

SPOUSES ANTONIO AND ELSA FORTUNA, COMPLAINANTS, VS. JUDGE MA. NIMFA PENACO-SITACA AND ROY P. MURALLON, BRANCH CLERK OF COURT, RTC, BRANCH 35, OZAMIS CITY, RESPONDENTS.

A.M. No. RTJ-01-1633 (A.M. OCA IPI-00-883-RTJ). June 19, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

On September 27, 1999, the Office of the Chief Justice received a letter-complaint from the Spouses Antonio and Elsa Fortuna, charging Judge Nimfa Penaco-Sitaca and Branch Clerk of Court Rey P. Murallon of alleged partiality, abuse of discretion and negligence in connection with Criminal Case No. RTC-1503 entitled, "People of the Philippines v. Dunhill Palomares," for Murder.

The letter-complaint was referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. The OCA directed both respondents to file their respective comments on the letter complaint.

Respondent Branch Clerk filed his Comment on November 25, 1999; while respondent Judge filed her own Comment on December 3, 1999.

On the basis of the OCA report and recommendation, the Court subsequently issued a Resolution dated February 16, 2000 requiring the parties to manifest if they are willing to submit the case for resolution on the basis of the pleadings filed. The Court further resolved to direct: 1.] respondent Judge to investigate and to file appropriate charges against Atty. Diego Palomares, Jr. if the bail bond filed before her is indeed falsified taking into account the letter of Atty. Glen Peter C. Baldado, former Clerk of Court, Regional Trial Court of Cagayan de Oro City, Branch 18; 2.] Executive Judge Noli Catli of the Regional Trial Court of Cagayan de Oro City to conduct his own investigation on the matter considering that the bail bond, particularly the order of release, appears to have been issued by Branch 18 of said court; and 3.] both respondent Judge Sitaca and Judge Catli to submit their reports to the Court through the OCA within thirty (30) days from notice.

Thereafter, respondents Judge and Branch Clerk submitted their manifestations dated March 9, 2000 and March 7, 2000, respectively, stating their willingness to submit the case for decision on the basis of the pleadings already filed. The said manifestations were noted by the Court in a Resolution dated June 19, 2000.

Complainants claim that the criminal case for the gruesome murder of their son was filed before the Regional Trial Court, Branch 35, Ozamis City presided by Acting Judge Nimfa Penaco-Sitaca and was submitted for decision on September 18, 1997. After two (2) years, the case remained undecided because Judge Sitaca ordered the suspension of the proceedings. Both respondents were likewise charged with abuse of discretion in accepting a fictitious bail bond filed by the father/counsel of the accused in the criminal case.

In her comment, respondent judge stated that she issued an order dated September 18, 1997 declaring the case submitted for decision. On October 10, 1997, she issued another order suspending the resolution of the case until the petition for certiorari filed by the accused with the Court of Appeals shall have been resolved. She stated that

although she was aware of the rule that an injunction is necessary before such suspension, she and the prosecution agreed that the same would be a "becoming courtesy to the Court of Appeals since there would be no judgment that would later on be set aside." She further averred that after reviewing the case, she realized that it would be better if she allowed the defense to cross-examine the prosecution witness. She likewise admitted her error with regard to the fake bail bond stating that the approval thereof cannot be justified and that she was taking "absolute and sole responsibility for the blunder born of neglect."

In his comment, respondent Branch Clerk stated that the RTC of Ozamis City, Branch 25 received on September 6, 1997, through Atty. Diego M. Palomares, Jr., lawyer/father of the accused in Criminal Case No. RTC-1503, a photocopy of the bail bond, which was notarized by the Branch Clerk of Court of the RTC of Cagayan de Oro City, Branch 18, approved by Vice-Executive Judge Nazar U. Chavez on September 3, 1997 and registered with the Office of the Registry of Deeds. The bail bond was accompanied by the original copy of the Order of Release dated September 2, 1997, duly signed by the Branch Clerk of Court, Atty. Glen Peter C. Baldado. Upon receipt thereof, respondent Branch Clerk immediately conferred with Judge Sitaca in the presence of Stenographer Emelda E. Ruiz and thereafter, upon instructions of Judge Sitaca, he issued an Order of Discharge from Custody dated September 6, 1997.

Respondent Branch Clerk further stated that since Atty. Baldado did not send the original copy of the bail bond, he religiously followed it up with three (3) letters dated May 28, 1998, August 31, 1998 and December 11, 1998, all of which were unanswered. It was only on January 22, 1999 that he received a letter dated January 14, 1999 from Atty. Baldado stating that he resigned effective May 16, 1998 and that as per court records, no such bail bond existed, much less was it approved by Judge Chavez. Neither was an Order of Release ever issued.

In view of respondent Judge's admission of the charges against her, the formal investigation on the matter was dispensed with.

The issue raised in this case is not novel. Complaints involving irregular approval of bail bonds and the issuance of orders of release appear to be a common offense of judges. In *Go v. Bongolan*,^[1] citing the earlier case of *Adapon v. Domagtay*,^[2] it was held:

This is not the first time that a complaint is brought before this Court involving the irregular approval of bail bond and issuance of order of release. The Court again reminds judges of lower courts of their role as the embodiment of competence, integrity and independence. This Court believes that in order to achieve justice, judges should, in all cases, diligently ascertain and conscientiously apply the law in relation to the facts of each case they hear and decide, unswayed by partisan interests, public opinion or fear of criticism. This is the least that judges can do to sustain the trust reposed on them by the public. (Emphasis provided)

Such degree of diligence and conscientiousness is clearly wanting in this case much more so considering the offense charged is punishable by capital punishment. In *Cruz v. Yaneza*,^[3] the Court stressed that -

. . . Utmost diligence is required of trial judges in granting bail, especially in cases where bail is not a matter of right. Certain procedures must be followed in order to be assured that accused would be present during trial. As a responsible judge respondent must not be swayed by the mere representations of the parties; instead, he should look into the real and hard facts of the case. He must be impartial not only in appearance but also in fact. (Emphasis provided)

Concededly, it is true that in receiving evidence on bail, a court is neither required to try the merits of the case nor is it called to speculate on the outcome of the trial^[4] and the determination of whether or not the evidence of guilt of the accused is strong, being a matter of judicial discretion, remains with the judge.^[5] However, we have held that admission to bail as a matter of discretion presupposes the exercise thereof in accordance with law and guided

by the applicable legal principles. The prosecution must first be accorded an opportunity to present evidence because by the very nature of deciding applications for bail, it is on the basis of such evidence that judicial discretion is weighed against in determining whether the guilt of the accused is strong. In other words, discretion must be exercised regularly, legally and within the confines of procedural due process, that is, after the evaluation of the evidence submitted by the prosecution. Any order issued in the absence thereof is not a product of sound judicial discretion but of whim and caprice and outright arbitrariness.[6]

The case of *Narciso v. Sta. Romana-Cruz*,[7].citing the landmark case of *Basco v. Rapatalo*,[8].expounded on what this judicial discretion consists of, thus:

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 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, 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 evidence in rebuttal.

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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 practicable and consistent with the purpose of the hearing which is merely to determine the weight of the 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." If a party is denied the opportunity to be heard, there would be a violation of procedural due process. (Emphasis provided)

Criminal Case No. RTC-1503 for Murder was pending before the RTC of Ozamis City, Branch 35. The purported bail bond, on the other hand, was approved by Branch 18 of the RTC of Cagayan de Oro City. Respondent judge's act of accepting at face value a mere machine copy of the bail bond issued by another court hardly measures up to that degree of diligence and conscientiousness demanded of a judge who is called upon to determine the propriety of granting bail in a case where the grant of the same is a matter of discretion rather than a right. In fact, respondent Judge's misconduct can only be characterized as a dereliction of duty. Prudence would have dictated that respondent Judge demand the presentation of the original of the bail bond before approving the same.[9]

Considering that the criminal case was pending before her sala and accused was detained in Ozamis City where her court sits, respondent Judge should have required the filing of another bail bond if, in her discretion, the accused's provisional liberty is warranted.[10] It has been consistently held that it is patent error for a judge to base his order of granting bail merely on supporting affidavits attached to the information since those are merely intended to establish probable cause as basis for the issuance of an arrest warrant and not to control his discretion to deny or grant bail in all situations.[11] How much more the granting of bail in a criminal case involving a capital crime on the basis of a mere photo copy of a bail bond allegedly filed and approved in another court of another city?

This Court has not been remiss in reminding judges of the procedure to be followed when a motion for admission to bail is filed by the accused. Indeed, the case of *Basco v. Rapatalo*, supra, summarized several cases^[12] which outlined the procedure to be observed when hearing petitions for bail in capital offense cases. Such procedure leaves no room for doubt as to the duties of the trial judge in cases of bail applications and it would be judicial apostasy for any member of the judiciary to disclaim knowledge or awareness thereof.^[13]

Generally a judge cannot be held to account or to answer criminally, civilly or administratively for an erroneous judgment or decision rendered by him in good faith. In the absence of fraud, dishonesty or corruption, the acts of a judge done in his judicial capacity are not subject to disciplinary action, even though such act may be erroneous.^[14] But while judges should not be disciplined for inefficiency on account merely of occasional mistakes or errors of judgment, it is highly imperative that they should be conversant with basic legal principles and be aware of well-settled authoritative doctrines.^[15]

In her Comment, respondent Judge contritely admits that she was guilty of "egregious error" in approving the accused's bail bond in Criminal Case No. RTC-1503; and she acknowledges the fact that the bail bond, the photocopy of which she relied on in granting the accused provisional liberty, was falsified. She also admits that she erred when she ordered the suspension of the said criminal case notwithstanding the absence of a restraining order from the Court of Appeals in the petition for certiorari filed before it. Respondent Judge characterizes her conduct as negligent, which under normal circumstances would warrant the full force of the commensurate sanction. While respondent Judge expects the penalty due her for her mistakes, she prays that the Court "be forgiving and be lenient" with her.^[16]

Indeed, judges are expected to keep abreast of all laws and prevailing jurisprudence to be able to render substantial justice and to maintain confidence in the legal system,^[17] consistent with the standard that magistrates must be the embodiment of competence, integrity and independence.^[18] Judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural rules. Observance of the law, which he is bound to know and sworn to uphold, is required of every judge.^[19] Judicial competence demands no less.^[20]

In the case at bar, respondent Judge, after realizing her mistakes, immediately took steps to rectify her errors. More specifically, after learning that the aforesaid bail bond was falsified, she ordered the issuance of a warrant of arrest against the accused. For this reason, this Court deems the recommended fine by the OCA appropriate vis-à-vis the prevailing facts of the case.

Considering that respondent Branch Clerk did not have any participation in the preparation of the bail bond in question except to present the same to respondent Judge, the complaint insofar as he is concerned should be dismissed.

WHEREFORE, judgment is hereby rendered:

- 1.] Imposing on respondent Judge Ma. Nimfa Penaco-Sitaca a FINE in the amount of Five Thousand Pesos (P5,000.00) for inefficiency and lack of circumspection. She is further ADMONISHED to be more circumspect in the performance of her judicial functions and STERNLY WARNED that the commission of similar acts in the future shall be dealt with more severely by this Court.
- 2.] Directing respondent Judge Nimfa Penaco-Sitaca to investigate and file the appropriate charges against Atty. Diego M. Palomares, Jr. if indeed the bail bond filed before her sala is falsified, taking into account the letter-reply of former Clerk of Court of Branch 18, Regional Trial Court of Cagayan de Oro City, Atty. Glen Peter C. Baldado, and to submit a report thereon;
- 3.] Directing Executive Judge Noli Catli of the Regional Trial Court of Cagayan de Oro City to conduct his own

investigation on the matter considering that the bail bond, especially the order of release, appears to have been issued by Branch 18 of said court.

4.] Dismissing the complaint against respondent Branch Clerk Roy P. Murallon.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] 311 SCRA 99 [1999].

[2] 265 SCRA 824 [1996].

[3] 304 SCRA 285 [1999].

[4] Concerned Citizens v. Elma, 241 SCRA 84 [1995].

[5] Aleria, Jr. v. Velez, 298 SCRA 611 [1998].

[6] Borinaga v. Tamin, 226 SCRA 206 [1993], citing People v. Nano, et al., 205 SCRA 155 [1992].

[7] G.R. No. 134504, 328 SCRA 505 [2000].

[8] 269 SCRA 220 [1997].

[9] Tuliao v. Ramos, 284 SCRA 378 [1998].

[10] Section 17 (a), Revised Rules on Criminal Procedure, as amended which provides, inter alia, that:

SEC. 17. Bail, where filed. - (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence of or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may also be filed with any Regional Trial Court of said place x x x.

[11] Buzon, Jr. v. Velasco, 253 SCRA 601 [1996].

[12] People v. Sola, 103 SCRA 393 [1981]; People v. Dacudao, 170 SCRA 489 [1989]; People v. Calo, 186 SCRA 620 [1990]; Libarios v. Dabalos, 199 SCRA 48 [1991]; People v. Nano, supra; Pico v. Combong, 216 SCRA 421 [1992]; Borinaga v. Tamin, supra; Aurillo v. Francisco, 235 SCRA 283 [1994]; Estoya v. Abraham-Singson, 237 SCRA 1 [1994]; Aguirre v. Belmonte, 237 SCRA 778 [1994]; Lardizabal v. Reyes, 240 SCRA 154 [1995]; Santos v. Ofilada, 245 SCRA 56 [1995]; Sule v. Biteng, 243 SCRA 524 [1995]; Buzon v. Velasco, supra.

[13] Basco v. Rapatalo, supra.

[14] Libarios v. Dabalos, supra.

[15] Gacayan v. Pamintuan, 314 SCRA 682 [1999], citing Estoya v. Abraham-Singson, supra, citing Aducayen v. Flores, 51 SCRA 73 [1973]; Ajeno v. Insierito, 71 SCRA 166 [1976]; Ubongen v. Mayo, 99 SCRA 30 [1980]; Lim v. Domagas, 228 SCRA 258 [1993]; Libarios v. Dabalos, supra.

[16] Comment, p. 2.

[17] *Carpio v. De Guzman*, 262 SCRA 615 [1996].

[18] Rule 1.01, Canon 1, Code of Judicial Conduct; *Galan Realty Co., Inc. v. Arranz*, 237 SCRA 770 [1994]; *Buzon v. Velasco*, *supra*.

[19] *Calleja v. Santelices*, A.M. No. RTJ-99-1443, 328 SCRA 61 [2000], citing *Hermo v. De la Rosa*, 299 SCRA 68 [1998].

[20] *Cortes v. Catral*, 279 SCRA 1 [1997]; *Cui v. Madayag*, 245 SCRA 1 [1995].

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