Supreme Court E-Library

FIRST DIVISION

[A.M. No. RTJ-99-1473. February 16, 2000]

JESSICA GOODMAN, *complainant, vs.* **JUDGE LORETO D. DE LA VICTORIA, Presiding Judge, Regional Trial Court, Branch 06, Cebu City,** *respondent.*

SYNOPSIS

Jessica Goodman filed an administrative complaint against herein respondent Judge Loreto D. dela Victoria , presiding judge of Regional Trial Court of Cebu City for abuse of authority, oppressive conduct and gross ignorance of the law in relation to granting of the application for bail of Moalboal Mayor Marcelo Abrenica and Adriano Cabantugan even without conducting any formal hearing. Likewise, the complainant asserted that respondent showed bias and patent abuse of authority for not allowing her private counsel to be heard, as the counsel was without authority from the public prosecutor. The Office of the Court Administrator recommended that respondent judge be ordered to pay the fine of ₱20,000.00 with stern warning that commission of a similar offense in the future will be dealt with more severely.

Respondent judge was wrong in refusing to hear complainant's counsel at the hearing of the application for bail. There was no prohibition for counsel of the complainant to appear before the court during hearing for admission to bail of an accused. There was likewise no need of special authority from the public prosecutor to do so. Moreover, respondent is liable for precipitate haste in granting bail. The judge is required to conduct a hearing even in cases where the prosecution chooses to just file a comment or leave the application for bail to the discretion of the court. Irrespective of the judge's opinion that the evidence of guilt against the accused is not strong, the law and settled jurisprudence require that an actual hearing be conducted before bail may be granted. Respondent judge, therefore, must be held liable for serious misconduct for not conducting formal hearing before granting bail. Accordingly, the Court found the respondent guilty of serious misconduct and imposed upon him the fine of ₱5,000.00.

Supreme Court E-Library

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; THERE IS NO PROHIBITION FOR PRIVATE COUNSEL TO APPEAR BEFORE THE COURT DURING THE HEARING FOR ADMISSION TO BAIL OF AN ACCUSED.**— The respondent judge was wrong in refusing to hear complainant's counsel at the hearing of the application for bail. There is no prohibition for counsel of complainant to appear before the court during the hearing for admission to bail of an accused. There is no need of any special authority from the public prosecutor to do so.

2. **ID.; ID.; ID.; JUDGES ARE REQUIRED TO CONDUCT ACTUAL HEARING IN BAIL APPLICATIONS.**— The judge is mandated to conduct a hearing even in cases where the prosecution chooses to just file a comment or leave the application for bail to the discretion of the court. Irrespective of his opinion that the evidence of guilt against the accused is not strong, the law and settled jurisprudence require that an actual hearing be conducted before bail may be granted.

3. **LEGAL AND JUDICIAL ETHICS; JUDGES; RESPONDENT IS LIABLE FOR SERIOUS MISCONDUCT FOR FAILURE TO COMPLY SUBSTANTIALLY WITH THE REQUIREMENT OF A HEARING IN BAIL APPLICATION.**— The brief inquiry conducted by respondent judge before granting bail did not constitute the hearing required by law, for such proceeding "did not elicit evidence from the prosecution to guide respondent in the proper determination of the petition." Respondent judge could not have intelligently assessed the weight of the evidence against accused before granting the application for bail. There were no questions propounded by respondent verifying the strength of the prosecution's evidence. In fact, the prosecution was not represented during the hearing. Thus, respondent judge failed to comply substantially with the requirement of a hearing in bail applications. Respondent judge, therefore, must be held liable for serious misconduct. However, on June 9, 1999, respondent judge applied for optional retirement, which the Court has approved. We may no longer impose the appropriate penalty that could be dismissal from office.

Supreme Court E-Library

RESOLUTION

PARDO, *J.*:

What is before the Court is a petition[1] for the dismissal of Judge Loreto D. de la Victoria, presiding judge, Regional Trial Court, Branch 06, Cebu City, for abuse of authority, oppressive conduct and gross ignorance of the law in relation to his handling of the application for bail of Moalboal Mayor Abrenica and Adriano Cabantugan in Special Proceedings No. 6204-CEB entitled "In the Matter of the Application for Bail of Mayor Marcelo Abrenica and Adriano Cabantugan."

On November 8, 1996, assassins gunned down Jerome Goodman, an American national, and struck him with a blunt instrument in Moalboal, Cebu. Before he died, he identified his assailants as Marcelo Abrenica, Mayor of Moalboal, and Mario Dumogho, bodyguard of the mayor.

On November 9, 1996, Mayor Abrenica and Adriano Cabantugan presented themselves to the police authorities. Mario Dumogho surrendered himself later.

On November 11, 1996, the Criminal Investigation Command (CIC), after securing the sworn statements of witnesses to the killing, filed with the Office of the Provincial Prosecutor of Cebu the charge sheet for murder against Mayor Abrenica, Adriano Cabantugan and Mario Dumogho. A supplemental charge sheet was later filed by the CIC for the inclusion of Tani Abrenica and Ikay Gabales in the murder charge. Both Tany Abrenica and Ikay Gabales are still at large.

Also, on November 11, 1996, Mayor Abrenica and Cabantugan, assisted by their counsel, filed with the Office of the Provincial Prosecutor of Cebu a "Request for Preliminary Investigation and Waiver of Article 125 of the Revised Penal Code." They agreed to remain under police custody pending completion of the preliminary investigation. The preliminary investigation was set for November 18, 1996.

---

[1] Filed on December 26, 1996 by Jessica Goodman, *Rollo*, pp. 1-12.

Supreme Court E-Library

On November 15, 1996, Mayor Abrenica and co-accused, Adriano Cabantugan, filed with the Regional Trial Court, Cebu City, an application for bail.[2] The petition was raffled to two judges in succession, as one after another voluntarily inhibited themselves in view of their close association and friendship with the accused mayor.

The case was re-raffled and assigned to respondent Judge Loreto D. de la Victoria. On November 20, 1996, respondent set the petition for bail for hearing on November 25, 1996, and sent notices to the Office of the Deputy Ombudsman, counsel for the accused and counsel of private complainant, Jessica Goodman. However, on the day of the hearing, respondent did not allow complainant's counsel, Atty. Cornelio Mercado, to be heard, stating that counsel was "without standing" before the court because he failed to secure the authority of the public prosecutor to appear at the hearing. After a brief inquiry as to the non-appearance of the public prosecutor, the date when subpoena was received by accused or counsel, and the fact that the Office of the Ombudsman was conducting a preliminary investigation, respondent granted the application for bail and fixed bail for the temporary liberty of accused mayor at sixty thousand pesos (₱60,000.00). Respondent likewise reiterated that the notice sent to complainant's counsel did not signify that he had been recognized by the court as possessing legal standing to appear without authority of the public prosecutor.

Hence, this complaint.

Complainant alleged that respondent's uncommon bias and patent abuse of authority to strip her counsel of any standing in court deprived her of her day in court. Complainant also stated that respondent exhibited oppressive conduct in requiring the parties to attend the hearing and thereafter embarrassed her and counsel by declaring them to be without any standing in court. Furthermore, respondent displayed ignorance of the law for failing to comply with the provisions of the Rules of Court, particularly those pertaining to denial or grant of bail, considering the seriousness of the offense charged against the accused.

[2] Docketed as Special Proceedings 6204-CEB.

Supreme Court E-Library

In his Comment dated August 12, 1997,[3] respondent Judge denied the charges of abuse of authority and oppressive conduct, alleging that the notice sent to complainant's counsel to attend the hearing of the petition for bail did not necessarily confer upon said parties the legal standing to intervene in the proceedings. He rationalized his position as follows:

". . . to allow the private complainant and/or her counsel to intervene and entertain their opposition which would then entail the presentation of evidence by the private complainant, the result would be to convert this kind of proceeding into one of preliminary investigation. I firmly believe that that would then be anomalous and irregular as this Court — which has already been disenfranchised to conduct a preliminary investigation under the new rules — would then be encroaching and usurping upon the functions and duties of the public prosecutor (the Ombudsman), and pre-empting the outcome of the investigation of the latter."[4]

Respondent justified his decision to grant bail by citing the failure of the Ombudsman or any of his prosecutors to appear at the hearing for bail to inform the court of any finding of strong evidence of guilt or that murder had been committed, and in consonance with the presumption of innocence.

Respondent judge maintained that his action found support in the provisions of the Rules of Court, particularly Section 7, paragraph 2, Rule 112, which provides:

"However, before the filing of such complaint or information, the person arrested may ask for a preliminary investigation by a proper officer in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, with the assistance of a lawyer and in case of non-availability of a lawyer, a responsible person of his choice. *Notwithstanding such waiver, he may apply for bail as provided in the corresponding rule and the investigation must be terminated within fifteen (15) days from its inception.*"

and Section 17 (c) of the Supreme Court Administrative Circular No. 12-94, amending Rule 114 of the Rules on Criminal Procedure, which provides:

---

[3] *Rollo*, pp. 57-59.

[4] Comment, *Rollo*, p. 58.

Supreme Court E-Library

"Any person in custody who is not yet charged in court may apply for bail with any court in the province, city or municipality where he is held."

He asked this Court to reject the accusation of gross ignorance of the law.

Respondent also alleged that the prosecution filed a comment on the petition for bail, but failed to attend the hearing. He attached a copy of the comment filed by the graft investigation officer, Office of the Ombudsman, Visayas, which stated as follows:

"1) Mayor Marcelo Abrenica, et al. are charged of the crime of Murder which carries a penalty of *Reclusion Perpetua* to Death;
2) This being so, this crime is non-bailable;
3) At this stage of the proceedings, wherein undersigned is still conducting the preliminary investigation of this case, undersigned cannot recommend bail for the temporary liberty of the accused;
4) We leave this matter to the sound discretion of the Honorable Court.

"Cebu City, Philippines, 22 November 1996.

Respectfully submitted:

ARTURO C. MOJICO
Deputy Ombudsman for the Visayas

By: (s/t) RICARDO A. REBOLLIDO
"Graft Investigation Officer II"[5]

However, complainant attached to her petition the order issued by the Office of the Ombudsman dated November 25, 1996, stating in part, to wit:

"It is the undersigned investigator's assessment that the evidence on record of the guilt of the respondent, Marcelo Abrenica, is strong."[6]

In its Memorandum dated May 31, 1999, the Office of the Court Administrator, through Deputy Court Administrator Bernardo T. Ponferrada, recommended that respondent judge be ordered to pay a fine of ₱20,000.00 with stern warning that the commission of a

---

[5] Comment, Annex "A", *Rollo*, p. 54.

[6] Petition, Annex "G", *Rollo*, pp. 45-46.

Supreme Court E-Library

similar offense in the future will be dealt with more severely.[7]

We find merit in this petition.

The respondent judge was wrong in refusing to hear complainant's counsel at the hearing of the application for bail.

There is no prohibition for counsel of complainant to appear before the court during the hearing for admission to bail of an accused. There is no need of any special authority from the public prosecutor to do so.

Moreover, respondent is liable for precipitate haste in granting bail.

The 1985 Rules on Criminal Procedure, as amended, mandates that no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, when evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal prosecution.[8]

The grant of bail to an accused charged with a capital offense such as murder, which carries with it the penalty of *reclusion perpetua* to death, is discretionary, not a matter of right.[9] Thus, the judge must first conduct a hearing to determine whether evidence of guilt is strong.[10]

After hearing, the court's order granting or denying bail must summarize the evidence for the prosecution.[11] On the basis thereof, the judge shall formulate his own conclusion as to whether or not the evidence of guilt is strong. Otherwise, the order granting or

---

[7] *Rollo*, pp. 82-86.

[8] Section 7, Rule 114, 1985 Rules on Criminal Procedure, as amended; *Obosa vs. Court of Appeals*, 266 SCRA 281 (1997); *Basco vs. Rapatalo,* 269 SCRA 220 (1997); *Buzon vs. Velasco,* 253 SCRA 601 (1996).

[9] *Guillermo vs. Reyes, Jr.,* 240 SCRA 154 (1995).

[10] *Cruz vs. Yaneza,* A.M. No. MTJ-99-1175, March 9, 1999; *De los Santos-Reyes vs. Montesa, Jr.*, 247 SCRA 85 (1995).

[11] *People vs. San Diego*, 26 SCRA 522 (1968); *Lardizabal vs. Reyes,* 238 SCRA 640 (1994); *Cortes vs. Catral,* 279 SCRA 1 (1997); *Baylon vs. Sison*, 243 SCRA 284 (1995).

Supreme Court E-Library

denying the application for bail may be arbitrary and hence, invalid.[12]

The judge is mandated to conduct a hearing even in cases where the prosecution chooses to just file a comment or leave the application for bail to the discretion of the court.[13] Irrespective of his opinion that the evidence of guilt against the accused is not strong, the law and settled jurisprudence require that an actual hearing be conducted before bail may be granted.

The brief inquiry conducted by respondent judge before granting bail did not constitute the hearing required by law, for such proceeding "did not elicit evidence from the prosecution to guide respondent in the proper determination of the petition."[14] Respondent judge could not have intelligently assessed the weight of the evidence against accused before granting the application for bail. There were no questions propounded by respondent verifying the strength of the prosecution's evidence. In fact, the prosecution was not represented during the hearing. Thus, respondent judge failed to comply substantially with the requirement of a hearing in bail applications.

Respondent judge, therefore, must be held liable for serious misconduct. However, on June 9, 1999, respondent judge applied for optional retirement, which the Court has approved.[15] We may no longer impose the appropriate penalty that could be dismissal from office.[16]

WHEREFORE, the Court finds respondent Judge Loreto D. dela Victoria, Regional Trial Court, Branch 06, Cebu City, guilty of serious misconduct in office and hereby imposes upon him a *FINE* of five thousand pesos (P5,000.00), to be deducted from the amount withheld from his retirement benefits.

---

[12] *Basco vs. Rapatalo, supra.*

[13] *Basco vs. Rapatalo, supra.*

[14] *Mamolo, Sr. vs. Narisma*, 252 SCRA 613 (1996).

[15] On August 10, 1999.

[16] Cf . *Cruz vs. Yaneza, supra,* Note 10; *Tabao vs. Espina*, 257 SCRA 298 (1996).

Supreme Court E-Library

SO ORDERED.

Puno, Kapunan and *Ynares-Santiago, JJ.*, concur.
Davide, Jr., C.J., concurs in the result.

FIRST DIVISION

[G.R. No. 127710. February 16, 2000]

AZUCENA B. GARCIA, *petitioner, vs.* **THE HONORABLE OFFICE OF THE OMBUDSMAN and ESMERALDO E. SIOSON, BENEDICTA F. BARRIENTOS, JACQUELINE C. MENDOZA,** *respondents.*

SYNOPSIS

In 1991, the National Development Company (NDC) initiated a program of early retirement of its personnel with an offer that the retirement and separation benefits are tax-exempt. In March 1995, petitioner Azucena B. Garcia availed of the program. However, private respondents, who are controller, disbursing officer and assistant general manager of NDC deducted withholding tax from the share of the petitioners in the provident fund benefits. Petitioner protested private respondents' action and requested them to refund the taxes withheld and remitted to the Bureau of Internal Revenue, claiming that such amount was tax–exempt. Due to private respondents' refusal to grant her request, petitioner filed with the Office of the Ombudsman a complaint against them for violation of Section 3 (e) of Republic Act No. 3019, for causing her undue injury. The Ombudsman dismissed petitioner's complaint.

In this appeal, the Court ruled that the Ombudsman acted correctly in dismissing petitioner's complaint because private respondents had not acted in bad faith or with gross negligence in deducting withholding tax from petitioner's provident fund benefits share over and above her personal contribution, as they were guided by the opinion of the Commissioner of Internal Revenue at the