

EVANGELINE L. DINAPOL, COMPLAINANT, VS. JUDGE ISMAEL O. BALDADO, REGIONAL TRIAL COURT, BRANCH 45, BAIS CITY, RESPONDENT.

A.M. No. RTJ-92-898. August 05, 1993

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Per Curiam:

In a sworn letter dated 26 August 1992 (Rollo, 2-3), complainant charges the respondent Judge with grave abuse of discretion, ignorance of the law and conduct unbecoming a member of the bench in that notwithstanding the fact that the spouses Crozoro Palermo and Jovy Palermo, accused in Criminal Case No. 775-G for murder, had not yet been arrested pursuant to the warrant of arrest he had issued on 3 March 1992 and were "freely roaming in the municipality of Guihulngan," said respondent Judge entertained a petition for bail and set the same for hearing despite the vigorous opposition of the complaining witness.

Complainant further alleges that the two accused have been "seen conspicuously after the filing of the petition for bail inside the chambers of this court [RTC] accompanied by a younger brother of a congressman"; that it was the said congressman who supposedly "sponsored" the appointment to the Judiciary of the respondent Judge; and that the accused spouses are "relatives of the said congressman."

The material operative facts in this case, as disclosed by the pleadings of the parties, are as follows:

The Information for Murder in Criminal Case No. 775-G (Rollo, 31-32) was filed on 28 February 1992 by 3rd Assistant Provincial Prosecutor Diosdado Hermosa of Negros Oriental before the respondent Judge's sala (Branch 45 of the Regional Trial Court of Negros Oriental). No bail was recommended for the provisional liberty of accused Crozoro Palermo and Jovy Palermo.

On 3 March 1992, the respondent Judge issued a warrant for the arrest of the accused.

On 9 March 1992, before the trial court could acquire jurisdiction over their persons, accused filed through their counsel, the Paras and Associates law office, a motion to grant and fix bail (Rollo, 52-53) which the respondent Judge set for hearing on 24 April 1992.

On 10 April 1992, Evangeline Dinapol, the complaining witness and a sister of the victim in the murder case, filed a vigorous opposition to the motion.

The accused did not appear on 24 April 1992. In view thereof, the respondent Judge issued an order (a) denying the motion to grant bail on the ground that the court "has not acquired jurisdiction over the person of the accused," (b) ordering the issuance of an alias warrant of arrest and (c) directing the PNP of Guihulngan "to exert utmost efforts for the arrest of the accused" (Rollo, 58). The alias warrant of arrest was then issued on 28 April 1992 (Rollo, 59). On that same date, however, the accused -- this time through Atty. Alfonso Briones -- filed an urgent motion for the reconsideration of the 24 April 1992 Order on the ground that "the accused are forthcoming, and are willing to voluntarily submit to the jurisdiction of the Court" (Rollo, 60). Acting thereon, and on the basis of Atty. Briones' confirmation of "the willingness of the accused to surrender to the custody of the court as stated in

said motion," respondent Judge issued an order on 4 May 1992 resetting the hearing of the motion to grant and fix bail for 7 May 1992 at 8:30 o'clock in the morning, subject to the condition that "the accused shall surrender to the custody of the court." Respondent Judge further directed the issuance of subpoenas to the prosecution witnesses and warned the prosecution "that failure to present evidence on said date without justifiable reason will be considered as lack of strength of its evidence" (Rollo, 61).

Despite their commitment and Atty. Briones' confirmation on their behalf that they would voluntarily surrender on 7 May 1992, the accused failed to appear on the set date. While the prosecution was ready with one witness, it did not present the latter as the accused were still at large and not under the jurisdiction of the court. Nevertheless, "in the interest of substantial justice and to avoid delay in the administration of justice," the respondent Judge issued on the said date an order resetting, once again, the hearing of the motion for 30 June and 1 and 3 July 1992. This extension was, however, subjected to the condition that "on or before June 30, 1992, accused shall have voluntarily surrendered and submitted themselves to the custody of this court [RTC]" (Rollo, 62).

On 19 June 1992, the subpoena and warrant server of the Guihulngan Police Station, SPO1 Hindenburg Cabang, executed a return of service of the 29 May 1992 warrant of arrest. He informed the trial court that the warrant had not been duly served as the accused "are not found here in Guihulngan, Negros Oriental," and the information gathered that they were temporarily residing in Cebu City proved to be false (Rollo, 65).

Thereupon, the Prosecution filed on 24 June 1992 a "Motion Entreating Hon. Ismael O. Baldado to Consider whether or Not to Continue Presiding Over the Above-Entitled Case" (Rollo, 67-70). It is alleged therein that the respondent Judge had acted with patent bias and partiality in the accused's favor as may be gleaned from his (Judge's) actuations as above-indicated, and from the fact that "the two (2) accused x x x have even been seen conspicuously after the filing of the petition for bail inside the Chambers of this Court [RTC] accompanied by a younger brother of a congressman. Yet, up to now, said accused are unarrested (sic) and are known to be roaming freely in Guihulngan, Negros Oriental." The accused, through counsel, filed an opposition to this motion (Rollo, 71); this was then followed by exchanges of pleadings.

In an order promulgated on 27 July 1992, respondent Judge inhibited himself from the case and ordered the same forwarded to Branch 33 of the Regional Trial Court of Negros Oriental at Dumaguete City, presided over by Judge Pacifico Bulado, for further disposition in accordance with Administrative Order No. 2691 dated 18 March 1991 (Rollo, 90). However, in his Order of 7 August 1992, Judge Bulado also inhibited himself from hearing the case since prosecution witness Alfredo Bulado is his first cousin or a relative within the fourth civil degree; Judge Bulado decreed the return of the case to the court of origin (Rollo, 92). On 25 August 1992, respondent Judge issued an order forwarding the case to this Court for the appropriate action on his inhibition (Rollo, 94); the case was docketed as Administrative Matter No. 92-9864.

In his Comment (Rollo, 21-30), filed in compliance with the Resolution of 13 October 1992 (Rollo, 20), respondent Judge maintains that he had in fact denied in his 24 April 1992 Order the accused's motion for bail precisely because his court had not yet acquired jurisdiction over the persons of the accused. Moreover, he claims that he ordered the issuance of an alias warrant for their arrest and acted favorably on the motion to reconsider the said denial (by resetting the hearing of the petition for bail) only to avoid what appeared to him as a "'pendulum' of procedure or a 'pingpong' of actions by both parties with the accused manifesting their willingness to surrender and submit to the custody of the court and the prosecution objecting to the hearing of the application for bail." He avers further that he was "solely motivated to resolve the issues with dispatch within the framework of procedural rules, set the incident for hearing on condition that the accused shall have voluntarily surrendered and submitted to the custody of the law on or before date (sic) set for the hearing."

In the same vein, he asserts that he cannot be charged with ignorance of the law because although he was "a working student in college," he has "consistently endeavored to achieve excellence, and his academic efforts proved fruitful -- -graduated (sic) Cum Laude in both Bachelor of Arts and Bachelor of Laws at Silliman University." He has likewise "continued to work for such excellence in his practice of law, and has applied with more vigor the quest for the same upon his assumption to the bench."

Finally, respondent Judge alleges that (a) there is no clear and direct proof to support the allegation that both accused were in his chambers for, as a matter of fact, the Prosecutor himself, in his Reply of 9 July 1992, admits that the said allegation "is not of our personal knowledge"; (b) "not a single politician has made interventions or at least insinuate (sic) to intervene, in any case pending before him"; and (c) there are parties working "behind the scene of this malicious charge" against whom he will, in due time, undertake legal recourse.

He did not, however categorically deny the charge that the accused were in his chambers after the motion for bail was filed, and the allegation that a congressman sponsored his appointment to the Judiciary.

On 14 January 1993, the complainant filed a Rejoinder [should be Reply] to Comment (Rollo, 101-102).

On 1 February 1993, we required the parties to inform this Court if they are submitting the case for resolution on the basis of the pleadings (Rollo, 109).

On 19 February 1993, this Court received the 29 January 1993 letter of Glenn B. Litrada, youngest sister of both Liberty Litrada -- the victim in the murder case -- and Evangeline Dinapol -- the complainant in the instant case -- informing this Court that in view of the latter's having been pressured into signing an affidavit of desistance, she (Glenn) would be taking over as the complainant in this case (Rollo, 110). Acting thereon, we required her to submit a copy of the said affidavit of desistance (Rollo, 113).

On 1 March 1993, respondent Judge filed a pleading, denominated as his Supplementary Comments, wherein he exposes Atty. Jose Estacion, Jr. as "the man behind, the prime mover and the active instigator, in the filing of this case." It appears that the respondent Judge, while still in the private practice of law, represented Ruth Sison in an administrative case (Adm. Matter No. RTJ-87-104) filed by her against Estacion who was then the Presiding Judge of Branch 44 of the RTC at Dumaguete City. In this Court's Resolution of 11 January 1990, Judge Estacion was ordered dismissed from the service "with forfeiture of all salary, benefits and leave credits" (Rollo, 160-166). After the respondent Judge's appointment, Atty. Estacion's group sought the former's removal (Rollo, 167). The respondent Judge attached to his Supplementary Comments the alleged true and correct copy of complainant Evangeline Dinapol's so-called affidavit of desistance (Rollo, 124).

Thereafter, in his 2 April 1993 compliance (with the Resolution of 16 February 1993), respondent Judge manifested that he is submitting the instant case for resolution on the basis of the pleadings. Complainant, on the other hand, chose not to submit her compliance.

In its 18 June 1993 Memorandum submitted in compliance with the 20 May 1993 Resolution of this Court directing it to evaluate the case and submit its report and recommendation thereon, the Office of the Court Administrator concludes that the respondent Judge has "committed a jurisdictional lapse in the procedure he adopted in setting the case for hearing the Motion to (sic) Bail filed by the counsel of the accused on the mere allegation that the accused are forthcoming and are willing to voluntarily submit to the jurisdiction of the court," According to the said Office, it is clear from Section 1, Rule 114 of the Revised Rules of Court that an accused can move for the granting of bail only if the court has acquired jurisdiction over his person. It then recommends that the respondent Judge "be sternly admonished with a warning that a repetition of the same or similar violation in the future will be dealt with more severely."

It is axiomatic that a court cannot entertain an accused's motion or petition for bail unless he is in the custody of the law. Bail is defined in Section 1, Rule 114 of the Revised Rules of Court as "the security given for the release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearance before any court as required under the conditions" specified in Section 2 thereof. A person is considered to be in the custody of the law (a) when he is arrested either by virtue of a warrant of arrest issued pursuant to Section 6, Rule 112, or even without a warrant under Section 5, Rule 113 in relation to Section 7, Rule 112 of the Revised Rules of Court, or (b) when he has voluntarily submitted himself to the jurisdiction of the court by surrendering to the proper authorities. Elsewise stated, the purpose of requiring bail is to relieve an accused from imprisonment until his conviction and yet secure his appearance at the trial (*Almeda vs. Villaluz*, 66 SCRA 38 [1975], citing *Green vs. Petit, Sheriff*, 54 N.E. 2d 281). Accordingly, it would be incongruous to grant bail to one who is free (*Feliciano vs. Pasicolan*, 2 SCRA 888 [1961], citing *Manigbas vs. Luna*, 52 O.G. 1405; see also *Mendoza vs. Court of First Instance of Quezon*, 51 SCRA 369, [1973]). The right to bail is guaranteed by the Constitution. Section 13, Article III of the 1987 Constitution provides in part that:

"All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. x x x."

However, "only those persons who have been either arrested, detained or otherwise deprived of their liberty will ever have occasion to seek the benefits of said provision" (*Herras Teehankee vs. Rovira*, 75 Phil. 634 [1945]). Thus, it logically follows that no petition for bail can be validly entertained for as long as the petitioner is NOT in the custody of the law.

Since the accused in Criminal Case No. 775-G were not arrested by virtue of both the original warrant of arrest and the alias warrant of arrest, and did not voluntarily submit to the jurisdiction of the trial court, they had no standing in court to file a motion for bail. Nor did the court have any business setting the same for hearing. By setting the said motion for hearing despite the fact that his court had not yet acquired jurisdiction over the persons of the accused, the respondent Judge blatantly disregarded established rule and settled jurisprudence. While he subsequently rectified his error by denying the motion in his Order of 24 April 1992, he nevertheless backtracked by granting the motion for reconsideration and setting anew the hearing of the motion for bail this time with a warning to the prosecution that its failure to present evidence on the scheduled date "will be considered as lack of strength of its evidence." We find neither rhyme nor reason for this warning because if there was any party to be warned, it should have been the accused who had abused the liberality of the respondent Judge and belittled the authority of the court. Worse, the respondent Judge still accommodated the accused -- who had already reneged on their commitment to submit to the court's jurisdiction -- by resetting the hearing of the motion for bail after they failed to appear a second time. These acts of the respondent Judge compounded his already questionable disregard of the rule and doctrine aforecited. He opted to perpetuate his defiance thereto and experiment on a new procedure which we cannot sanction. According to Canon 18 of the Canons of Judicial Ethics, a Judge violates his duty as a minister of justice if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him.

Respondent Judge had likewise betrayed impropriety by his unusual partiality in favor of one of the parties. It is to be observed that the former did not categorically deny the accused's reported visit to his chambers after the motion for bail was filed. Instead of simply stating in a few words that the accused never saw him in his chambers, the respondent Judge labored hard to discuss in detail his position that "there is no clear and direct proof" to support the said allegation. The Canons of Judicial Ethics mandate that a judge's official conduct should be free from the appearance of impropriety, and that his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach (Canon 3, Canons of

Judicial Ethics).

ACCORDINGLY, respondent Judge is hereby meted a fine of Ten Thousand Pesos (P10,000.00) and is warned that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

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