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WHEREFORE, respondent Atty. Haide B. Vista-Gumba is found administratively liable for grave misconduct. She is *SUSPENDED* from the practice of law for *SIX (6) MONTHS,* effective immediately, with a warning that a repetition of the same or a similar act will be dealt with more severely.

Let notice of this Resolution be spread in respondent's record as an attorney in this Court, and notice thereof be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all the courts concerned.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *del Castillo, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-04-1845. October 5, 2011]
(Formerly A.M. No. IPI No. 03-1831-RTJ)

ATTY. FRANKLIN G. GACAL, *complainant, vs.* **JUDGE JAIME I. INFANTE, REGIONAL TRIAL COURT, BRANCH 38, IN ALABEL, SARANGANI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; REQUIREMENT OF HEARING MANDATORY BEFORE THE GRANT OF BAIL; CASE AT BAR. — Judge Infante apparently acted as if the requirement for the bail hearing was a merely minor rule to be dispensed with. Although, in theory, the only function of bail is to ensure the appearance of the accused at the time set for the arraignment and trial; and, in practice, bail serves the further purpose of preventing the release of an accused who may be dangerous to society or

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whom the judge may not want to release, a hearing upon notice is mandatory before the grant of bail, whether bail is a matter of right or discretion. With more reason is this true in criminal prosecutions of a capital offense, or of an offense punishable by *reclusion perpetua* or life imprisonment. Rule 114, Section 7 of the *Rules of Court*, as amended, states that: "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 criminal action."

2. ID.; ID.; ID.; ID.; A HEARING SHOULD STILL BE HELD EVEN IF THERE IS NO PETITION FOR BAIL; CASE AT BAR. — In *Cortes v. Catral*, therefore, the Court has outlined the following duties of the judge once an application for bail is filed, to wit: "**1. In all cases whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation** (Section 18, Rule 114 of the Revised Rules of Court, as amended); **2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless or 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, *id*.); **3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution**; 4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, *id*.); otherwise, the petition should be denied." x x x Judge Infante contends that a bail hearing in Criminal Case No. 1138-03 was not necessary because the accused did not file an application for bail; and because the public prosecutor had recommended bail. Judge Infante's contention is unwarranted. Even where there is no petition for bail in a case x x x, a hearing should still be held. This hearing is separate and distinct from the initial hearing to determine the existence of probable cause, in which the trial judge ascertains whether or not there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty of the crime. The Prosecution must be given a chance to show the strength of its evidence; otherwise, a violation of due process occurs.

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3. ID.; ID.; ID.; ID.; ID.; PUBLIC PROSECUTOR'S RECOMMENDATION OF BAIL DID NOT WARRANT DISPENSING WITH THE HEARING; CASE AT BAR. — The fact that the public prosecutor recommended bail for Ancheta did not warrant dispensing with the hearing. The public prosecutor's recommendation of bail was not material in deciding whether to conduct the mandatory hearing or not. For one, the public prosecutor's recommendation, albeit persuasive, did not necessarily bind the trial judge, in whom alone the discretion to determine whether to grant bail or not was vested. Whatever the public prosecutor recommended, including the amount of bail, was non-binding. Nor did such recommendation constitute a showing that the evidence of guilt was not strong. If it was otherwise, the trial judge could become unavoidably controlled by the Prosecution.

4. JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; GROSS IGNORANCE OF THE LAW; GRANTING OF BAIL WITHOUT A HEARING, CENSURABLE THEREFOR; CASE AT BAR. — Every judge should be faithful to the law and should maintain professional competence. His role in the administration of justice requires a continuous study of the law and jurisprudence, lest public confidence in the Judiciary be eroded by incompetence and irresponsible conduct. In that light, the failure of Judge Infante to conduct a hearing prior to the grant of bail in capital offenses was inexcusable and reflected gross ignorance of the law and the rules as well as a cavalier disregard of its requirement. He well knew that the determination of whether or not the evidence of guilt is strong was a matter of judicial discretion, and that the discretion lay not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the Prosecution's evidence of guilt against the accused. His fault was made worse by his granting bail despite the absence of a petition for bail from the accused. Consequently, any order he issued in the absence of the requisite evidence was not a product of sound judicial discretion but of whim and caprice and outright arbitrariness.

5. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY; CASE AT BAR. — The Court imposed a fine of ₱20,000.00 on the respondent judge in *Docena-Caspe v. Bugtas*. In that case, the respondent judge granted bail to the two accused who had been charged

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with murder without first conducting a hearing. Likewise, in *Loyola v. Gabo*, the Court fined the respondent judge in the similar amount of ₱20,000.00 for granting bail to the accused in a murder case without the requisite bail hearing. To accord with such precedents, the Court prescribes a fine of ₱20,000.00 on Judge Infante, with a stern warning that a repetition of the offense or the commission of another serious offense will be more severely dealt with.

D E C I S I O N

BERSAMIN, *J.*:

It is axiomatic that bail cannot be allowed to a person charged with a capital offense, or an offense punishable with *reclusion perpetua* or life imprisonment, without a hearing upon notice to the Prosecution. Any judge who so allows bail is guilty of gross ignorance of the law and the rules, and is subject to appropriate administrative sanctions.

Atty. Franklin Gacal, the private prosecutor in Criminal Case No. 1136-03 of the Regional Trial Court (RTC) in Alabel, Sarangani entitled *People v. Faustino Ancheta*, a prosecution for murder arising from the killing of Felomino O. Occasion, charges Judge Jaime I. Infante, Presiding Judge of Branch 38 of the RTC to whose Branch Criminal Case No. 1136-03 was raffled for arraignment and trial, with gross ignorance of the law, gross incompetence, and evident partiality, for the latter's failure to set a hearing before granting bail to the accused and for releasing him immediately after allowing bail.

Antecedents

On March 18, 2003, Judge Gregorio R. Balanag, Jr. of the Municipal Circuit Trial Court of Kiamba-Maitum, Sarangani issued a warrant for the arrest of Faustino Ancheta in connection with a murder case. Judge Balanag did not recommend bail. Ancheta, who had meanwhile gone into hiding, was not arrested. Upon review, the Office of the Provincial Prosecutor, acting through Assistant Provincial Prosecutor Alfredo Barcelona, Jr., affirmed the findings and recommendation of Judge Balanag

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on the offense to be charged, and accordingly filed in the RTC an information for murder on April 21, 2003 (Criminal Case No. 1136-03), but with a recommendation for bail in the amount of ₱400,000.00. Criminal Case No. 1136-03 was raffled to Judge Infante's Branch.

On April 23, 2003, Judge Infante issued twin orders, one granting bail to Ancheta, and another releasing Ancheta from custody.

On April 25, 2003, Atty. Gacal, upon learning of the twin orders issued by Judge Infante, filed a so-called *Very Urgent Motion For Reconsideration And/Or To Cancel Bailbond With Prayer To Enforce Warrant Of Arrest Or Issue Warrant Of Arrest Anew Or In The Alternative Very Urgent Motion For This Court To Motu Prop[r]io Correct An Apparent And Patent Error* (very urgent motion).

In the hearing of the very urgent motion on April 29, 2003, only Atty. Gacal and his collaborating counsel appeared in court. Judge Infante directed the public prosecutor to comment on the very urgent motion within five days from notice, after which the motion would be submitted for resolution with or without the comment. Ancheta, through counsel, opposed, stating that the motion did not bear the conformity of the public prosecutor.

At the arraignment of Ancheta set on May 15, 2003, the parties and their counsel appeared, but Assistant Provincial Prosecutor Barcelona, Jr., the assigned public prosecutor, did not appear because he was then following up his regular appointment as the Provincial Prosecutor of Sarangani Province. Accordingly, the arraignment was reset to May 29, 2003.

On May 21, 2003, Judge Infante denied Atty. Gacal's very urgent motion on the ground that the motion was *pro forma* for not bearing the conformity of the public prosecutor, and on the further ground that the private prosecutor had not been authorized to act as such pursuant to Section 5, Rule 110, of the *Rules of Court*. Judge Infante directed that the consideration of the bail issue be held in abeyance until after the public prosecutor had submitted a comment, because he wanted to know the position

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of the public prosecutor on Atty. Gacal's very urgent motion having been filed without the approval of the public prosecutor.[1]

On May 29, 2003, the public prosecutor appeared, but did not file any comment. Thereupon, Atty. Gacal sought authority to appear as a private prosecutor. The public prosecutor did not oppose Atty. Gacal's request. With that, Atty. Gacal moved for the reconsideration of the grant of bail to Ancheta. In response, Judge Infante required the public prosecutor to file his comment on Atty. Gacal's motion for reconsideration, and again reset the arraignment of the accused to June 20, 2003.[2]

On June 4, 2003, the public prosecutor filed a comment, stating that he had recommended bail as a matter of course; that the orders dated April 23, 2003 approving bail upon his recommendation and releasing the accused were proper; and that his recommendation of bail was in effect a waiver of the public prosecutor's right to a bail hearing.

By June 20, 2003, when no order regarding the matter of bail was issued, Atty. Gacal sought the inhibition of Judge Infante on the ground of his gross incompetence manifested by his failure to exercise judicial power to resolve the issue of bail.

In his motion for inhibition,[3] Atty. Gacal insisted that the issue of bail urgently required a resolution that involved a judicial determination and was, for that reason, a judicial function; that Judge Infante failed to resolve the issue of bail, although he should have acted upon it with dispatch, because it was unusual that several persons charged with murder were being detained while Ancheta was let free on bail even without his filing a petition for bail; that such event also put the integrity of Judge Infante's court in peril; and that although his motion for reconsideration included the alternative relief for Judge Infante to *motu proprio* correct his apparent error, his refusal to resolve the matter in due time constituted gross ignorance of law.

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[1] *Rollo*, pp. 44-45.

[2] *Id.*, p. 4.

[3] *Id.*, pp. 121-123.

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Atty. Gacal contended that Judge Infante was not worthy of his position as a judge either because he unjustifiably failed to exercise his judicial power or because he did not at all know how to exercise his judicial power; that his lack of judicial will rendered him utterly incompetent to perform the functions of a judge; that at one time, he ordered the bail issue to be submitted for resolution, with or without the comment of the public prosecutor, but at another time, he directed that the bail issue be submitted for resolution, with his later order denoting that he would resolve the issue only after receiving the comment from the public prosecutor; that he should not be too dependent on the public prosecutor's comment considering that the resolution of the matter of bail was entirely within his discretion as the judge;[4] and that the granting of bail without a petition for bail being filed by the accused or a hearing being held for that purpose constituted gross ignorance of the law and the rules.[5]

Finally, Atty. Gacal stated that Judge Infante and the public prosecutor were both guilty of violating the *Anti-Graft and Corrupt Practices Act*[6] for giving undue advantage to Ancheta by allowing him bail without his filing a petition for bail and without a hearing being first conducted.[7]

On July 9, 2003, Judge Infante definitively denied Atty. Gacal's very urgent motion.

On August 5, 2003, the Office of the Court Administrator (OCAd) received from the Office of the Ombudsman the indorsement of the administrative complaint Atty. Gacal had filed against Judge Infante (CPL-M-03-0581 entitled *Gacal v. Infante, et al.*), forwarding the records of the administrative case for appropriate action to the Supreme Court as the exclusive administrative authority over all courts, their judges and their personnel.[8]

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[4] *Rollo*, pp 1-8, 6.

[5] *Id.*, pp. 67-70, 70.

[6] *Id.*, p. 70.

[7] *Id.*

[8] *Id.*, p. 67.

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On August 21, 2003, then Court Administrator Presbitero J. Velasco, Jr. (now a Member of the Court) required Judge Infante to comment on the administrative complaint against him, and to show cause within 10 days from receipt why he should not be suspended, disbarred, or otherwise disciplinarily sanctioned as a member of the Bar for violation of Canon 10, Rule 10.03 of the *Code of Professional Responsibility* pursuant to the resolution of the Court *En Banc* in A.M. No. 02-9-02-SC dated September 17, 2002.[9]

On October 6, 2003, the OCAd received Judge Infante's comment dated September 22, 2003, by which he denied any transgression in the granting of bail to Ancheta, stating the following:

2. At the outset, as a clarificatory note, accused Faustino Ancheta is out on bail, not because he applied for bail duly granted by the court but because he posted the required bail since in the first place the Fiscal recommended bail, duly approved by the Undersigned, in the amount of ₱400,000.00. Underscoring is made to stress the fact that accused Ancheta had actually never filed an application for bail. Perforce, the court had nothing to hear, grant or deny an application/motion/petition for bail since none was filed by the accused.

3. Thus, the twin Orders dated April 23, 2003 are exactly meant as an approval of the bailbond (property) posted by accused Ancheta, it being found to be complete and sufficient. They are not orders granting an application for bail, as misconstrued by private prosecutor. (Certified true machine copy of the twin Orders dated April 23 marked as Annex-2 and 2-a are hereto attached)

4. On April 25, 2003, private complainant in the cited criminal case, thru counsel (the Gacal, Gacal and Gacal Law Office), filed a "Very Urgent Motion for Reconsideration or in the alternative Very Urgent Motion for this Court to *Motu Proprio* Correct an Apparent Error," praying that the twin Orders dated April 23, 2003 be reconsidered. (Certified machine copy of the said urgent motion marked as Annex 3 is hereto attached)

5. On April 29, 2003, during the hearing on motion, the private complainant and his counsel (private prosecutor) appeared. The Fiscal

[9] *Id.,* p. 90.

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was not present. The court nonetheless ordered the Fiscal to file his comment/s on the said motion. The accused thru private counsel in an open court hearing opposed the subject motion inasmuch as the same bears no conformity of the Fiscal. In that hearing, the court advised the private prosecutor to coordinate and secure the conformity of the Fiscal in filing his motion. (Certified machine copy of the Order dated April 29, 2003, marked as Annex 4 is hereto attached)

6. On May 15, 2003, the scheduled date for the arraignment of accused Ancheta, the parties and private prosecutor appeared. Again, the 1st Asst. Provincial Fiscal, Alfredo Barcelona, Jr., failed to appear who, being the next highest in rank in their Office, was processing his application for regular appointment as Provincial Fiscal of Sarangani Province. He was then the Acting Provincial Fiscal — Designate in view of the appointment of former Provincial Fiscal Laureano T. Alzate as RTC Judge in Koronadal City. Due to the absence of the Fiscal and the motion for reconsideration then pending for resolution, the scheduled arraignment was reset to May 29, 2003, per Order dated May 15, 2003, (certified machine copy of which marked as Annex 5 is hereto attached)

7. On May 21, 2003, the Undersigned resolved to deny for being pro forma the pending motion for reconsideration. As held in the Order of denial, it was found that the private prosecutor was not duly authorized in writing by the provincial prosecutor to prosecute the said criminal case, nor was he judicially approved to act as such in violation of Section 5, Rule 110 of the Revised Rules on Criminal Procedure. The bail issue, however, was held in abeyance until submission of the comment thereon by the Fiscal as this Presiding Judge would like then to know the position of the Fiscal anent to the cited motion without his approval. The arraignment was reset to June 20, 2003. Again, the private prosecutor was orally advised to coordinate and secure the approval of the Fiscal in filing his motions/pleadings. (Certified machine copy of the Order dated May 21, 2003 marked as Annex 6 hereto attached)

8. On June 4, 2003, the Fiscal finally filed his "Comment on the Very Urgent Motion for Reconsideration filed by private complainant thru counsel (private prosecutor). Consistently, the Fiscal in his comment recommended bail as a matter of course and that he claimed that Orders dated April 23, 2003 approving bail upon his recommendation are proper, waiving in effect his right for a bail

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hearing. (Certified true machine copy of the Fiscal's comment marked as Annex-7 is hereto attached).[10]

Under date of February 16, 2004, the OCAd recommended after investigation that the case be re-docketed as a regular administrative matter, and that Judge Infante be fined in the amount of ₱20,000.00,[11] *viz*:

EVALUATION: The 1987 Constitution provides that, all persons, except those charged with offenses punishable by *reclusion perpetua* when the evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties or be released on recognizance as may be provided by law (Sec. 13, Art. III).

The Revised Rules of Criminal Procedure provides that, no person charged with a capital offense or offense punishable by *reclusion perpetua* or life imprisonment shall be admitted to bail when the evidence is strong, regardless of the stage of the criminal prosecution (Sec. 7, Rule 114).

With the aforequoted provisions of the Constitution and the Rules of Criminal Procedure as a backdrop, the question is: Can respondent judge in granting bail to the accused dispense with the hearing of Application for Bail?

The preliminary investigation of Criminal Case No. 03-61, entitled *Benito M. Occasion vs. Faustino Ancheta* for Murder was conducted by Judge Gregorio R. Balanag, Jr., of MCTC, Kiamba-Maitum, Sarangani. Finding the existence of probable cause that an offense of Murder was committed and the accused is probably guilty thereof, he transmitted his resolution to the Office of the Provincial Prosecutor, together with the records of the case, with No Bail Recommended. Upon review of the resolution of the investigating judge by the OIC of the Office of the Provincial Prosecutor of Sarangani, he filed the information for Murder against accused Faustino Ancheta but a bail of ₱400,000.00 for the provisional liberty of the latter was recommended. Relying on the recommendation of the Fiscal, respondent judge granted the Application for Bail of the accused.

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[10] *Id.*, pp. 94-103 (bold emphasis is in the original text).

[11] *Id.*, pp. 205-212.

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The offense of Murder is punishable by *reclusion temporal* in its maximum period to death (Art. 248, RPC). By reason of the penalty prescribed by law, Murder is considered a capital offense and, grant of bail is a matter of discretion which can be exercised only by respondent judge after the evidence is submitted in a hearing. Hearing of the application for bail is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is weak or strong (*People vs. Dacudao*, 170 SCRA 489). It becomes, therefore, a ministerial duty of a judge to conduct hearing the moment an application for bail is filed if the accused is charged with capital offense or an offense punishable by *reclusion perpetua* or life imprisonment. If doubt can be entertained, it follows that the evidence of guilt is weak and bail shall be recommended. On the other hand, if the evidence is clear and strong, no bail shall be granted.

Verily, respondent judge erred when he issued an order granting the application for bail filed by the accused (Annex "C") based merely on the order issued by the Fiscal (Annex "A") recommending bail of ₱400,000.00 for the provisional liberty of the accused without even bothering to read the affidavits of the witnesses for the prosecution. Respondent judge cannot abdicate his right and authority to determine whether the evidence against the accused who is charged with capital offense is strong or not.

After the respondent judge has approved the property bond posted by the accused, the complainant, as private prosecutor filed a Motion for Reconsideration and/or Cancel Bailbond or in the alternative, Very Urgent Motion to *Motu Proprio* correct an Apparent Error. On the hearing of the Motion on 29 April 2003, the Fiscal was absent but he (the Fiscal) was given five (5) days from receipt of the order within which to file his comment and, with or without comment the incident is deemed submitted for resolution and, hearing of the Motion was reset to May 15, 2003. But the Fiscal again failed to appear on said date and, the arraignment of the accused was set on 29 May 2003. On 21 May 2003, respondent judge resolved to deny the Motion on the ground that the private prosecutor was not authorized in writing by the Chief of the Prosecution's Office or the Regional State Prosecutor to prosecute the case, subject to the approval of the court, pursuant to Sect. 5, Rule 110 Revised Rules of Criminal Procedure.

The need for an authority in writing from the Chief of the Prosecution's Office or Regional State Prosecutor to the Private Prosecutor to prosecute the case, subject to the approval of the court,

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contemplates of a situation wherein there is no regular prosecutor assigned the court, or the prosecutor assigned, due to heavy work schedule, cannot attend to the prosecution of pending criminal cases to expedite disposition of the case. This provision of the Rules of Criminal Procedure does not prevent the offended party who did not reserve, waive nor institute separate civil action, from intervening in the case through a private prosecutor.

> Intervention of the offended party in Criminal Action — Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 11, the offended party may intervene by counsel in the prosecution of the offense (Sec. 16, Rule 110 [*Supra*]).
>
> When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action (Sec. 1 (a), Rule 111 [*Supra*]).

The offended party in Criminal Case No. 1136-03 did not reserve his right to institute separate civil action, he did not waive such right and did not file civil action prior to the criminal action, so the offended party may under the law intervene as a matter of right.

The authority to intervene includes actual conduct of trial under the control of the Fiscal which includes the right to file pleadings. According to respondent judge, he advised the private prosecutor to coordinate with the fiscal and secure his approval in accord with the mandate of Section 5, Rule 110 of the Revised Rule of Criminal Procedure: On this point, respondent judge again erred. The right of the offended party to intervene is conferred by law and the approval of the Fiscal or even the court is not all necessary (Sec. 1 (a), Rule 111, [*Supra*]). Respondent Judge, however, is correct when he stated that the motions filed by the private prosecutor should be with the conformity of the Fiscal.

Respondent judge's errors are basic such that his acts constitutes gross ignorance of the law.

RECOMMENDATION: Respectfully recommended for the consideration of the Honorable Court is the recommendation that the instant I.P.I. be re-docketed as a regular administrative matter and respondent Judge be held ordered to pay a fine of ₱20,000.00.

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On March 31, 2004,[12] the Court directed that the administrative case be docketed as a regular administrative matter.

On December 01, 2004,[13] the Court denied Atty. Gacal's ancillary prayer to disqualify Judge Infante from trying Criminal Case No. 1138-03 pending resolution of this administrative matter.

Ruling

We approve and adopt the findings and recommendation of the OCAd, considering that they are well substantiated by the records. We note that Judge Infante did not deny that he granted bail for the provisional release of Ancheta in Criminal Case No. 1138-03 without conducting the requisite bail hearing.

I
Bail hearing was mandatory in Criminal Case No. 1138-03

Judge Infante would excuse himself from blame and responsibility by insisting that the hearing was no longer necessary considering that the accused had not filed a petition for bail; that inasmuch as no application for bail had been filed by the accused, his twin orders of April 23, 2003 were not orders granting an application for bail, but were instead his approval of the bail bond posted; and that Atty. Gacal's very urgent motion and other motions and written submissions lacked the requisite written conformity of the public prosecutor, rendering them null and void.

We cannot relieve Judge Infante from blame and responsibility.

The willingness of Judge Infante to rely on the mere representation of the public prosecutor that his grant of bail upon the public prosecutor's recommendation had been proper, and that his (public prosecutor) recommendation of bail had in effect waived the need for a bail hearing perplexes the Court. He thereby betrayed an uncommon readiness to trust more in

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[12] *Id.*, p. 213.

[13] *Id.*, p. 224.

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the public prosecutor's judgment than in his own judicious discretion as a trial judge. He should not do so.

Judge Infante made the situation worse by brushing aside the valid remonstrations expressed in Atty. Gacal's very urgent motion thusly:

> This Court is not unaware that the charge of murder being a capital offense is not bailable x x x
>
> x x x x x x x x x
>
> The phrase "x x x application for admission to bail x x x" is not an irrelevant but a significant infusion in the cited rule (section 8), the plain import of which is that bail hearing is preceded by a motion/ petition for admission to bail filed by a detained accused himself or thru counsel.
>
> **The peculiar feature of the instant case, however, is the absence of a petition/motion for admission to bail filed by the herein accused. On the contrary, it is the consistent position of the fiscal to recommend bail since the prosecution evidence being merely circumstantial, is not strong for the purpose of granting bail. x x x. This court believes that bail hearing, albeit necessary in the grant of bail involving capital offense, is not at all times and in all instances essential to afford the party the right to due process especially so, when the fiscal in this case was given reasonable opportunity to explain his side, and yet he maintained the propriety of grant of bail without need of hearing since the prosecution evidence is not strong for the purpose of granting bail.**
>
> Further, while it is preponderant of judicial experience to adopt the fiscal's recommendation in bail fixing, this court, however, had in addition and in accord with Section 6(a) of the Revised Rules on Criminal Procedure, evaluated the record of the case, and only upon being convinced and satisfied that the prosecution evidence as contained in the affidavits of all the prosecution witnesses, no one being an eye-witness are merely circumstantial evidence, that this court in the exercise of sound discretion allowed the accused to post bail.
>
> x x x x x x x x x

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The convergence of the foregoing factors — absence of motion for admission to bail filed by the accused, the recommendation of the fiscal to grant bail, the pro forma motion of the private prosecutor for lack of prior approval from the fiscal and this court's evaluation of the records — sufficiently warrants the grant of bail to herein accused.[14]

Judge Infante specifically cited judicial experience as sanctioning his adoption and approval of the public prosecutor's recommendation on the fixing of bail. Yet, it was not concealed from him that the public prosecutor's recommendation had been mainly based on the documentary evidence adduced,[15] and on the public prosecutor's misguided position that the evidence of guilt was weak because only circumstantial evidence had been presented. As such, Judge Infante's unquestioning echoing of the public prosecutor's conclusion about the evidence of guilt not being sufficient to deny bail did not justify his dispensing with the bail hearing.

Judge Infante apparently acted as if the requirement for the bail hearing was a merely minor rule to be dispensed with. Although, in theory, the only function of bail is to ensure the appearance of the accused at the time set for the arraignment and trial; and, in practice, bail serves the further purpose of preventing the release of an accused who may be dangerous to society or whom the judge may not want to release,[16] a hearing upon notice is mandatory before the grant of bail, whether bail is a matter of right or discretion.[17] With more reason is this true in criminal prosecutions of a capital offense, or of an offense punishable by *reclusion perpetua* or life imprisonment. Rule 114, Section 7 of the *Rules of Court*, as amended, states that:

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[14] *Id.*, pp. 22-23 (bold emphasis supplied).

[15] *Id.*, pp. 101-102.

[16] *Basco v. Rapatalo*, A.M. No. RTJ-96-1335, March 5, 1997, 269 SCRA 220.

[17] *Te v. Perez*, A.M. No. MTJ-00-1286, January 21, 2002, 374 SCRA 130; *Bangayan v. Butacan*, A.M. No. MTJ-00-1320, November 22, 2000, 345 SCRA 301, 306.

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"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 criminal action."

In *Cortes v. Catral*,[18] therefore, the Court has outlined the following duties of the judge once an application for bail is filed, to wit:

1. **In all cases whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation** (Section 18, Rule 114 of the Revised Rules of Court, as amended);

2. **Where bail is a matter of discretion, conduct a hearing of the application for bail regardless or 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, *id.*);

3. **Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;**

4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, *id.*); otherwise, the petition should be denied. [emphasis supplied]

II
Judge Infante disregarded rules and guidelines in Criminal Case No. 1138-03

Ostensibly, Judge Infante disregarded basic but well-known rules and guidelines on the matter of bail.

1.
In case no application for bail is filed, bail hearing was not dispensable

Judge Infante contends that a bail hearing in Criminal Case No. 1138-03 was not necessary because the accused did not

[18] A.M. No. RTJ-97-138, September 10, 1997, 279 SCRA 1, 18.

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file an application for bail; and because the public prosecutor had recommended bail.

Judge Infante's contention is unwarranted.

Even where there is no petition for bail in a case like Criminal Case No. 1138-03, a hearing should still be held. This hearing is separate and distinct from the initial hearing to determine the existence of probable cause, in which the trial judge ascertains whether or not there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty of the crime. The Prosecution must be given a chance to show the strength of its evidence; otherwise, a violation of due process occurs.[19]

The fact that the public prosecutor recommended bail for Ancheta did not warrant dispensing with the hearing. The public prosecutor's recommendation of bail was not material in deciding whether to conduct the mandatory hearing or not. For one, the public prosecutor's recommendation, albeit persuasive, did not necessarily bind the trial judge,[20] in whom alone the discretion to determine whether to grant bail or not was vested. Whatever the public prosecutor recommended, including the amount of bail, was non-binding. Nor did such recommendation constitute a showing that the evidence of guilt was not strong. If it was otherwise, the trial judge could become unavoidably controlled by the Prosecution.

Being the trial judge, Judge Infante had to be aware of the precedents laid down by the Supreme Court regarding the bail hearing being mandatory and indispensable. He ought to have remembered, then, that it was only through such hearing that he could be put in a position to determine whether the evidence for the Prosecution was weak or strong.[21] Hence, his dispensing

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[19] *Directo v. Bautista*, A.M. No. MTJ-99-1205, November 29, 2000, 346 SCRA 223.

[20] *Marzan-Gelacio v. Flores*, A.M. No. RTJ-99-1488, June 20, 2000, 334 SCRA 1, 9.

[21] *Marzan-Gelacio v. Flores, supra*.

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with the hearing manifested a gross ignorance of the law and the rules.

2.
Public prosecutor's failure to oppose application for bail or to adduce evidence did not dispense with hearing

That the Prosecution did not oppose the grant of bail to Ancheta, as in fact it recommended bail, and that the Prosecution did not want to adduce evidence were irrelevant, and did not dispense with the bail hearing. The gravity of the charge in Criminal Case No. 1138-03 made it still mandatory for Judge Infante to conduct a bail hearing in which he could have made on his own searching and clarificatory questions from which to infer the strength or weakness of the evidence of guilt. He should not have readily and easily gone along with the public prosecutor's opinion that the evidence of guilt, being circumstantial, was not strong enough to deny bail; else, he might be regarded as having abdicated from a responsibility that was his alone as the trial judge.

Judge Infante's holding that circumstantial evidence of guilt was of a lesser weight than direct evidence in the establishment of guilt was also surprising. His training and experience should have cautioned him enough on the point that the lack or absence of direct evidence did not necessarily mean that the guilt of the accused could not anymore be proved, because circumstantial evidence, if sufficient, could supplant the absence of direct evidence.[22] In short, evidence of guilt was not necessarily weak because it was circumstantial.

Instead, Judge Infante should have assiduously determined why the Prosecution refused to satisfy its burden of proof in the admission of the accused to bail. Should he have found that the public prosecutor's refusal was not justified, he could have then himself inquired on the nature and extent of the evidence of guilt for the purpose of enabling himself to ascertain whether or not such evidence was strong. He could not have ignored the

[22] *Gan v. People*, G.R. No. 165884, April 23, 2007, 521 SCRA 550.

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possibility that the public prosecutor might have erred in assessing the evidence of guilt as weak.[23] At any rate, if he found the Prosecution to be uncooperative, he could still have endeavored to determine on his own the existence of such evidence,[24] with the assistance of the private prosecutor.

3.

Judge Infante's granting of bail without a hearing was censurable for gross ignorance of the law and the rules

Every judge should be faithful to the law and should maintain professional competence.[25] His role in the administration of justice requires a continuous study of the law and jurisprudence, lest public confidence in the Judiciary be eroded by incompetence and irresponsible conduct.[26]

In that light, the failure of Judge Infante to conduct a hearing prior to the grant of bail in capital offenses was inexcusable and reflected gross ignorance of the law and the rules as well as a cavalier disregard of its requirement.[27] He well knew that the determination of whether or not the evidence of guilt is strong was a matter of judicial discretion,[28] and that the discretion lay not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the Prosecution's evidence of guilt against the accused.[29] His fault was made worse by his granting bail despite the absence of a petition for bail from the accused.[30] Consequently, any order

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[23] *Marzan-Gelacio v. Flores, supra* note 20.

[24] *Te v. Perez,* A.M. No. MTJ-00-1286, January 21, 2002, 374 SCRA 130.

[25] Rule 3.01, *Code of Judicial Conduct.*

[26] *Taborite v. Sollesta,* A.M. No. MTJ-02-1388, August 12, 2003, 408 SCRA 602.

[27] *Bantuas v. Pangadapun,* RTJ-98-1407, July 20, 1998, 292 SCRA 622.

[28] *Aleria, Jr. v. Velez,* G.R. No. 127400, November 16, 1998, 298 SCRA 611.

[29] *Gimeno v. Arcueno, Sr.*, A.M. No. MTJ-94-981, November 29, 1995, 250 SCRA 376.

[30] *Delos Santos-Reyes v. Montesa, Jr.*, A.M. No. RTJ-93-983, August 7, 1995, 247 SCRA 85.

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he issued in the absence of the requisite evidence was not a product of sound judicial discretion but of whim and caprice and outright arbitrariness.[31]

III
Imposable Penalty

We next determine the penalty imposable on Judge Infante for his gross ignorance of the law and the rules.

The Court imposed a fine of ₱20,000.00 on the respondent judge in *Docena-Caspe v. Bugtas.*[32] In that case, the respondent judge granted bail to the two accused who had been charged with murder without first conducting a hearing. Likewise, in *Loyola v. Gabo,*[33] the Court fined the respondent judge in the similar amount of ₱20,000.00 for granting bail to the accused in a murder case without the requisite bail hearing. To accord with such precedents, the Court prescribes a fine of ₱20,000.00 on Judge Infante, with a stern warning that a repetition of the offense or the commission of another serious offense will be more severely dealt with.

WHEREFORE, we *FIND AND DECLARE* Judge Jaime I. Infante guilty of gross ignorance of the law and the rules; and, accordingly, *FINE* him in the amount of ₱20,000.00, with a stern warning that a repetition of the offense or the commission of another serious offense will be more severely dealt with.

Let a copy of this Decision be furnished to the Office of the Court Administrator for proper dissemination to all trial judges.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Villarama, Jr., JJ.,* concur.

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[31] *Baylon v. Sison,* A.M. No. 92-7-360-0, April 6, 1995, 243 SCRA 284.

[32] AM RTJ-03-1767, March 28, 2003, 400 SCRA 37.

[33] A.M. No. RTJ-00-1524, January 26, 2000, 323 SCRA 348.