

TERESITA Q. TUCAY, COMPLAINANT, VS. JUDGE ROGER A. DOMAGAS, BRANCH 46, REGIONAL TRIAL COURT, URDANETA, PANGASINAN, RESPONDENT.

A.M. No. RTJ-95-1286. March 02, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

Teresita Q. Tucay filed this complaint against Judge Roger A. Domagas of the Regional Trial Court (Branch 46), Urdaneta, Pangasinan, charging him with ignorance of the law, serious misconduct and grave abuse of discretion.

The facts are as follows:

Ludovico Ellamil, Bernardo Ellamil and Melchor Ellamil are accused of murder in Criminal Case No. U-6762. The case was formerly assigned to the respondent judge. Teresita Tucay, the wife of the victim, is the complainant in that case.

On April 18, 1994, a petition for bail was filed on behalf of the accused Bernardo Ellamil. The petition was denied, [1] however, by respondent judge on the ground that it did not bear the conformity of the provincial prosecutor.

The following day, April 19, 1994, a second petition for bail [2] was filed by the accused with the prayer that he be allowed to post bail in the amount of P50,000.00. This time, the petition contained the notation "No objection" of Provincial Prosecutor Jose Antonio Guillermo.

Without holding a hearing to determine whether the evidence of the prosecution was strong, respondent judge issued an order [3] on the same day, in which he granted bail and directed the release of accused from detention with instructions to the bondsman to register the bond with the Register of Deeds of Lingayen, Pangasinan within ten days.

The present complaint was filed, protesting the grant of bail without hearing and without notice to trial fiscal, Atty. Tita Villarin, of the Provincial Prosecutor's recommendation for approval of the bond. It is alleged that the assessed value of the property given as bond is only P47,330.00, and, therefore, is short of the amount fixed for the release of the accused.

In his comment filed on August 3, 1994, respondent judge alleged:

(1)

The granting of the second petition for bail bears the conformity of the Provincial Prosecutor as per his notation at the right-hand margin on page 2 of the petition;

(2)

That the accused already made an additional bond as per Order dated May 19, 1994 to complete the P50,000.00

bail bond which he registered including the original bond;

(3)

The second petition for bail was approved on April 19, 1994 and the initial hearing was supposed to be on February 24 & 25, 1994 in so far as one accused, Ludovico Ellamil y Quinit, a youthful offender under the custody of DSWD and thereafter transferred to the Regional Rehabilitation Center, Bauang, La Union, is concerned;

(4)

That the hearing has been postponed repeatedly at the instance of the private prosecutor due to the non-arrest of the other two (2) accused:

(5)

That to avoid further suspicion and upon manifestation of the private prosecutor the undersigned inhibited himself as of May 31, 1994 and said case has been re-raffled to Branch 49, presided by Hon. Iluminado C. Meneses.

In her reply dated September 19, 1994, complainant alleged that respondent judge required the accused, Bernardo Ellamil, to post an additional bond only after she had pointed out the deficiency of the original property bond. She further alleged that the provincial prosecutor recommended no bail, despite the fact that MCTC Judge Rodrigo Nabor who, had ordered the arrest of the accused after a preliminary investigation, had fixed no bail for his temporary release. Complainant denied that the delay in the trial of the case was due to postponements requested by her counsel.

The Office of the Court Administrator (OCA), to which the letter--complaint was sent, finds the respondent judge grossly ignorant of the law in granting bail without a hearing in a criminal case involving a capital offense and recommends that he be fined and given a stern warning. The OCA stresses that respondent judge ought to know that a hearing to show that the evidence of guilt is not strong was indispensable to the grant of bail to the accused. It likewise points out that, in his order releasing the accused on bail, the judge did not state that he was granting the petition for bail but simply ordered him released. In a memorandum signed by Deputy Court Administrator Juanito A. Bernad and approved by Court Administrator Ernani Cruz Paño, the OCA states:

It is evident from the records that, the aforesaid second petition for bail was not set for hearing by respondent Judge in disregard of the provision of Sec. 5, Rule 114 of the Revised Rules on Criminal Procedure, requiring hearing before an accused charged with a capital offense can be granted bail. Although the Provincial Prosecutor interposed no objection thereto, the assailed Order dated April 19, 1994 which was issued on the very day the petition for bail was filed, nevertheless showed lack of compliance with the procedural requirement that the prosecution be given an opportunity to present within a reasonable time all the evidence that it may desire to introduce before the court may resolve the motion for bail. (Sec. 15, Rule 114).

In A.M. No. 92-10-884-RTC - Re: Report of the Pasig RTC Judges, citing the case of *Herras Teehankee vs. Director of Prison*, 76 Phil. 756, 789, this Court held that:

"x x x even where the prosecutor refuses to adduce evidence in opposition to the application to grant and fix bail, the Court may ask the prosecution questions to ascertain the strength of the State's evidence or judge the adequacy of the amount of bail."

Moreover, the assailed Order of April 19, 1994 is defective in form and substance as it made no categorical mention whatsoever of granting the petition for bail, much less did it contain any pronouncement to the effect that the requisite proof of guilt of the accused is not evident. It simply stated the fact that the bailbond in the amount of

P50,000.00 had been posted by said accused who was consequently ordered released from detention.

"The court's discretion to grant bail in capital offense must be exercised in the light of a summary of the evidence presented by the prosecution, otherwise, it could be uncontrolled and might be capricious or whimsical. Hence, the court's order granting or refusing bail must contain a summary of the evidence for the prosecution followed by its conclusion whether or not the evidence of guilt is strong." (Carpio vs. Maglalang, 196 SCRA 50-51, citing "People vs. San Diego, 26 SCRA 522, 524)

"x x x Such error cannot be characterized as mere deficiency in prudence, discretion and judgment but a patent disregard of well-known rules and, therefore, constitutive of gross ignorance of the law" (A.M. No. RTJ-93-1097 "Regional State Prosecutor Francisco Q. Aurillo, Jr. vs. Judge Getulio M. Francisco and Judge Pedro S. Espina, etc." August 12, 1994).

We agree with the foregoing observations of the OCA. We wish to add that, although the Provincial Prosecutor had interposed no objection to the grant of bail to the accused, respondent judge should 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.

He should have called a hearing for the additional reason of taking into account the guidelines in Rule 114, sec. 6 of 1985 Rules on Criminal Procedure, as amended, in fixing the amount of the bail. As it is, the respondent judge simply fixed the amount of bail at P50,000.00 and ordered the release of the accused. It turned out that the property given as security for the bond had a market value of only P42,940.00. Although it appears that an additional bond was later posted, this was done only after the complainant had objected to the bond.

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 granted the petition for bail and ordered the release of the accused. In failing to observe these rudimentary requirements, the respondent judge showed gross ignorance of the law for which he should be fined.

The OCA recommends that a fine of P20,000.00 be imposed on him and that he be warned. The recommendation is in accordance with the penalty imposed in the analogous cases. [4]

WHEREFORE, respondent Judge Roger A. Domagas is hereby ordered to pay a fine of P20,000.00 and is sternly warned that the commission of a similar offense in the future will be dealt with more severely.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quason, Puno, Vitug, Kapunan, and Francisco, JJ., concur.

[1] Annex B, Complaint.

[2] Annex C, Complaint.

[3] Annex G, Complaint.

[4] Libarios v. Dabalos, 199 SCRA 48 (1991); Borinaga v. Tamin, 226 SCRA 206 (1993).

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