

**INOCENCIO BASCO, COMPLAINANT, VS. JUDGE LEO H. RAPATALO,
REGIONAL TRIAL COURT, BRANCH 32, AGOO, LA UNION,
RESPONDENT.**

A.M. No. RTJ-96-1335. March 05, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

In a sworn letter-complaint dated August 14, 1995, complainant Inocencio Basco charged respondent Judge Leo M. Rapatalo of RTC, Branch 32, Agoo, La Union with gross ignorance or willful disregard of established rule of law for granting bail to an accused in a murder case (Criminal Case No. 2927) without receiving evidence and conducting a hearing.

Complainant, who is the father of the victim, alleged that an information for murder was filed against a certain Roger Morente, one of three accused. The accused Morente filed a petition for bail. The hearing for said petition was set for May 31, 1995 by petitioner but was not heard since the respondent Judge was then on leave. It was reset to June 8, 1995 but on said date, respondent Judge reset it to June 22, 1995. The hearing for June 22, 1995, however, did not materialize. Instead, the accused was arraigned and trial was set. Again, the petition for bail was not heard on said date as the prosecution's witnesses in connection with said petition were not notified. Another attempt was made to reset the hearing to July 17, 1995.

In the meantime, complainant allegedly saw the accused in Rosario, La Union on July 3, 1995. He later learned that the accused was out on bail despite the fact that the petition had not been heard at all. Upon investigation, complainant discovered that bail had been granted and a release order dated June 29, 1995[1] was issued on the basis of a marginal note[2] dated June 22, 1995, at the bottom of the bail petition by Assistant Prosecutor Manuel Oliva which stated: "No objection: P80,000.00," signed and approved by the assistant prosecutor and eventually by respondent Judge. Note that there was already a release order dated June 29, 1995 on the basis of the marginal note of the Assistant Prosecutor dated June 22, 1995 (when the hearing of the petition for bail was aborted and instead arraignment took place) when another hearing was scheduled for July 17, 1995.

In his comment dated October 16, 1995, respondent Judge alleged that he granted the petition based on the prosecutor's option not to oppose the petition as well as the latter's recommendation setting the bailbond in the amount of P80,000.00. He averred that when the prosecution chose not to oppose the petition for bail, he had the discretion on whether to approve it or not. He further declared that when he approved the petition, he had a right to presume that the prosecutor knew what he was doing since he was more familiar with the case, having conducted the preliminary investigation. Furthermore, the private prosecutor was not around at the time the public prosecutor recommended bail.

Respondent Judge stated that in any case, the bailbond posted by accused was cancelled and a warrant for his arrest was issued on account of complainant's motion for reconsideration. The Assistant Provincial Prosecutor apparently conformed to and approved the motion for reconsideration.[3] To date, accused is confined at the La

Union Provincial Jail.

A better understanding of bail as an aspect of criminal procedure entails appreciating its nature and purposes. "Bail" is the security required by the court and given by the accused to ensure that the accused appears before the proper court at the scheduled time and place to answer the charges brought against him or her. In theory, the only function of bail is to ensure the appearance of the defendant at the time set for trial. The sole purpose of confining the accused in jail before conviction, it has been observed, is to assure his presence at the trial.[4] In other words, if the denial of bail is authorized in capital offenses, it is only in theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the court. Hence the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of probability of evasion of the prosecution.[5] In practice, bail has also been used to prevent the release of an accused who might otherwise be dangerous to society or whom the judges might not want to release."[6]

It is in view of the abovementioned practical function of bail that it is not a matter of right in cases where the person is charged with a capital offense punishable by death, reclusion perpetua or life imprisonment. Article 114, section 7 of the Rules of Court, as amended, states, "No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment when the evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal action."

When the grant of bail is discretionary, the prosecution has the burden of showing that the evidence of guilt against the accused is strong. However, the determination of whether or not the evidence of guilt is strong, being a matter of judicial discretion, remains with the judge. "This discretion by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing. Since the discretion is directed to the weight of the evidence and since evidence cannot properly be weighed if not duly exhibited or produced before the court,[7] it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner having the right of cross examination and to introduce his own evidence in rebuttal."[8]

To be sure, the discretion of the trial court, "is not absolute nor beyond control. It must be sound, and exercised within reasonable bounds. Judicial discretion, by its very nature involves the exercise of the judge's individual opinion and the law has wisely provided that its exercise be guided by well-known rules which, while allowing the judge rational latitude for the operation of his own individual views, prevent them from getting out of control. An uncontrolled or uncontrollable discretion on the part of a judge is a misnomer. It is a fallacy. Lord Mansfield, speaking of the discretion to be exercised in granting or denying bail said: "But discretion when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful; but legal and regular."[9]

Consequently, in the application for bail of a person charged with a capital offense punishable by death, reclusion perpetua or life imprisonment, a hearing, whether summary or otherwise in the discretion of the court, must actually be conducted to determine whether or not the evidence of guilt against the accused is strong. "A summary hearing means such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of hearing which is merely to determine the weight of evidence for the purposes of bail. On such hearing, the court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted. The course of inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross examination."[10] If a party is denied the opportunity to be heard, there would be a violation of procedural due process.

That it is mandatory for the judge to require a hearing in a petition for bail is emphasized in the following cases:

(1) *People v. Sola* decided in 1981.[11] In this case seven separate information for murder were filed against the accused Sola and 18 other persons. After preliminary investigation, the municipal trial court issued warrants for their arrest. However without giving the prosecution the opportunity to prove that the evidence of guilt against the accused is strong, the court granted them the right to post bail for their temporary release. Citing *People v. San Diego*,[12] we held: "We are of the considered opinion that whether the motion for bail of a defendant 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 should resolve the motion for bail. If, as in the criminal case involved in the instant special civil action, 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."

(2) *People v. Dacudao* decided in 1989.[13] In this case, an information was filed against the accused for murder, a non-bailable offense. The judge, without conducting any hearing, granted bail on the ground that there was not enough evidence to warrant a case for murder because only affidavits of the prosecution witnesses who were allegedly not eyewitnesses to the crime were filed. We held: "Whatever the court possessed at the time it issued the questioned ruling was intended only for prima facie determining whether or not there is sufficient ground to engender a well founded belief that the crime was committed and pinpointing the persons who probably committed it. Whether or not the evidence of guilt is strong for each individual accused still has to be established unless the prosecution submits the issue on whatever it has already presented. To appreciate the strength or weakness of the evidence of guilt, the prosecution must be consulted or held. It is equally entitled to due process."

(3) *People v. Calo* decided in 1990.[14] In this case, the prosecution was scheduled to present nine witnesses at the hearings held to determine whether the evidence against the private respondents was strong. After hearing the fifth witness, the respondent judge insisted on terminating the proceedings. We held: "The prosecution in the instant case was not given adequate opportunity to prove that there is strong evidence of guilt and to present within a reasonable time all the evidence it desired to present."

(4) *Libarios v. Dabalo* decided in 1991[15] which involved an administrative complaint against the respondent judge for ignorance of the law and grave abuse of discretion. In this case, the respondent judge, without conducting any prior hearing, directed the issuance of a warrant of arrest against the accused charged with murder, fixing at the same time the bail at P50,000.00 each on the ground that the evidence against them was merely circumstantial. We held: "Where a person is accused of a capital offense, the trial court must conduct a hearing in a summary proceeding to allow the prosecution to present, within a reasonable time, all evidence it may desire to produce to prove that the evidence of guilt against the accused is strong before resolving the issue of bail for the temporary release of the accused. Failure to conduct a hearing before fixing bail in the instant case amounted to a violation of due process." The respondent judge was ordered to pay a fine of P20,000.00 and warned to exercise more care in the performance of his duties.

(5) *People v. Nano* decided in 1992.[16] In this case, the judge issued an order admitting the accused in a kidnapping and murder case to bail without any hearing. We held: "The prosecution must first be given 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."

(6) *Pico v. Combong, Jr.* decided in 1992.[17] In this administrative case, the respondent judge granted bail to an accused charged with an offense punishable by reclusion perpetua, without notice and hearing and even before the accused had been arrested or detained. We held: "It is well settled that an application for bail from a person charged with a capital offense (now an offense punishable by reclusion perpetua) must be set for

hearing at which both the defense and the prosecution must be given reasonable opportunity to prove (in case of the prosecution) that the evidence of guilt of the applicant is strong, or (in the case of the defense) that such evidence of guilt was not strong." The respondent judge was ordered to pay a fine of P20,000.00 and warned to exercise greater care and diligence in the performance of his duties.

(7) *De Guia v. Maglalang* decided in 1993,[18] the respondent judge issued a warrant of arrest and also fixed the bail of an accused charged with the non bailable offense of statutory rape without allowing the prosecution an opportunity to show that the evidence of guilt against the accused is strong. Respondent judge alleged that the only evidence on record — the sworn statements of the complaining witness and her guardian — were not sufficient to justify the denial of bail. We held: "It is an established principle that in cases where a person is accused of a capital offense, the trial court must conduct a hearing in a summary proceeding, to allow the prosecution an opportunity to present, within a reasonable time, all evidence it may desire to produce to prove that the evidence of guilt against the accused is strong, before resolving the issue of bail for the temporary release of the accused. Failure to conduct a hearing before fixing bail amounts to a violation of due process." It was noted that the warrant of arrest was returned unserved and that after the case was re-raffled to the complainant judge's sala, the warrant was set aside and cancelled. There was no evidence on record showing whether the approved bail was revoked by the complainant judge, whether the accused was apprehended or whether the accused filed an application for bail. Hence, the respondent judge was ordered to pay a fine of P5,000.00 instead of the usual P20,000.00 that the court imposes on judges who grant the application of bail without notice and hearing.

(8) *Borinaga v. Tamin* decided in 1993.[19] In this case, a complaint for murder was filed against five persons. While the preliminary investigation was pending in the Municipal Circuit Trial Court, a petition for bail was filed by one of the accused before the respondent judge in the Regional Trial Court. The respondent judge ordered the prosecutor to appear at the hearing to present evidence that the guilt of the accused is strong. At the scheduled hearing, the public prosecutor failed to appear prompting the respondent to grant the application for bail. We held: "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 evidence it may desire to introduce before the court may resolve the motion for bail." The respondent judge was fined P20,000.00 and was warned that the commission of a similar offense in the future will be dealt with more severely.

(9) *Aurillo v. Francisco* decided in 1994.[20] In this administrative case, the respondent judge issued two separate warrants of arrest against two persons charged with murder and parricide, but fixed the amount of bail for each accused without notifying the prosecution of any motion to fix bail nor of any order granting the same. Citing *People v. Dacudao*,[21] we held: "A hearing is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is weak or strong. Hence, a denial of the prosecution's request to adduce evidence, deprives it of procedural due process, a right to which it is equally entitled as the defense. A hearing is required to afford the judge a basis for determining the existence of those factors set forth under Rule 114, Sec 6." The respondent judge was ordered to pay a fine of P20,000 with a warning that the commission of the same or similar acts in the future will be dealt with more severely.

(10) *Estoya v. Abraham-Singson* decided in 1994[22] In this case, an administrative complaint was filed against the respondent judge, alleging, among others, that she granted an application for bail filed by the accused charged with murder. The grant was made over the objection of the prosecution which insisted that the evidence of guilt was strong and without allowing the prosecution to present evidence in this regard. We held: "In immediately granting bail and fixing it at only P20,000.00 for each of the accused without allowing the prosecution to present its evidence, the respondent denied the prosecution due process. This Court had said so in many cases and had imposed sanctions on judges who granted applications for bail in capital offenses and in offenses punishable by reclusion perpetua without giving the prosecution the opportunity to prove that the evidence of guilt is strong." The respondent judge was dismissed from service because the erroneous granting

of bail was just one of the offenses found to have been committed by her in the aforesaid complaint.

(11) *Aguirre v. Belmonte* decided in 1994.[23] In this administrative case the respondent judge issued warrants of arrest and, at the same time and on his own motion, authorized the provisional release on bail of the accused in two criminal cases for murder. The accused were still at large at the time the order granting bail was issued. We held: "A hearing is mandatory before bail can be granted to an accused who is charged with a capital offense." The judge was ordered to pay a fine of P25,000.00 with a warning that a repetition of the same or similar acts in the future will be dealt with more severely. He was meted a fine in a higher amount than the usual P20,000.00 because it involved two criminal cases wherein the respondent judge, "was not only the grantor of bail but likewise the applicant therefor."

(12) *Lardizabal v. Reyes* decided in 1994.[24] In this administrative case, the respondent judge issued an order directing the arrest of the accused charged with rape and, *motu proprio*, fixed the bail of the accused in the amount of P80,000.00 without application on the part of the accused to be admitted to bail. When the accused filed a motion to reduce bailbond, the respondent judge again, without any prior notice and hearing, reduced the bail to P40,000.00. We held: "The rule is explicit that when an accused is charged with a serious offense punishable by reclusion perpetua, such as rape, 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." The respondent judge was ordered to pay a fine of P20,000.00 with a warning that a repetition of similar or the same offense will be dealt with more severely.

(13) *Guillermo v. Reyes* decided in 1995[25] involving an administrative complaint against the respondent judge for granting bail to the two accused charged with serious illegal detention. When the two accused first filed a joint application for bail, the petition for bail was duly heard and the evidence offered by the accused and the prosecution in opposition thereto were properly taken into account. However, the respondent judge denied the application for bail on the ground that it was premature since the accused were not yet in custody of the law. In a subsequent order, the respondent judge, without conducting any hearing on the aforesaid application and thereby denying the prosecution an opportunity to oppose the same, granted said petition upon the voluntary appearance in court of the two accused. Respondent judge insisted that there was a hearing but the proceeding he adverted to was that which was conducted when the motion for bail was first considered and then denied for being premature. We held: "The error of the respondent judge lies in the fact that in his subsequent consideration of the application for bail, he acted affirmatively thereon without conducting another hearing and what is worse, his order concededly lacked the requisite summary or resume of the evidence presented by the parties and necessary to support the grant of bail." The respondent judge was reprimanded because despite the irregularity in the procedure adopted in the proceeding, the prosecution was undeniably afforded the benefit of notice and hearing. No erroneous appreciation of the evidence was alleged nor did the prosecution indicate its desire to introduce additional evidence in an appropriate challenge to the aforesaid grant of bail by the respondent.

(14) *Santos v. Ofilada* decided in 1995.[26] In this case, an administrative complaint was filed against the respondent judge, who, without notice and hearing to the prosecution, granted bail to an accused charged with murder and illegal possession of firearm. We held: "Where admission to bail is a matter of discretion, a hearing is mandatory before an accused can be granted bail. At the hearing, both the prosecution and the defense must be given reasonable opportunity to prove, in case of the prosecution, that the evidence of guilt of the applicant is strong, and in the case of the defense, that evidence of such guilt is not strong." The respondent judge was ordered to pay a fine of P20,000.00 with a warning that a repetition of similar acts will warrant a more severe sanction.

(15) *Sule v. Biteng* decided in 1995.[27] In this administrative case, the respondent judge, without affording the prosecution the opportunity to be heard, granted with indecent haste the petition for bail filed by the accused charged with murder because the accused "x x x voluntarily surrendered to the authorities as soon as he was informed that he was one of the suspect (sic) x x x" We held: "With his open admission that he granted bail to

the accused without giving the prosecution any opportunity to be heard, the respondent deliberately disregarded decisions of this court holding that such act amounts to a denial of due process, and made himself administratively liable for gross ignorance of the law for which appropriate sanctions may be imposed." The respondent judge was ordered to pay a fine of P20,000.00 and warned that commission of the same or similar acts in the future will be dealt with more severely.

(16) *Reymualdo Buzon, Jr. v. Judge Tirso Velasco* decided in 1996.[28] In this administrative case, the respondent judge, without hearing nor comment from the prosecution, granted bail to an accused charged with murder. Notably, no bail was recommended in the warrant of arrest. We held: "When bail is a matter of discretion, the judge is required to conduct a hearing and to give notice of such hearing to the fiscal or require him to submit his recommendation. x x x Truly, a judge would not be in a position to determine whether the prosecution's evidence is weak or strong unless a hearing is first conducted." A fine of P20,000.00 was imposed on the respondent judge with the stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

The aforecited cases are all to the effect that when bail is discretionary, a hearing, whether summary or otherwise in the discretion of the court, should first be conducted to determine the existence of strong evidence, or lack of it, against the accused to enable the judge to make an intelligent assessment of the evidence presented by the parties.

Since the determination of whether or not the evidence of guilt against the accused is strong is a matter of judicial discretion, the judge is mandated to conduct a hearing even in cases where the prosecution chooses to just file a comment or leave the application for bail to the discretion of the court. Hence:

(1) In the case of *Gimeno v. Arcueno, Sr.*, [29] an administrative complaint was filed against the respondent judge for granting bail to one of the accused in a robbery with homicide case without affording the prosecution a chance to be heard. The respondent judge explained that he issued an order for the motion to fix bail but the public prosecutor filed a comment instead which respondent judge thought was adequate compliance with law. Respondent added that the evidence of guilt of the accused, as disclosed by the records, was not so strong as to deny the application for bail. In fact, the accused who filed for bail, together with three others, were later dropped by the Office of the Provincial Prosecutor from the information for failure of the witnesses to positively identify them. We held: "The grant of bail is a matter of right except in cases involving capital offenses when the matter is left to the sound discretion of the court. That discretion lies, not in the determination whether or not a hearing should be held but in the appreciation and evaluation of the prosecution's evidence of guilt against the accused. x x x A hearing is plainly indispensable before a judge can aptly be said to be in a position to determine whether the evidence for the prosecution is weak or strong." Although the respondent judge's explanation was not enough to completely exculpate him, the circumstances, coupled with his sincere belief in the propriety of his order warranted a mitigation of the usual sanction the Court imposes in cases of this nature. The respondent judge was ordered to pay a fine of P5,000.00 and warned that a repetition of the same or similar act in the future will be dealt with more severely.

(2) In the case of *Concerned Citizens v. Elma*, [30] an administrative complaint was filed against the respondent judge for granting bail to a person charged with illegal recruitment in large scale and estafa in five separate information. The accused filed a motion to fix bail and the respondent judge instead of setting the application for hearing, directed the prosecution to file its comment or opposition. The prosecution submitted its comment leaving the application for bail to the discretion of the court. The respondent judge, in granting the bail of the accused rationalized that in ordering the prosecution to comment on the accused's motion to fix bail, he has substantially complied with the requirement of a formal hearing. He further claimed that he required the prosecution to adduce evidence but the latter refused and left the determination of the motion to his discretion. This Court held, "It is true that the weight of the evidence adduced is addressed to the sound discretion of the court. However, such discretion may only be exercised after the hearing called to ascertain the degree of guilt of the accused for the purpose of determining whether or not he should be granted liberty. x x x In the case at

bar, however, no formal hearing was conducted by the respondent judge. He could not have assessed the weight of evidence against the accused Gatus before granting the latter's application for bail." The respondent judge was dismissed from service because he was previously fined for a similar offense and was sternly warned that a repetition of the same or similar offense would be dealt with more severely.

(3) In the case of *Baylon v. Sison*,^[31] an administrative complaint was filed against the respondent judge for granting bail to several accused in a double murder case. The respondent judge claimed that he granted the application for bail because the assistant prosecutor who was present at the hearing did not interpose an objection thereto and that the prosecution never requested that it be allowed to show that the evidence of guilt is strong but instead, submitted the incident for resolution. The respondent judge further claimed that the motion for reconsideration of the order granting bail was denied only after due consideration of the pertinent affidavits. We held: "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." The respondent judge was 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 would be dealt with more severely.

A hearing is likewise required if the prosecution refuses to adduce evidence in opposition to the application to grant and fix bail. "The importance of a hearing has been emphasized in not a few cases wherein the court 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 questions from which it may infer the strength of the evidence of guilt, or the lack of it, against the accused."^[32]

In the recent case of *Tucay v. Domagas*,^[33] an administrative complaint was filed against the respondent judge for granting bail to an accused charged with murder. The application for bail contained the annotation "No objection" of the provincial prosecutor and the respondent judge, without holding a hearing to determine whether the evidence of the prosecution was strong, granted bail and ordered the release of the accused from detention with instructions to the bondsman to register the bond with the Register of Deeds within ten days. It was later found out that the assessed value of the property given was short of the amount fixed for the release of the accused. We held: "Although the provincial prosecutor had interposed no objection to the grant of bail to the accused, respondent judge should have 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. x x x Only after satisfying himself that the prosecution did not wish to oppose the petition for bail for justifiable cause (e.g., for tactical reasons) and taking into account the factors enumerated in Rule 114, Sec. 6 for fixing bail should respondent judge have ordered the petition for bail and ordered the release of the accused." Respondent judge herein was ordered to pay a fine of P20,000.00 and was given a stern warning that the commission of a similar offense in the future would be dealt with more severely.

Corollarily, another reason why hearing of a petition for bail is required, as can be gleaned from the abovesited case, is 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.^[34] This Court, in a number of cases^[35] held that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require that it answer questions in order to ascertain not only the strength of the state's evidence but also the adequacy of the amount of bail.

After hearing, the court's order granting or refusing bail must contain a summary of the evidence for the prosecution.^[36] 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. Otherwise, the order granting or

denying the application for bail may be invalidated because the summary of evidence for the prosecution which contains the judge's evaluation of the evidence may be considered as an aspect of procedural due process for both the prosecution and the defense.

This court in the case of *Carpio v. Maglalang*[37] invalidated the order of respondent judge granting bail to the accused because "Without summarizing the factual basis of its order granting bail, the court merely stated the number of prosecution witnesses but not their respective testimonies, and concluded that the evidence presented by the prosecution was not "sufficiently strong" to deny bail to Escano."

With the mounting precedents, this Court sees no reason why it has to repeatedly remind trial court judges to perform their mandatory duty of conducting the required hearing in bail applications where the accused stands charged with a capital offense.

An evaluation of the records in the case at bar reveals that respondent Judge granted bail to the accused without first conducting a hearing to prove that the guilt of the accused is strong despite his knowledge that the offense charged is a capital offense in disregard of the procedure laid down in Section 8, Rule 114 of the Rules of Court as amended by Administrative Circular No. 12-94.

Respondent judge admittedly granted the petition for bail based on the prosecution's declaration not to oppose the petition. Respondent's assertion, however, that he has a right to presume that the prosecutor knows what he is doing on account of the latter's familiarity with the case due to his having conducted the preliminary investigation is faulty. Said reasoning is tantamount to ceding to the prosecutor the duty of exercising judicial discretion to determine whether the guilt of the accused is strong. Judicial discretion is the domain of the judge before whom the petition for provisional liberty will be decided. The mandated duty to exercise discretion has never been reposed upon the prosecutor.

In the case of *Montalbo v. Santamaria*,[38] this Court held that the respondent judge is duty bound to exercise judicial discretion conferred upon him by law to determine whether in the case at bar, the proof is evident or the presumption of guilt is strong against the defendant and to grant or deny the petition for provisional liberty. It also held that a writ of mandamus will lie in order to compel the respondent judge to perform a duty imposed upon him by law.

The absence of objection from the prosecution is never a basis for granting bail to the accused. It is the court's determination after a hearing that the guilt of the accused is not strong that forms the basis for granting bail. Respondent Judge should not have relied solely on the recommendation made by the prosecutor but should have ascertained personally whether the evidence of guilt is strong. After all, the judge is not bound by the prosecutor's recommendation. Moreover, there will be a violation of due process if the respondent Judge grants the application for bail without hearing since Section 8 of Rule 114 provides that whatever evidence presented for or against the accused's provisional release will be determined at the hearing.

The practice by trial court judges of granting bail to the accused when the prosecutor refuses or fails to present evidence to prove that the evidence of guilt of the accused is strong can be traced to the case of *Herras Teehankee v. Director of Prisons*[39] where this Court gave the following "instructions" to the People's Court,[40] thus:

- "1) In capital cases like the present when the prosecutor does not oppose the petition for release on bail, the court should, as a general rule, in the proper exercise of its discretion, grant the release after the approval of the bail which it should fix for the purpose;
- 2) But if the court has reasons to believe that the special prosecutor's attitude is not justified, it may ask him questions to ascertain the strength of the state's evidence or to judge the adequacy of the amount of bail;

3) When, however, the special prosecutor refuses to answer any particular question on the ground that the answer may involve a disclosure imperiling the success of the prosecution or jeopardizing the public interest, the court may not compel him to do so, if and when he exhibits a statement to that effect of the Solicitor General, who, as head of the Office of Special Prosecutors, is vested with the direction and control of the prosecution, and may not, even at the trial, be ordered by the court to present evidence which he does not want to introduce — provided, of course, that such refusal shall not prejudice the rights of the defendant or detainee.”[41]

The rationale for the first instruction was stated by this Court, as follows:

"If, for any reason, any party should abstain from introducing evidence in the case for any definite purpose, no law nor rule exists by which he may be so compelled and the court before which the case is pending has to act without that evidence and, in so doing, it clearly would not be failing in its duties. If the Constitution or the law plots a certain course of action to be taken by the court when certain evidence is found by it to exist, and the opposite course if that evidence is wanting, and said evidence is not voluntarily adduced by the proper party, the court's clear duty would be to adopt that course which has been provided for in case of absence of such evidence. Applying the principle to the case at bar, it was no more within the power — nor discretion — of the court to coerce the prosecution into presenting its evidence than to force the prisoner into adducing hers. And when both elected not to do so, as they had a perfect right to elect, the only thing remaining for the court to do was to grant the application for bail."

As for the second instruction, this Court stated that:

"The prosecutor might not oppose the application for bail and might refuse to satisfy his burden of proof, but where 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, the court must possess a reasonable degree of control over him in the paramount interest of justice. Under such circumstance, the court is authorized by our second instruction to 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, recommending bail."

As for the third instruction, this Court declared:

"It must be observed that the court is made to rely upon the official statement of the Solicitor General on the question of whether or not the revelation of evidence may endanger the success of the prosecution and jeopardize the public interest. This is so, for there is no way for the court to determine that question without having the evidence disclosed in the presence of the applicant, disclosure which is sought to be avoided to protect the interests of the prosecution before the trial."

It is to be recalled that *Herras Teehankee* was decided fully half a century ago under a completely different factual milieu. *Haydee Herras Teehankee* was indicted under a law dealing with treason cases and collaboration with the enemy. The said "instructions" given in the said case under the 1940 Rules of Court no longer apply due to the amendments introduced in the 1985 Rules of Court.

In the 1940 Rules of Court of the Philippines, the applicable provisions on "Bail" provides, as follows:

"Sec. 5. Capital offenses defined. — A capital offense, as the term is used in this rule, is an offense which, under the law existing at the time of its commission, and at the time of the application to be admitted to bail, may be punished by death.

Sec. 6. Capital offenses not bailable. — No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong.

Sec. 7. Capital offense — Burden of proof . — On the hearing of an application for admission to bail made by

any person who is in custody for the commission of a capital offense, the burden of showing that the evidence of guilt is strong is on the prosecution.

The above-cited provisions have not been adopted in toto in the 1985 Rules of Court, as amended by Administrative Circular No. 12-94, since some phrases and lines have been intercalated, as shown by the underscored phrases and statements below:

"Sec. 6. Capital offense, defined. — A capital offense, as the term is used in these rules, is an offense which, under the law existing at the time of its commission and at the time of the application to be admitted to bail, may be punished with death.

Sec. 7. Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. — No person charged with a capital offense, of an offense punishable by reclusion perpetua or life imprisonment, when evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal prosecution.

Sec. 8. Burden of proof in bail application. — At the hearing of an application for admission to bail filed by any person who is in custody for the commission of an offense punishable by death, reclusion perpetua or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearings shall be considered automatically reproduced at the trial, but upon motion of either party, the court may recall any witness for additional examination unless the witness is dead, outside of the Philippines or otherwise unable to testify."

It should be noted that there has been added in Section 8 a crucial sentence not found in the counterpart provision, Section 7, Rule 110 of the 1940 Rules of Court. The above-underscored sentence in Section 8, Rule 114 of the 1985 Rules of Court, as amended, was added to address a situation where in case the prosecution does not choose to present evidence to oppose the application for bail, the judge may feel duty-bound to grant the bail application. In such a case, the judge may well lose control of the proceedings. In a sense, this undermines the authority of a judge since all that the prosecution has to do to "force" the judge to grant the bail application is to refrain from presenting evidence opposing the same. In effect, this situation makes Sections 6 and 7 of the 1940 Rules of Court on "Bail" meaningless since whether or not the evidence of guilt of a person charged with a capital offense is strong cannot be determined if the prosecution chooses not to present evidence or oppose the bail application in a hearing precisely to be conducted by the trial judge for that purpose, as called for in the two sections. In the event that the prosecution fails or refuses to adduce evidence in the scheduled hearing, then a hearing as in a regular trial should be scheduled. In this regard, a hearing in the application for bail necessarily means presentation of evidence, and the filing of a comment or a written opposition to the bail application by the prosecution will not suffice.

The prosecution under the revised provision is duty bound to present evidence in the bail hearing to prove whether the evidence of guilt of the accused is strong and not merely to oppose the grant of bail to the accused. "This also prevents the practice in the past wherein a petition for bail was used as a means to force the prosecution into a premature revelation of its evidence and, if it refused to do so, the accused would claim the grant of bail on the ground that the evidence of guilt was not strong." [42]

It should be stressed at this point, however, that the nature of the hearing in an application for bail must be equated with its purpose i.e., to determine the bailability of the accused. If the prosecution were permitted to conduct a hearing for bail as if it were a full-dress trial on the merits, the purpose of the proceeding, which is to secure provisional liberty of the accused to enable him to prepare for his defense, could be defeated. At any rate, in case of a summary hearing, the prosecution witnesses could always be recalled at the trial on the merits. [43]

In the light of the applicable rules on bail and the jurisprudential principles just enunciated, this Court reiterates

the duties of the trial 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 (Section 18, Rule 114 of the Rules of Court as amended);
- (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 sound discretion (Sections 7 and 8, *supra*);
- (3) Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution (*Baylon v. Sison, supra*);
- (4) If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond. (Section 19, *supra*). Otherwise, petition should be denied.

The above-enumerated procedure should now leave no room for doubt as to the duties of the trial judge in cases of bail applications. So basic and fundamental is it to conduct a hearing in connection with the grant of bail in the proper cases that it would amount to judicial apostasy for any member of the judiciary to disclaim knowledge or awareness thereof.[44] 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.[45]

Respondent judge herein insists that he could exercise his discretion in granting bail to the accused since the Assistant Prosecutor signified in writing that he had no objection to the grant of bail and recommended, instead, the bailbond in the sum of P80,000.00. It is to be emphasized that although the court may have the discretion to grant the application for bail, in cases of capital offenses, the determination as to whether or not the evidence of guilt is strong can only be reached after due hearing which, in this particular instance has not been substantially complied with by the respondent Judge.

While it may be true that the respondent judge set the application for bail for hearing three times, thus showing lack of malice or bad faith in granting bail to the accused, nonetheless, this does not completely exculpate him because the fact remains that a hearing has not actually been conducted in violation of his duty to determine whether or not the evidence against the accused is strong for purposes of bail. Normally, the Court imposes a penalty of P20,000.00 fine in cases where the judge grants the application for bail without notice and hearing. In view however of the circumstances of this case, a reprimand instead of the P20,000.00 would suffice.

WHEREFORE, in view of the foregoing, respondent Judge Leo M. Rapatalo, RTC, Branch 32, Agoo, La Union, is hereby REPRIMANDED with the WARNING that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Release Order dated June 29, 1995, p. 13, Rollo.

[2] p. 10, Rollo.

[3] Order dated August 17, 1995, p. 19, Rollo.

[4]Del Carmen, Rolando V., Criminal Procedure, Law and Practice, p. 31, 3rd ed. (1995).

[5] Section 7, *supra*.

[6] Del Carmen, Rolando V., *supra*.

[7]Ramos v. Ramos, 45 Phil. 362.

[8] Ocampo v. Bernabe, 77 Phil. 55.

[9]Francisco, Ricardo J., Criminal Procedure, 1993 ed., p. 226. citing *Rex v. Wilkee*, 4 Burr., 2527; 98 Reprint, 327, cited in note 26 (a), 6 C.J., p. 254.

[10] Siazon v Presiding Judge, et al., 42 SCRA 184 (1971).

[11] 103 SCRA 393.

[12] 26 SCRA 522 (1968).

[13] 170 SCRA 489.

[14] 186 SCRA 620

[15] 199 SCRA 48

[16]205 SCRA 155

[17] 215 SCRA 421

[18] A.M. No. RTJ-89-306, March 1, 1993

[19] 226 SCRA 206, 216 (1993).

[20] 235 SCRA 283.

[21] *Supra*.

[22] 237 SCRA 1

[23] 237 SCRA 778

[24] 238 SCRA 640.

[25]240 SCRA 154.

[26] 245 SCRA 56.

[27] 243 SCRA 524.

[28] A.M. No RTJ-94-1209, 253 SCRA 601.

[29] 250 SCRA 376 (1995).

[30] 241 SCRA 84 (1995).

[31] 243 SCRA 284 (1995). See also the cases of *Borinaga v. Tamin*, supra and *Aguirre v. Belmonte*, supra and *Tucay v. Domagas*, 242 SCRA 110 (1995).

[32] *Baylon v. Sison*, supra.

[33] 242 SCRA 110 (1995).

[34] See also *People v. Dacudao*, supra and *Aurillo v. Francisco*, supra.

[35] *Baylon v. Sison*, supra.; *Borinaga v. Tamin*, supra; *Santos v. Ofilada*, supra; *Aguirre v. Belmonte*, supra.

[36] See *People v. San Diego*, 26 SCRA 52; *People v. Nano*, supra; *Guillermo v. Reyes*, supra; *Santos v. Ofilada*, supra.

[37] 196 SCRA 41 (1991).

[38] 54 Phil. 955, [1930].

[39] 76 Phil. 756 (1946).

[40] Created under Commonwealth Act No. 682 to try cases of treason and collaboration with the enemy.

[41] Supra, p. 774.

[42] Regalado, F.D., *Remedial Law Compendium*, 7th Revised Edition, Volume II, p. 343.

[43] *Siazon v. Presiding Judge, et al.*, supra.

[44] *Borinaga v. Tamin*, supra.

[45] Supra, citing *Libarios v. Dabalos*, 199 SCRA 48 (1991).

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