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WHEREFORE, the petition is *GRANTED* and the resolution dated April 20, 2001, of the Graft Investigation Officer, as approved by the Office of the Ombudsman, and his order, dated June 29, 2001, are hereby *SET ASIDE* and the complaint of respondent Santiago B. Villaruz against petitioner Susan Mendoza-Arce for violation of R.A. No. 3019, §3(e) and for falsification committed by a public officer under Art. 171 of the Revised Penal Code is *DISMISSED.*

SO ORDERED.

Bellosillo (Chairman), and *De Leon, Jr., JJ.,* concur.

Quisumbing, J., no part. Close relations to counsel of a party.

FIRST DIVISION

[A.M. No. 00-1529-RTJ. April 9, 2002]
(Formerly A.M. No. OCA-IPI-97-453-RTJ)

ATTY. FRED HENRY V. MARALLAG and NORMA F. FERI, *complainants, vs.* **JUDGE LORETO CLORIBEL-PURUGGANAN, RTC, Branch 3, Tuguegarao, Cagayan,** *respondent.*

SYNOPSIS

Complainant lawyer was the private prosecutor in a criminal case involving the death of the other complainant 's husband, Ferdinand Neri. The accused in the said criminal case admitted the killing of Ferdinand Neri, hence, a motion to conduct hearing in the reverse order was filed and approved by the respondent judge. The respondent judge ruled that the prosecution shall first present evidence regarding the petition for bail. The prosecution filed an appeal before the Court of Appeals assailing the order directing the prosecution to present evidence ahead of the defense in the hearing on the application for bail. But

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despite the pendency of the appeal, the respondent judge set the hearing for the petition for bail and refused to postpone it despite the motion of the prosecution. Because of the failure of the prosecution to present their witness on the scheduled hearing, the respondent judge granted bail to the accused. Thereafter, the complainants filed the present administrative case against the respondent judge claiming that the granting of bail upon the accused reflected gross ignorance of the law, incompetence and grave abuse of discretion on her part. The case was forwarded to the Office of the Court Administrator, which recommended that the respondent judge be held liable for grass ignorance of the law and be fined in the amount of P 5000.00.

According to the Supreme Court, the prosecution's failure to submit evidence on the accused's application for bail did not justify respondent judge's act of granting bail without a hearing. It is mandatory for the court to conduct a hearing or ask searching and clarificatory questions from which it may infer the strength of the State's evidence of guilt of the accused. However, the Court noted that the prosecution's failure to present evidence in relation to the petition for bail was not entirely due to the fault of respondent Judge. The prosecution was partly to blame for the failure. Hence, the Court found that the imposition of fine would not be justified under the circumstances of the case. The respondent judge was reprimanded by the Court and warned that a repetition of the same or similar acts in the future shall be dealt with more severely.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; WHEN ADMISSION TO BAIL OF AN ACCUSED IS DISCRETIONARY; REQUIREMENTS; NOT PRESENT IN CASE AT BAR.** — The rule is that all persons in custody shall, before conviction, be entitled to bail as a matter of right. However, when the accused is charged with a capital offense, or an offense punishable by *reclusion perpetua*, and the evidence of guilt is strong, the grant of bail becomes a matter of discretion. Where the admission to bail of an accused is discretionary, it

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is mandatory for the trial court to conduct a hearing to afford both the prosecution and the defense a reasonable opportunity to present evidence to establish, in the case of the prosecution, that evidence of the guilt of the accused is strong, and in the case of the defense, that such evidence of guilt is not strong. The criminal case before respondent Judge involved an accused who was charged with murder, a capital offense. Thus, the conduct of a hearing on the accused's application for bail was necessary before the trial court could grant bail. The records of the case however reveal that although the trial court set several dates for the hearing on the application for bail, the parties were not able to adduce evidence which would enable the trial court to determine whether the evidence of the accused's guilt was strong, for purposes of resolving the issue of whether the latter is entitled to bail. It was the other issues raised by the prosecution, such as the necessity of Duarte's arraignment before the application for bail may be resolved, and the propriety of conducting trial in reverse order, which were taken up during the scheduled hearings. The prosecution was thus deprived of the opportunity to prove that the evidence of Duarte's guilt was strong, and the defense was also denied the chance to prove otherwise. The records further indicate that when the prosecution failed to present any evidence during the hearing on the application for bail on August 12, 1997, respondent Judge proceeded at once to pronounce that the motion was deemed submitted for resolution.

2. **ID.; ID.; ID.; REQUIREMENT OF HEARING OR ASKING SEARCHING OR CLARIFICATORY QUESTIONS, MANDATORY.** — The prosecution's failure to submit evidence on the accused's application for bail did not justify respondent Judge's act of granting bail to the accused without a hearing, because the established rule is that even if the prosecution refuses to adduce evidence or fails to interpose any objection to the motion for bail, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions from which it may infer the strength of the State's evidence of guilt of the accused. A judge is in fact required to include in his or her order granting or refusing bail a summary of the evidence presented by the prosecution; otherwise, such order would be uncontrolled and may be deemed capricious or whimsical.

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3. **ID.; ID.; ID.; ID.; EFFECT OF FAILURE TO COMPLY THEREWITH; CASE AT BAR.** — Respondent Judge's act of granting bail to the accused without hearing the parties on the matter or asking searching and clarificatory questions runs counter to the rule requiring the conduct of a hearing on a petition for bail in cases where an accused is charged with a capital offense. Such error merits a reprimand, for the Court has previously held that — x x x 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 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 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, caprice and arbitrariness.

APPEARANCES OF COUNSEL

Fred Henry V. Marallag in his own behalf and as counsel for Norma F. Feri.

D E C I S I O N

KAPUNAN, *J.*:

This is an administrative complaint filed by Fred Henry V. Marallag and his client Norma F. Feri against respondent Judge Loreto Cloribel-Purugganan of the Regional Trial Court of Tuguegarao, Cagayan, Branch 3 for gross incompetence, gross ignorance of the law, oppression and grave abuse of discretion, relative to Criminal Case No. 7316.

The records show that on December 3, 1996, an information for murder was filed against Segismundo Duarte charging him with the murder of Ferdinand T. Feri. Subsequently, Duarte filed a petition for bail.

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On January 28, 1997, the date set for the hearing of the petition for bail, complainant Marallag, the private prosecutor handling Criminal Case No. 7316, manifested that Duarte first had to be arraigned in order that the trial court may acquire jurisdiction over said accused. Upon arraignment, Duarte pleaded Not Guilty to the offense charged. The prosecution informed the court that during the preliminary investigation before the Municipal Trial Court of Tuguegarao, Cagayan, Duarte admitted to the killing of Ferdinand Feri but claimed that he did it in self-defense. Thereafter, the prosecution orally moved that the reverse order of trial be conducted (i.e., that the defense shall be the first to present its evidence), in view of Duarte's admission of the killing.

Respondent Judge ordered Duarte to clarify in writing whether he admits to the killing of Ferdinand Feri or not. She likewise set for oral argument the next day, January 29, 1997, the issue of whether the reverse order of trial should be followed in the criminal case.

On January 29, 1997, after both parties were heard, respondent Judge granted the motion to conduct the trial in reverse order. The defense moved to reconsider the trial court's ruling. Subsequently, the trial court required the parties to submit their respective position papers on the issue of whether the trial should be in the reverse order. On February 4, 1997, the prosecution submitted a Memorandum of Authorities while the defense submitted its Position Paper.

In an Order dated February 26, 1997, respondent Judge ruled that the prosecution shall first present evidence regarding the petition for bail. The order stated in part:

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Let this case be reset anew for hearing of the application for bail on March 11 and 12, 1997, at 8:30 o'clock in the morning, since the accused refused to be presented during the last hearing, the prosecution is directed to get ready with their witnesses to be presented if any to prove their opposition. Otherwise the Court will consider this Motion for Bail submitted for resolution.

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The prosecution moved to reconsider the same, and its motion was granted in part by respondent Judge in her Order of June 18, 1997, which acknowledged that a hearing on the petition for bail must first be conducted before the court may resolve the same.

On July 14, 1997, complainants filed with the Court of Appeals a petition for *certiorari*, *mandamus* and prohibition questioning the February 26, 1997 Order of the respondent Judge, but the same was dismissed by the appellate court in a Resolution dated July 24, 1997, on the ground that the prosecution failed to report the matter to the Office of the Solicitor General for appropriate action.

Meanwhile, at the hearing of the petition for bail on August 12, 1997, the prosecution moved for postponement thereof in view of the pendency of the petition for *certiorari*, *mandamus* and prohibition in the Court of Appeals. Respondent Judge informed the parties of the dismissal of said petition, but the prosecution reiterated their motion for postponement, arguing that since they had not yet received a copy of the appellate court's resolution denying their petition, said dismissal had not yet attained finality and that they were going to file a motion for reconsideration thereof. Respondent Judge ordered the prosecution to proceed with the presentation of its witnesses but only complainant Feri was present in court. When the respondent Judge called on Mrs. Feri to testify, the prosecution refused, reasoning that the latter was not an eyewitness to the crime charged and would be testifying only with respect to the civil aspect of the case. However, respondent Judge considered the petition for bail submitted for resolution.

On August 14, 1997, the trial court issued an Order granting bail to Duarte. Respondent Judge concluded that the evidence against Duarte was not strong and the latter was thus entitled to post bail due to the prosecution's failure to present its witnesses during the scheduled hearings for the petition for bail despite the issuance of subpoenas to said witnesses. The Order stated:

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Considering that the prosecution witnesses never appeared when their turn to testify came and for four (4) settings, they never cropped up, this Court developed its impression that prosecution is left without anybody to oppose this motion for bail with no proof that the guilt of the accused is strong.

So this Court has to follow the amended Rules on Criminal Procedure, especially Rule 114, Sec. 3, quoted thus:

> Sec. 3. Bail, a matter of right; exception. — All persons in custody, shall, before final conviction, be entitled to bail as a matter of right except those charged with a capital offense, or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by *reclusion perpetua*, when evidence of guilt is strong.

Finding no witnesses to prove the guilt of the accused or to show that the evidence of guilt is strong;

AS PRAYED FOR, said Motion for Bail is hereby granted.[1]

Complainants thereafter filed the instant administrative case against respondent Judge, claiming that her issuance of the August 14, 1997 Order reflects gross ignorance of the law, incompetence and grave abuse of discretion on her part, since said Order granting bail did not contain a summary of evidence presented by the prosecution which summary is necessary to determine whether a judge has adequate basis for granting bail.[2]

In her Answer, respondent Judge argued that the complaint is premature since the assailed Order is still under reconsideration. Moreover, she said that there was no gross incompetence on her part in issuing the same because the prosecution failed to present its witnesses to oppose the petition for bail, notwithstanding the setting of several hearing dates for it to do so.[3] Respondent Judge also charged complainant Marallag of violating Canons

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[1] Order dated August 14, 1997, pp. 2-3.

[2] Administrative Complaint, pp. 6-8.

[3] Answer, pp. 1, 3.

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10[4] and 10.1[5] of the Code of Professional Responsibility for including the following false statements of fact in the administrative complaint against her:

(1) that respondent Judge *denied* his motion for reconsideration of the February 26, 1997 Order (requiring the prosecution to present evidence and to consider the motion for bail submitted for resolution) in its Order of June 18, 1997, when in fact respondent Judge partly granted the same and acknowledged therein that in petitions for bail, the prosecution must be accorded the opportunity to present evidence to prove that the evidence of guilt of the accused is strong, and accordingly set the presentation of evidence for August 12, 1997;

(2) that respondent Judge denied complainants due process by considering the application for bail submitted for resolution without conducting a hearing thereon, when it was the prosecution which failed, despite several opportunities granted thereto, to present its witnesses on the scheduled hearing dates;

(3) that respondent Judge refused to postpone the hearing on the application for bail on August 12, 1997 despite the pendency in the Court of Appeals of the petition for *certiorari*, prohibition and *mandamus* (assailing the order directing the prosecution to present evidence ahead of the defense), even though in truth, complainant had already received a copy of the appellate court's resolution denying said petition even before August 12, 1997.[6]

Respondent Judge further accused complainant Marallag of violating Canons 11[7] and 11.03[8] of the Code of Professional

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[4] Canon 10 of the Code of Professional Responsibility provides:

A lawyer owes candor, fairness and good faith to the Court.

[5] Canon 10.1 of the Code of Professional Responsibility provides:

A lawyer shall not do any falsehood nor mislead or allow the Court to be misled by any office.

[6] See Answer, p. 4.

[7] Canon 11 of the Code of Professional Responsibility provides:

A lawyer shall observe and maintain respect due to the courts and to judicial officers and should insist on similar conduct by others.

[8] Canon 11.03 of the Code of Professional Responsibility provides:

A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the courts.

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Responsibility for exhibiting disrespect towards her during the hearing on August 12, 1997, specifically, by using "menacing language" against her and raising his voice.[9]

On November 29, 1999, Office the Court Administrator submitted its memorandum recommending that respondent Judge be held liable for gross ignorance of the law and be fined in the amount of Five Thousand Pesos (₱5,000.00).

The complaint is meritorious.

The rule is that all persons in custody shall, before conviction, be entitled to bail as a matter of right. However, when the accused is charged with a capital offense, or an offense punishable by *reclusion perpetua*, and the evidence of guilt is strong, the grant of bail becomes a matter of discretion.[10]

Where the admission to bail of an accused is discretionary, it is mandatory for the trial court to conduct a hearing to afford both the prosecution and the defense a reasonable opportunity to present evidence to establish, in the case of the prosecution, that evidence of the guilt of the accused is strong, and in the case of the defense, that such evidence of guilt is not strong.[11]

The criminal case before respondent Judge involved an accused who was charged with murder, a capital offense.[12] Thus, the conduct of a hearing on the accused's application for bail was necessary before the trial court could grant bail. The records of the case however reveal that although the trial court set several dates for the hearing on the application for bail, the parties were not able to adduce evidence which would enable the trial court to determine whether the evidence of the accused's guilt was strong, for purposes of resolving the issue of whether the latter is entitled to bail. It was the other issues raised by the prosecution, such as the necessity of Duarte's arraignment before

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[9] *Id.*, at 5.

[10] Rule 114, Sections 4 and 7, Revised Rules of Court.

[11] *Santos vs. Ofilada*, 245 SCRA 56 (1995).

[12] Article 248, Revised Penal Code.

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the application for bail may be resolved, and the propriety of conducting trial in reverse order, which were taken up during the scheduled hearings.[13] The prosecution was thus deprived of the opportunity to prove that the evidence of Duarte's guilt was strong, and the defense was also denied the chance to prove otherwise. The records further indicate that when the prosecution failed to present any evidence during the hearing on the application for bail on August 12, 1997, respondent Judge proceeded at once to pronounce that the motion was deemed submitted for resolution.

The prosecution's failure to submit evidence on the accused's application for bail did not justify respondent Judge's act of granting bail to the accused without a hearing, because the established rule is that even if the prosecution refuses to adduce evidence or fails to interpose any objection to the motion for bail, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions from which it may infer the strength of the State's evidence of guilt of the accused.[14] A judge is in fact required to include in his or her order granting or refusing bail a summary of the evidence presented by the prosecution; otherwise, such order would be uncontrolled and may be deemed capricious or whimsical.[15]

Respondent Judge's act of granting bail to the accused without hearing the parties on the matter or asking searching and clarificatory questions runs counter to the rule requiring the conduct of a hearing on a petition for bail in cases where an accused is charged with a capital offense. Such error merits a reprimand, for the Court has previously held that —

> xxx 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

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[13] See Order dated February 26, 1997, June 18, 1997 and July 2, 1997.

[14] *Borinaga vs. Tamin,* 226 SCRA 206 (1993).

[15] *People vs. San Diego*, 26 SCRA 522, 524 (1968).

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is weighed 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 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, caprice and arbitrariness.[16]

However, the Court notes that the prosecution's failure to present evidence in relation to the petition for bail was not entirely due to the fault of respondent Judge. The prosecution is also partly to blame for such failure. On the dates set by the trial court for hearing of the petition for bail, the prosecution raised other issues—first, the alleged inconsistency between the accused's plea of Not Guilty during the arraignment and his admission during the preliminary investigation that he killed Ferdinand Feri in self-defense; and second, the necessity of conducting the trial in the reverse order—which sidetracked the hearing on the petition for bail. Moreover, it was the prosecution which refused to heed respondent Judge's order that it proceed with the presentation of its evidence relative to the petition for bail during the hearing of August 12, 1997. Hence, the Court finds that an imposition on respondent Judge of a fine would not be justified under the circumstances of this case.

The Court also deems it proper to refer to the integrated Bar of the Philippines for investigation, recommendation and report the allegations of respondent Judge that complainant Marallag knowingly made untruthful statements of fact in his complaint filed with the Court, and exhibited disrespect toward respondent Judge during several hearings of Criminal Case No. 7316.

WHEREFORE, respondent Judge Loreto Cloribel-Purugganan of the Regional Trial Court of Tuguegarao, Cagayan, Branch 3, is hereby *REPRIMANDED* and *WARNED* that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of this decision be attached to the personal record of respondent Judge.

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[16] *Santos vs. Ofilada, supra*, at 62.

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The charges made by respondent Judge against complainant Atty. Fred Henry V. Marallag are hereby *REFERRED* to the Integrated Bar of the Philippines for investigation, report and recommendation.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and *Ynares-Santiago, JJ.,* concur.

FIRST DIVISION

[G.R. No. 141396. April 9, 2002]

DEOGRACIAS MUSA, ROMEO and ANDRO MUSA, as represented by their Attorney-in-fact, MARILYN MUSA, *petitioners, vs.* **SYLVIA AMOR,** *respondent.*

SYNOPSIS

Assailed in this petition for review on *certiorari* is the decision of the Court of Appeals which modified in part the decision of the Department of Agrarian Reform Adjudication Board (DARAB) and ruled that herein petitioners were not tenants of the subject landholding as well as the resolution denying petitioners' motion for reconsideration. Rosario Dasig, acted as administratrix of her son's landholdings while the latter migrated to the United States. Later on, she sold the property to herein respondent Sylvia Amor. This prompted petitioners herein, claiming to be tenants of the landholding, to file a case for redemption with the Department of Agrarian Reform Regional Adjudicator. Petitioners subsequently filed a complaint for annulment of sale against respondent. The Regional Adjudicator of the DAR ruled in favor of petitioners and declared them as tenants of the subject landholding and