

HON. ALFREDO Y. CHU, COMPLAINANT, VS. JUDGE ANA MARIA I. DOLALAS, MCTC, KABASALAN-SIAY-PAYAO, ZAMBOANGA DEL SUR, RESPONDENT.*A.M. No. MTJ-93-796. August 02, 1996*

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d9e893b8a13e/>**KAPUNAN, J.:**

In a letter-complaint to the Court Administrator dated December 4, 1992, complainant Alfredo Chu, Municipal Mayor of Kabasalan, Zamboanga del Sur, charged respondent Ana Maria Dolalas, Municipal Circuit Trial Judge of Kabasalan-Siay-Payao, Zamboanga del Sur, with (a) tardiness and tolerating the habitual tardiness of court personnel resulting in the uncontrollable clogging of cases in respondent's court and (b) grave abuse of discretion in requiring bail of fifty thousand pesos (P50,000.00) each for all accused in Criminal Case No. 6255 entitled "People of the Philippines versus Yoga Guerrero, et al." for Robbery with Violence Against or Intimidation of Persons.[1]

Required by the Deputy Court Administrator to comment on the complaint, the respondent judge in a letter to the Court dated January 22, 1993 alleged that the complaint was in retaliation to an incident involving herein complainant and respondent judge which occurred on December 3, 1992. On that day, complainant barged into the respondent judge's chamber while she was conducting an investigation and angrily protested as excessive the bail required of all the accused in Criminal Case No. 6255. She claimed to have politely explained her action to complainant and even suggested that the accused file motions for reduction of bail. However, complainant refused to be appeased. This led to a heated exchange of words. Respondent judge said that in order to uphold the dignity of her court, she sternly chastised complainant for his behavior and penchant for insulting people. Thereafter, complainant left. In her comment, respondent judge affixed a joint affidavit of three witnesses to the incident, Fatima Ahmad, Generosa Vesagas and Leticia Tamparong, who corroborated her version of the incident.

Respondent judge, likewise, denied the charge of habitual tardiness. She explained that the nature of her assignments demanded flexibility in her office hours and working days considering that in addition to her regular circuit, she was also designated to hear cases coming from the municipalities of Siay, Payao, Naga, Tilay, Ipil, Tungawan and R.T. Lim. She claimed party litigants consulted with her not only on working days and during office hours but on numerous occasions, even on Saturdays and Sundays and in some instances even while she was on the road enroute to work. She also explained that the court employees, particularly the Clerk of Court and Process Server, were usually out of the office because of the nature of their work. Respondent judge believed that the P50,000.00 bail is not excessive. She justified her action by pointing out that the robbery was committed at nighttime, with violence and intimidation of persons, use of force upon property, use of water transport, bladed weapons and firearms. She asseverated that she conducted required preliminary investigation, observed that procedures required in Section 6 (b), Rule 112 of the Rules of Criminal Procedure and even dropped the charges against some of the accused after finding that there was no probable cause to warrant the charges.[2]

On February 14, 1994, by resolution of this Court, herein administrative case was referred to Executive Judge Sergio Apostol of the Regional Trial Court, Zamboanga del Sur, for investigation, report and recommendation.

In his report and recommendation dated May 18, 1994, Executive Judge Apostol recommended that the case against respondent judge be dismissed after finding the charges of tardiness and grave abuse of discretion baseless and untenable.[3]

The Office of the Court Administrator (OCA), to which the case was referred for evaluation, report and recommendation, found respondent judge not guilty of tardiness but found that she acted with grave abuse of discretion in imposing the P50,000.00 on each of the accused in Criminal Case No. 6255. In a memorandum signed by Deputy Court Administrator Juanito A. Bernad and approved by Court Administrator Ernani Cruz Paño, the OCA stated:

After a careful study of the records, we conclude that the charge of tardiness which caused the clogging of the respondent's docket cannot be established. The complainant failed to present evidence to substantiate said charge. On the other hand, the respondent Judge's case disposal for the year 1992, the year this administrative complaint was filed, is sufficient to belie the allegation that she usually arrives late in the office resulting in the clogging of her docket. Per verification with the Statistics Division, this Court, it was revealed that the respondent Judge in the year 1992 had an average case disposal of 11.25 a month.

The allegation that the respondent Judge tolerated the habitual tardiness of her personnel is likewise unsubstantiated. The investigating Judge himself failed to show in his report that the said complaint is meritorious.

After a re-evaluation of the case, we found that the charge against respondent Judge for grave abuse of discretion for imposing bail amounting to fifty thousand pesos (P50,000.00) for each of the accused in the robbery with violence and intimidation of persons to be meritorious.

Under Section 6, Rule 114 of the Revised Rules on Criminal Procedure the Judge who issued or granted the application for bail shall fix a reasonable amount of bail considering primarily, but not limited to the following guidelines:

- (a) Financial ability of the accused to give bail;
- (b) Nature and circumstances of the offense;
- (c) Penalty of the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) The weight of the evidence against the accused;
- (g) Probability of the accused appearing for trial;
- (h) Forfeiture of other bonds;
- (i) The fact that accused was a fugitive from justice when arrested; and
- (j) The pendency of other cases in which the accused is under bond.

Same provision likewise prohibits the granting of excessive bail.

For fixing the same amount of bail of fifty thousand pesos (P50,000.00) for eighteen (18) accused (Rollo, p. 213), respondent Judge violated the above-cited provision of the 1985 Rules on Criminal Procedure. If the

respondent Judge, in determining the amount of bail takes into consideration, among others, the financial ability of the accused to give bail, the character and reputation of the accused, the age and health of the accused and the pendency of other cases in which the accused is under bond, then, the bail bond fixed should not be similar for the 18 accused charged with the crime of Robbery with violence and intimidation of persons. Not all of the 18 accused are similarly situated so the above-mentioned factors have to be considered in fixing the amount of bail for their provisional liberty.

Moreover, under Ministry Circular No. 8 issued by the Department of Justice on April 29, 1985 (formerly the applicable circular is Circular No. 10 but Circular 10-A [revising Circular No. 10] provides that the Bail Bond Guide of 1981, as provided in Ministry Circular No. 36, series of 1981, as amended by Ministry Circular No. 8, series of 1985, shall be used in fixing the amount of bail for other offenses not mentioned in Circular 10-A) the bail bond fixed or recommended for the provisional release of the accused is computed at one thousand pesos (1,000.00) per year of imprisonment based on the maximum penalty imposable for the offense. The circular though addressed to prosecutors should also be observed by the courts due to its significance in the administration of criminal justice (People vs. Resterio-Andrade G.R. No. 79827, July 31, 1989, Third Division, 175 SCRA 782).

As provided for in Article 294 (5) of the Revised Penal Code the crime of Robbery with Violence against or intimidation of persons carries with it a penalty of prision correccional in its maximum period to prision mayor in its medium period. Prision correccional maximum is equivalent to 4 years, 2 months and 1 day to 6 years, while prision mayor medium is equivalent to 8 years and 1 day to 10 years. The maximum period of the said penalty is 8 years, 21 days to 10 years. Therefore, if the maximum imposable penalty for the said crime is 8 years, 21 days to 10 years the maximum amount of bail that can be imposed, based on guidelines laid down in Ministry Circular No. 8, series of 1985, is only ten thousand pesos (P10,000.00).

Though there are still other factors stated in Section 6, Rule 114 of the Revised Rules on Criminal Procedure that have to be considered in fixing the amount of bail, the bail amounting to P50,000.00 is considerably high taking into consideration P10,000.00 bail computed using the guidelines provided for by the Department of Justice.[4]

We agree with the foregoing observations of the OCA. In imposing the unreasonable excessive amount of bail on the accused, respondent judge disregarded the guidelines laid down in Section 9 (formerly Section 6), Rule 114 of the Rules of Court on Criminal Procedure. Obviously, she failed to take into consideration the penalty for the offense charged, the financial ability of the accused to give bail, the nature and circumstances of the offense charged and the weight of evidence against them. From the records, it is evident that respondent judge herself was cognizant of the facts surrounding Criminal Case No. 6255, in that, Robert Roble, one of the accused in said robbery case, is the son of Mrs. Emma Vda. de Roble who was one of the claimants and who was in actual possession of the fishpond in question. In fact, respondent judge even wrote to the chief of Police of Kabasalan, Zamboanga del Sur sometime November, 1992 asking the latter to assist Mrs. Emma Vda. de Roble in entering the fishpond in question.[5] It appears that as a consequence of the harvesting of fish from the fishpond by Emma Vda. de Roble and her workers that the case for Robbery with Violence Against or Intimidation was filed against the accused in Criminal Case No. 6255. If Mrs. Roble was a claimant of the fishpond, this fact might negate unlawful taking, which is an element of the crime charged. Therefore, the weight of evidence against the accused, which is one of the factors to be considered in the fixing of the amount of bail, should have been considered in their favor. Notably, the maximum imposable penalty for the crime charged is only 8 years and 21 days to 10 years. Following Department of Justice guidelines that the amount of bail must be computed at P1,000.00 for every year of the imposable maximum penalty, the amount of bail in the case at bar should not exceed P10,000.00. Finally, the records bear no allegations of other circumstances adverse to the accused that would warrant a higher bail bond, i.e., character and reputation of the accused, the probability of their appearing in court,

their being fugitives from justice when arrested, and pendency of other cases against them also under bond.

The aforesaid guidelines have been explained and elaborated in *Villaseñor v. Abaño*[6] wherein the Court declared that:

In the matter of bail fixing, courts perforce are to be guided at all times by the purpose for which bail is required. The definition of bail in Section 1, Rule 114, Rules of Court, gives this purpose - 'the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance.' And, in amplification thereof, Section 2 of the same rule states that the condition of the bail is that 'defendant shall answer the complaint or information in the court in which it is filed or to which it may be transferred for trial, and after conviction, if the case is appealed to the Court of First Instance upon application supported by an undertaking or bail, that he will surrender himself in execution of such judgment as the appellate court may render, or that, in case cause is to be tried anew or remanded for a new trial, he will appear in the court to which it may be remanded and submit himself to the orders and processes thereof.'

Expressions in varying language spell out in a general way the principles governing bail fixing. One is that the amount should be high enough to assure the presence of defendant when required but no higher than is reasonably calculated to fulfill this purpose. Another is that 'the good of the public as well as the rights of the accused,' and 'the need for a tie to the jurisdiction and the right to freedom from unnecessary restraint before conviction under the circumstances surrounding each particular accused,' should all be balanced in one equation.

We are not to consider solely the inability of a defendant to secure bail in a certain amount. This circumstance by itself does not make the amount excessive. For, where an accused has no means of his own, no one to bail him out, or none to turn to for premium payments, any amount fixed no matter how small would fall into the category of excessive bail; and, he 'would be entitled to be discharged on his own recognizance.'

So it is, that experience has brought forth certain guidelines in bail fixing, which may be summarized as follows: (1) ability of the accused to give bail; (2) nature of the offense; (3) penalty for the offense charged; (4) character and reputation of the accused; (5) health of the accused; (6) character and strength of the evidence; (7) probability of the accused appearing in trial; (8) forfeiture of other bonds; (9) whether the accused was a fugitive from justice when arrested; and (10) if the accused is under bond for appearance at trial in other cases.

But, at bottom, in bail fixing, 'the principal factor considered, to the determination of which most other factors are directed, is the probability of the appearance of the accused, or of his flight to avoid punishment.' Of importance then is the possible penalty that may be meted. Of course, penalty depends to a great extent upon the gravity of offense.[7]

The Department of Justice has also issued similar guidelines in its Circular No. 8 which provides, thusly:

April 29, 1985

MINISTRY CIRCULAR NO. 8

TO: ALL PROVINCIAL/CITY FISCALS, THEIR ASSISTANTS AND STATE PROSECUTORS

SUBJECT: FIXING THE AMOUNT OF BAIL

The amount of bail for various offenses as fixed in the Bail Bond Guide of 1981 which was issued pursuant to Ministry Circular No. 36, series of 1981, is no longer realistic considering that the value of the peso has undergone a marked depreciation in the past years. In most instances, the amount of bail provided in the Bail Bond Guide of 1981 has become so low that persons facing charges in court forfeit their bail by intentionally failing to appear in court when required or by jumping bail.

To give more meaning and force to the law on bail, therefore, you are hereby directed to recommend bail for the provisional release of an accused in an amount computed at One Thousand Pesos (P1,000.00) per year of imprisonment based on the maximum penalty impossible for the offense. Thus, the amount of bail in a case of homicide which is punishable by reclusion temporal (12 years and 1 day to 20 years of imprisonment) shall be P20,000.00.

In crime punishable with a penalty of less than one (1) year of imprisonment, the bail shall be computed at P100.00 per month based on the maximum of the imposable penalty.

xxx xxx xxx

Ministry Circular No. 36, series of 1981, is hereby, modified accordingly.

Sgd.

ESTELITO P. MENDOZA

Minister of Justice

Though the above-cited circular is addressed to fiscals, their assistants and state prosecutors, that same is instructive to members of the bench who are called upon by law to discharge the important function of bail fixing. In *People v. Resterio-Andrade*,^[8] we said this about another Department of Justice Circular on bail:

Although Circular No. 10 is addressed to fiscals and prosecutors, courts must not only be aware but should also consider it due to its significance in the administration of criminal justice. x x x. While technically not binding upon the courts, Circular No. 10 merits attention, being in a sense an expression of policy of the Executive Branch, through the Department of Justice, in the enforcement of criminal laws.^[9]

Indeed, discretion and latitude is given to a court called upon to rule on the question of bail. However, where conditions imposed upon an accused or defendant seeking bail are so rigid and prohibitive, i.e., when the amount of bail is excessive, as to amount to a refusal thereof, the constitutional right to bail is rendered nugatory.

Consequently, respondent judge committed grave abuse of discretion in fixing the amount of P50,000.00 each as bail for the provisional liberty of all the accused in Criminal Case No. 6255.

ACCORDINGLY, respondent judge is hereby ADMONISHED to be more careful and circumspect in the performance of her duties and is warned that the commission of a similar offense in the future will be dealt with more severely.

SO ORDERED.

Padilla (Chairman), Vitug, and Hermosisima, Jr., JJ., concur.

Bellosillo, J., is on official leave.

[1] Rollo, pp. 5-6.

[2] Id., at 29-32.

[3] Id., at 79-90.

[4] Id., at 527-528.

[5] Id., at 16.

[6] 21 SCRA 312, 317 [1967].

[7] Id., at 315-317.

[8] 175 SCRA 782, 789 [1989].

[9] Ibid.

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