

TRINIDAD O. LACHICA, COMPLAINANT, VS. JUDGE ROSABELLA M. TORMIS, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 4, CEBU CITY, RESPONDENT.

A.M. No. MTJ-05-1609 [OCA-IPi No. 03-1490-MTJ]. September 20, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In an Affidavit dated October 2, 2003,[1] Trinidad O. Lachica charged Judge Rosabella M. Tormis of the Municipal Trial Court in Cities of Cebu City, Branch IV, with Abuse of Authority relative to Criminal Cases Nos. 57220-R to 57223-R.[2] Complainant alleged that since the filing of the information, accused Domugho has remained at large. Thus, the cases were ordered archived[3] but an alias warrant of arrest[4] was issued by respondent judge on January 14, 2000.

On July 2, 2003, Domugho was apprehended by PO3 Epifanio G. Sanjorjo at around 8:45 p.m. and was brought to the police station for booking and custody at 9:30 p.m.[5]

However, on July 3, 2003, at around 8:30 a.m., complainant was surprised to receive a call from the accused informing her that she was released from confinement on July 2, 2003 at 10:00 p.m. Complainant inquired from the police station if an Order of Release was issued by the court, but she was informed that the accused was released because the respondent judge called the police station and told the desk officer that the accused had posted a cash bail bond and may already be released.

Complainant checked the case records but the expediente contained no copy of the release order. It was only at 1:00 p.m. that she was shown a copy thereof. Meanwhile, the case records could not be located. It was only on 4:30 p.m. of July 3, 2003 that the same was found.

The police blotter showed no entry that an order of release was received by the police. Only a notation that the accused had put up a cash bail bond was entered therein.

Complainant also averred that it was improper for the respondent judge to receive the cash bail bond as the function belongs exclusively to the Office of the Clerk of Court. She claimed that respondent judge committed an act of impropriety when she called the police station to verbally order the release of the accused. She claimed that it was irregular that no copy of the release order was found in the expediente in the morning of July 3, 2003 considering that it was supposedly issued on July 2, 2003.

In her Comment[6] dated December 3, 2003 respondent judge denied the charges of complainant. She maintained that on July 2, 2003 at 7:00 p.m., she issued the Order of Release after the accused posted a cash bond. She claimed that the accused was released by virtue of the Order of Release and not on the basis of her alleged telephone call to the police station.

On August 2, 2004, the Court resolved to refer the case to the Executive Judge, Regional Trial Court, Cebu City for investigation, report and recommendation.[7]

The investigating judge submitted a Report[8] dated November 18, 2004 recommending that respondent judge be fined in the amount of P20,000.00 or suspended for three (3) months based on the following findings:

- The accused was arrested at 8:45 in the evening of July 2, 200[4], was booked at the Waterfront Police Station at 9:00 p.m., and released without a Release Order at 10:00 that same night.
- The arresting officer and the accused never appeared before the respondent judge on the night of July 2, 200[4], as claimed by respondent judge. The accused was arrested at 8:45 p.m., after her classes at Southwestern University. She could not have appeared before respondent judge prior to her arrest since she was in school. Had it been true that the arresting officer appeared before the judge that night, it would have been highly improbable for the arresting officer not to have asked for a copy of the Release Order.
- No one saw the Release Order on July 2, 200[4], except the respondent judge, as per testimony of the complainant and Helen Mongoya, and as shown by the police blotter, and the affidavit of the arresting officer claiming that they were reprimanded by their Chief because they released the accused without a Release Order.
- The accused was released without the Release Order, and only upon the telephone call of respondent judge.
- The Release Order was never issued on the night of July 2, 200[4]. No judge in his right mind would issue a Release Order without the record of the case, more so if the case had been "archived".
- The Release Order appeared only in the afternoon of July 3, 200[4].
- The record of the case was found by court aide, Juan Años, in the bodega of MTCC, Branch 4, together with the records of other archived cases, at about 4:30 in the afternoon of July 3, 200[4].
- Respondent judge was in Manila early morning of July 3, 200[4].
- It was physically impossible for the respondent judge to have signed the Release Order before 1:00 p.m. of July 3, 200[4], since she was in Manila. Questions may be raised whether the Receipt for the Cash Bond and the Release Order were signed by a person other than the respondent judge. As can be gleaned from the record, the signature appearing on the Receipt for the Cash Bond, the Release Order and the signature of the respondent judge on her Comment dated December 10, 2003, do not appear to be signed by the same person.
- Respondent judge authenticated the Release Order during the Investigation proper as the Release Order she issued on July 2, 2003.[9]

The Office of the Court Administrator (OCA) agreed with the findings of the investigating judge but recommended that respondent judge be suspended for three (3) months.[10]

We agree with the findings of the investigating judge and the OCA except for the recommended penalty.

During the investigation, it was established that the accused was arrested on July 2, 2003 at 8:45 p.m. and was brought directly to the Waterfront Police Station where she was booked at 9:00 p.m. At about 10:00 p.m. the accused was set free without a release order.[11]

Respondent judge, however, claimed that she issued the Order of Release on July 2, 2003 at around 7:00 p.m. after the accused and her counsel, together with the arresting officer, came to her office and posted a cash bond. It was by virtue of this order that the accused was released.

A circumspect scrutiny of the testimonies given by respondent judge reveals that she made several untruthful statements possibly with the intent to mislead the Court.

It was improbable that, as claimed by respondent judge, she issued the Order of Release on July 2, 2003 at around 7:00 p.m. considering that the accused was apprehended at 8:45 p.m. The complainant and the arresting officer, as

well as the entry in the police blotter all declared that the arrest was made at 8:45 p.m. and not earlier. Verily, respondent judge could not have issued the release order at around 7:00 p.m. as the accused has not yet been arrested at that time.

She also insisted that on July 2, 2003, the accused and her counsel, and the arresting officer went to her office and posted a bond whereupon she issued the Order of Release. However, this is belied by the testimonies of the arresting officer and the complainant who both claimed that the accused was brought directly to the police station after the arrest. We agree with the observation of the OCA that, it would be impossible for complainant or the arresting officer not to have mentioned anything regarding this incident if the same actually transpired. Likewise, as pointed out by the investigating judge, it is highly improbable for the arresting officer not to have demanded a copy of the release order if he really appeared before the respondent.

Incidentally, the arresting officer denied receiving any order of release from respondent judge on July 2, 2003. In fact, he claimed that they were reprimanded by their commanding officer for releasing from their custody the person of the accused without any accompanying court order. The following day, July 3, 2003, he went to the court to secure a copy of the said order.

Respondent judge also averred that the Order of Release was received by SP01 James Estrera, which receipt was duly noted in the police blotter. An examination of the records, however, discloses that what SPO1 Estrera received was only a copy of the Receipt of the Cash Bail Bond dated July 2, 2003 and not the Order of Release. In fact, there was no mention of a release order in the police blotter.[12]

It is also undisputed that respondent judge personally received the cash bail bond for the accused. For this act alone, respondent is already administratively liable. Section 14, Rule 114 of the Revised Rules of Criminal Procedure specifies the persons with whom a cash bail bond may be deposited, namely: the collector of internal revenue or the provincial, city or municipal treasurer. A judge is not authorized to receive the deposit of cash as bail nor should such cash be kept in his office.

The respondent judge is guilty of gross misconduct for having abused her judicial authority when she personally accepted the cash bail bond of the accused and for deliberately making untruthful statements in her comment and during the investigation of the instant administrative case with intent to mislead this Court.

The foregoing acts not only seriously undermine and adversely reflect on the honesty and integrity of respondent judge as an officer of the court; they also betray a character flaw which speaks ill of her person. Making false representations is a vice which no judge should imbibe. As the judge is the visible representation of the law, and more importantly justice, he must therefore, be the first to abide by the law and weave an example for the others to follow.[13]

In the Judiciary, moral integrity is more than a cardinal virtue, it is a necessity.[14] Respondent must bear in mind that the exacting standards of conduct demanded from judges are designed to promote public confidence in the integrity and impartiality of the judiciary.[15] When the judge himself becomes the transgressor of the law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity of the judiciary itself.[16]

Misconduct is defined as any unlawful conduct of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.[17] To justify the taking of drastic disciplinary action, as is what is sought by complainant in this case, the law requires that the error or mistake must be gross or patent, malicious, deliberate or in bad faith.[18]

It need not be overemphasized that in receiving the cash bond respondent judge ran afoul with Rule 114 of the Rules of Criminal Procedure. Indeed, in the case of *Office of the Court Administrator v. Fernandez*,^[19] the Court held that:

The rules specify the persons with whom a cash bail bond may be deposited namely: the collector of internal revenue, or the provincial, city or municipal treasurer. Section 14 of Rule 114 of the Revised Rules of Criminal Procedure (effective December 1, 2000) provides:

SEC. 14. Deposit of Cash as bail – The accused or any person acting in his behalf may deposit in cash with the nearest collector of internal revenue or provincial, city or municipal treasurer the amount of the bail fixed by the court, or recommended by the prosecutor who investigated or filed the case. Upon submission of a proper certificate of deposit and of a written undertaking showing compliance with the requirements of section 2 of this Rule, the accused shall be discharged from custody. The money deposited shall be considered as bail and applied to the payment of fine and costs while the excess, if any, shall be returned to the accused or to whoever made the deposit.

A judge is not one of those authorized to receive the deposit of cash as bail, nor should such cash be kept in the office of the judge.

Gross misconduct under Section 8(3), Rule 140 of the Revised Rules of Court, as amended, is classified as a serious offense punishable by any of the sanctions enumerated in Section 11 of the same Rule which provides that:

SEC. 11. Sanctions. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

- Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
- Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
- A fine of more than P20,000.00 but not exceeding P40,000.00.

This is not the first time that respondent judge was sanctioned by this Court. It appears that aside from this case, respondent judge has been administratively charged eight (8) other times.^[20] Of these cases three (3) have been dismissed.^[21]

On April 27, 2004 in Administrative Matter No. MTJ-00-1337,^[22] the Court found respondent guilty of improper conduct for trying to influence the course of litigation in Criminal Case No. 99796-12 and was accordingly reprimanded. She was also admonished for conduct unbecoming of a judge.

On December 17, 2004, respondent was fined in the amount of P5,000.00 in Administrative Matters Nos. 04-7-373-RTC^[23] and 04-7-374-RTC,^[24] for gross violation of Section 17, Rule 114, for having approved the bail of an accused in Criminal Cases Nos. CEB-BRL-783 and 922 pending before the RTC, Branch 60, Barili, Cebu, absent showing of unavailability of all RTC judges in Cebu City.

On March 16, 2005, respondent judge was admonished in Administrative Matter No. 04-1554-MTJ and reminded to be more circumspect in granting postponements.

Clearly, being chastised thrice has not reformed respondent. For the foregoing considerations, we find that the penalties recommended by the investigating judge and the OCA are not commensurate to respondent judge's

misconduct which is aggravated by her past misdeeds. Respondent judge's infraction merits suspension from the service for six (6) months.

WHEREFORE, Rosabella M. Tormis, Presiding Judge, Municipal Trial Court in Cities, Cebu City, Branch IV, is found GUILTY of gross misconduct and is SUSPENDED from office for six (6) months without salary and other benefits and STERNLY WARNED that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 1-4.

[2] *People v. Norma Domugho @ Rona Cantillas* for Violation of B.P. Blg. 22.

[3] Rollo, p. 5.

[4] *Id.* at 6.

[5] *Id.* at 7.

[6] *Id.* at 23-28.

[7] *Id.* at 52.

[8] *Id.* at 57-62.

[9] *Id.* at 61-62.

[10] *Id.* at 100.

[11] *Id.* at 13-17.

[12] *Id.* at 7.

[13] *Guerrero v. Deray*, A.M. No. MTJ-02-1466, 10 December 2002, 393 SCRA 591, 600.

[14] *Pascual v. Bonifacio*, A.M. No. RTJ-01-1625, 10 March 2003, 398 SCRA 695, 702.

[15] *Vedaña v. Judge Valencia*, 356 Phil. 317, 329 [1998].

[16] *Yap v. Inopiquez, Jr.*, A.M. No. MTJ-02-1431, 9 May 2003, 403 SCRA 141, 150.

[17] *Canson v. Garchitorena*, 370 Phil. 287, 306 [1999].

[18] *Fernandez v. Judge Español*, 351 Phil. 928, 935 [1998].

[19] A.M. No. MTJ-03-1511, 20 August 2004, 437 SCRA 81, 84.

[20] (1) IPI No. 01-1157-MTJ for Grave misconduct and gross ignorance of the law; (2) IPI No. 02-1289-MTJ for Dishonesty and grave misconduct; (3) IPI No. 03-1414-MTJ for Gross ignorance of the law; (4) IPI No. 03-1490-MTJ, the instant case, for Abuse of Authority; (5) A.M. No. MTJ-00-1337, for Conduct Unbecoming a Dispenser of Justice, *Navarro v. Tormis*, 27 April 2004, 428 SCRA 37; (6) IPI No. 04-1554-MTJ for Ignorance of the law, bias and partiality, oppression and violation of Art. 207, Revised Penal Code, etc.; (7) A.M. No. 04-7-373-RTC, Re: Report on the Judicial Audit Conducted in the RTC, Branch 60, Barili, Cebu, 17 December 2004, 447 SCRA 246; (8) A.M. No. 04-7-374-RTC, Re: Violation of Judge Ildefonso Suerte, RTC, Branch 60,

Barili, Cebu, of Administrative Order No. 36-2004 dated March 3, 2004, 17 December 2004, 447 SCRA 246.

[21] IPI Nos. 01-1157-MTJ; 02-1289-MTJ and 03-1414-MTJ.

[22] Navarro v. Tormis, A.M. No. MTJ-00-1337, 27 April 2004, 428 SCRA 37.

[23] Entitled Re: Report on the Judicial Audit Conducted in the RTC, Branch 60, Barili, Cebu.

[24] Entitled Re: Violation of Judge Ildefonso Suerte, RTC, Branch 60, Barili, Cebu, of Administrative Order No. 36-2004 dated March 3, 2004.

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