosecution, which was not even duly represented, was not given the opportunity to prove that the evidence of guilt of the accused was strong.

Required to comment thereon, respondent judge tried to justify his assailed orders by claiming that he honestly believes that he did not commit a serious and grave abuse of discretion; that he granted the petition for bail because the assistant prosecutor present at the hearing did not interpose any objection thereto; that the prosecution never requested, either in its opposition to the petition for bail or in its motion for reconsideration of his adverse order, that it be allowed to show that the evidence of guilt against the accused was strong but, instead, submitted the incident for resolution; that the motion for reconsideration of the order granting bail was denied only after due hearing and after a careful and judicious consideration of the pertinent affidavits, counter-affidavit, position papers and arguments submitted by the parties; that the lack of previous notice was cured by the filing of the motion for reconsideration since, in the application of due process, what is sought to be safeguarded is not the lack of previous notice but the denial of the opportunity to be heard; that the claim of Assistant City Prosecutor Rosita Castro that there was no hearing held on December 23, 1991 is negated by the testimonies given in A.M. No. RTJ-92-822 by defense counsel Atty. Constante Rueca, Officer-in-Charge Gloria Beltran, Court Stenographer Tripina Tigno, and herein respondent; that a judge cannot be held administratively liable for an erroneous decision rendered in good faith; and that the filing of the complaint is pure and simple harassment.[7]

In a resolution[8] dated May 4, 1993, this Court referred the administrative matter at bar to the Office of the Court Administrator for evaluation, report and recommendation within sixty (60) days from receipt of the records of this case. However, it was only two (2) years thereafter, or on February 10, 1995 when, after repeated inquiries, the said office submitted its report and recommendation with the explanation that it had to verify whether the issue raised in the instant case is pertinent to another pending administrative case involving the same parties. It made no manifestation or submission in the interim.

The Court views with displeasure and chagrin the chronology of events which, even if true, caused the supervenience of a grossly unreasonable delay in the resolution of this simple administrative matter, to the inevitable prejudice and frustration of the offended parties and the prosecution in the criminal case involved. This is a situation which this Court has assiduously tried to avoid and obviate, since it tarnishes the judicial image, fuels suspicions and speculations, and creates an unfair climate of misperception and distrust. We shall not clutter this decision with the pointless mea culpae of the parties responsible, but this Court is not beyond expressing its profound regrets for this distressing episode and shall redouble its efforts to prevent any repetition thereof.

Nonetheless, prescinding from the regrettably lackadaisical manner with which this case was handled by the Office of the Court Administrator, we are constrained to agree with its finding that respondent judge is indeed guilty as charged, as well as its recommendation for a much belated administrative sanction to be imposed on him.

Complainant alleges that the prosecution was not given notice of the petition for bail at least three (3) days prior to the scheduled hearing thereof. It bears emphasis that the petition for bail was filed in court and a copy thereof served on the prosecution on December 21, 1991, a Saturday, and was craftily set for hearing on December 23, 1991, thereby giving the prosecution only one day, a Sunday at that, to prepare its opposition thereto. The stratagem employed by the defense which virtually deprived the prosecution of an opportunity to adequately counter the representations in its petition is too obvious to be ignored. Yet respondent judge condoned the same

and aggravated the situation by the unusual and precipitate haste with which the petition was granted by respondent judge.

On top of that, he exacerbated his disregard of settled rules of procedure by justifying his non-observance of the three-day notice rule under Section 4, Rule 15 of the Rules of Court on the theory that the petition for bail is an urgent motion and may therefore be heard on shorter notice. Such ratiocination, which espouses and reveals a distorted notion as to the true nature and conditions of the right to bail, does violence to the well-established rule of law that bail is not a matter of right and requires a hearing where the accused is charged with an offense which is punishable by death, reclusion perpetua or life imprisonment.[9] Given this contingency, respondent judge should have carefully scrutinized the validity of the petition for bail and the veracity of its allegations, rather than cavalierly considering it outright as an urgent motion.

There are two main arguments invoked and relied on by respondent judge to support and justify his grant of bail to the accused, namely, that time was of the essence, considering that the accused had been detained since October 21, 1991; and that the prosecution failed to interpose an objection to the granting of bail and to ask for an opportunity to prove the strength of the evidence of guilt against the accused.

We reject the first tenuous proposition that time was of the essence, since the ambient circumstances obtaining prior to the grant of bail could not but have cautioned respondent judge to be more circumspect in entertaining and resolving the petition therefor. First, the accused were charged with double murder, each of which is punishable by reclusion perpetua to death, hence bail is not a matter of right. Second, no bail was recommended in the information which was filed on the bases of the sworn statements of several eyewitnesses to the incident, thus constituting clear and strong evidence of the guilt of all the accused.[10] Third, at the time of the application for bail, there was still pending a reinvestigation of the case being conducted by the Office of the City Prosecutor. It must be noted that the reinvestigation was at the instance of the accused themselves, hence any resultant delay caused by the conduct thereof is naturally and logically attributable to them. And, finally, the guileful setting of the hearing of the petition for bail on December 23, 1991, when the same was filed only on December 21, 1991 which was a Saturday, readily casts doubt on the good faith in and the regularity of the procedure adopted by the defense.

On the basis of the foregoing considerations alone, and even without the further elaboration correctly advanced by complainant in representation of her office, we find no cogent reason whatsoever to justify respondent's alacrity in ordering the immediate release of the accused despite their somewhat extended confinement and, much less, could respondent's pretensions validly support a grant of bail.

Respondent judge asseverates that he honestly believes that he did not commit a serious and grave abuse of discretion. He hastens to add the handy and oft-invoked defense that he cannot be held administratively liable for an erroneous decision rendered in good faith.

Respondent should not hide behind that axiom so often resorted to, it may be now be said, to the point of abuse. 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. Moreover, the Code of Judicial Conduct requires judges to act with competence, integrity and independence and should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[11] It is true that, 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,[12] as we have hereinbefore demonstrated.

We agree that bail in this case, not being a matter of right, must be addressed to the sound discretion of

respondent judge. But this does not mean, however, a lubricious and untrammelled exercise of such discretion. 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, to wit:

"x x x 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.

"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. 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." [13]

Quintessentially, and as a matter of law, the discretion of the court, in cases involving capital offenses may be exercised only after there has been a hearing called to ascertain the weight of the evidence against the accused. Peremptorily, the discretion lies, not in determining whether or not there will be a hearing, but in appreciating and evaluating the weight of the evidence of guilt against the accused. It follows that any order issued in the absence thereof is not a product of sound judicial discretion but of whim and caprice and outright arbitrariness. [14]

This brings us to the second and main contention of respondent judge. He would want to impress upon this Court that it was incumbent upon the prosecution to seek permission from the trial court to prove that the evidence of guilt against the accused is strong, and that when it failed to do so in any of its pleadings filed with the court, respondent judge was left with no other recourse but to grant the application for bail. He likewise asserts that the prosecution failed to interpose an objection during the hearing on the petition for bail. Such arguments are deplorably specious and lamentably absurd.

The rule is explicit that when an accused is charged with a serious offense punishable with reclusion perpetua to death, such as murder, bail may be granted only after a motion for that purpose has been filed by the accused and a hearing thereon conducted by a judge to determine whether or not the prosecution's evidence of guilt is strong. 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 wish to introduce on the probable guilt of the accused, before the court resolves the motion for bail. [15]

It is accordingly settled that 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 the guilt of the accused. [16] In fact, such a summary with his evaluation of the evidence may be considered as an aspect of procedural due process for both the prosecution and the defense.

The importance of a hearing has been emphasized in not a few cases wherein this Court has ruled that even if the prosecution refuses to adduce evidence or fails to interpose an objection to the motion for bail, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions from which it may infer the strength

of the evidence of guilt, or the lack of it, against the accused.

Thus, in the aforecited case of *Borinaga vs. Tamin, etc.*,<sup>[17]</sup> it was there 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 People's evidence or judge the adequacy vel non of the amount of bail. This was reiterated in the recent case of *Aguirre, et al. vs. Belmonte, etc.*<sup>[18]</sup> where we said that the error committed by the therein respondent judge in granting bail cannot be corrected by the mere failure of the prosecution to file a motion for cancellation thereof or a clarification of his order.

In *Libarios vs. Dabalos*,<sup>[19]</sup> we emphasized that irrespective of respondent judge's opinion that the evidence of guilt against the accused is not strong, the law and settled jurisprudence demands that a hearing be conducted before bail can be fixed for the temporary release of the accused, if bail is at all justified.

Where the prosecutor does not oppose the application for bail and refuses to satisfy his burden of proof, but the court has reasons to believe that the prosecutor's attitude is not justified, as when he is evidently committing a gross error or a dereliction of duty, it has been ruled in the early case of *Herras Teehankee vs. Director of Prisons, et al.*<sup>[20]</sup> that, in the paramount interest of justice, the court must inquire from the prosecutor as to the nature of his evidence to determine whether or not it is strong, it being possible for the prosecutor to have erred in considering it weak and, therefore, in recommending bail.

Finally, in the most recent case of *Tucay vs. Domagas*<sup>[21]</sup> it was categorically stressed that although the provincial prosecutor had interposed no objection to the grant of bail to the accused, the respondent judge therein should nevertheless have set the petition for bail for hearing and diligently ascertained from the prosecution whether the latter was not really contesting the bail application. Additionally, it must be borne in mind that a hearing is also necessary for the court to take into consideration the guidelines set forth in Section 6, Rule 114 of the Rules of Court in fixing the amount of bail. Only after respondent judge has satisfied himself that these requirements have been met can he then proceed to rule on whether or not to grant bail.

The obstinate persistence of respondent judge in posturing that he did conduct a hearing on December 23, 1991 is belied by the fact that the order granting bail, the contents of which could merely be deduced after a careful perusal of the records of the case and the other orders issued by him in view of the parties' failure to present the same, leaves much to be desired. For one, it does not contain the requisite summary of the evidence presented by the parties and necessary to support the grant of bail. What appears from the records is that the petition for bail was granted on the basis merely of the joint counter-affidavit of the accused, and possibly of a witness, and the position paper of the accused. The prosecution was not even given the chance to cross-examine the accused on their counter-affidavit. Mere affidavits or recitals of their contents are not sufficient since they are mere hearsay evidence, hence they cannot legally form the basis of an order granting bail.<sup>[22]</sup>

As a final note, we take judicial cognizance of the decision of the Court of Appeals in CA-G.R. SP No. 28384, promulgated on January 19, 1993, which annulled and set aside the orders dated December 23, 1991 and January 10, 1992 issued by herein respondent judge. The disquisitions therein of said appellate court serve to further strengthen the merits of our findings and the necessity for the present administrative disciplinary proceeding.

WHEREFORE, respondent Judge Deodoro J. Sison is hereby found guilty of gross ignorance of the law and grave abuse of discretion. He is hereby ORDERED to pay a FINE of P20,000.00 with a STERN WARNING that the commission of the same or similar offense in the future will definitely be dealt with more severely. Let a copy of this decision be attached to the personal records of respondent Judge Deodoro J. Sison.

Considering that the offense involved in this administrative matter was committed way back on December 23,

1991, this judgment is immediately final and executory.

**SO ORDERED.**

Narvasa, C.J., Feliciano, Padilla, Bidin, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan, Mendoza, and Francisco, JJ., concur.

Vitug, J., concur but vote for a reduced fine of P10, 000.00.

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[1] Rollo, 4.

[2] Ibid., 19-29.

[3] Ibid., 12.

[4] Rollo, 14.

[5] Ibid., 16.

[6] Ibid., 18.

[7] Rollo, 58.

[8] Ibid., 65.

[9] Section 4, Rule 114, Rules of Court, as amended.

[10] Order of June 8, 1992, 6; Rollo, 19.

[11] Lardizabal vs. Reyes, A.M. No. MTJ-94-897, December 5, 1994.

[12] Libarios vs. Dabalos, A.M. No. RTJ-89-286, July 11, 1991, 199 SCRA 48.

[13] Borinaga vs. Tamin, etc., A.M. No. RTJ-93-936, September 10, 1993, 226 SCRA 206.

[14] People vs. Nano, etc., et al., G.R. No. 94639, January 13, 1992, 205 SCRA 155.

[15] Lardizabal vs. Reyes, supra, Fn. 11.

[16] Aguirre, et al. vs. Belmonte, etc., A.M. No. RTJ-93-1052, October 27, 1994; Carpio, et al. vs. Maglalang, etc., et al., G.R. No. 78162, April 19, 1991, 196 SCRA 41.

[17] Supra, Fn. 12.

[18] Supra, Fn. 15.

[19] Supra, Fn. 11.

[20] 76 Phil. 756 (1946).

[21] A.M. No. RTJ-95-1286, March 2, 1995.

[22] Ocampo vs. Bernabe, et al., 77 Phil. 55 (1946).

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