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[A.M. No. RTJ-00-1524. January 26, 2000]

LUCIA F. LAYOLA, *complainant, vs.* **JUDGE BASILIO R. GABO, Jr.,** *respondent.*

SYNOPSIS

An information for murder was filed against SPO2 Leopoldo M. German for the killing of complainant's son. The information which categorically stated that no bail was recommended was raffled as Criminal Case No. 209-M-97 to respondent judge. During the course of the trial, respondent judge, on motion, released said accused to his immediate supervisor, the Chief of Police of Sta. Maria Police Station, without conducting a hearing. This was assailed by complainant as a violation of Section 3 (e) of R. A. 3019 for rendering an unjust interlocutory order and for gross ignorance of the law. The Office of the Court Administrator to which the complaint was referred to for investigation, report and recommendation found no sufficient basis for the charge of unjust interlocutory order but found respondent guilty of gross ignorance of the law for granting release of the accused without hearing.

The Supreme Court sustained the Office of the Court Administrator. The quantum of proof for a judge to be held liable for knowingly rendering an unjust judgment is proof beyond reasonable doubt, and that the judgment assailed is unjust, contrary to law or unsupported by the evidence, and rendered with deliberate intent to do an injustice. The allegations complainant were unsubstantiated, thus respondent cannot be found guilty of the charge.

Bail cannot be allowed as a matter of right in capital offenses like murder, but may be issued upon the sound discretion of the court after hearing duly conducted despite the fact that the prosecution did not oppose the motion. The granting of bail in non-bailable offenses without hearing constitutes gross ignorance of the law.

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SYLLABUS

1. **CRIMINAL LAW; CRIMES COMMITTED BY PUBLIC OFFICERS; KNOWINGLY RENDERING AN UNJUST INTERLOCUTORY ORDER; ELEMENTS.**— Knowingly rendering an unjust interlocutory order must have the elements: 1) that the offender is a judge; 2) that he performs any of the following acts: a) he knowingly renders unjust interlocutory order or decree; or b) he renders a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance.

2. **REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; QUANTUM OF PROOF REQUIRED TO HOLD A JUDGE GUILTY OF KNOWINGLY RENDERING AN UNJUST JUDGMENT.**— It is a settled doctrine that for a judge to be held liable for knowingly rendering an unjust judgment, it must be established beyond cavil that the judgment adverted to is just, contrary to law or unsupported by the evidence, and that the same was rendered with conscious and deliberate intent to do an injustice. In other words, the quantum of proof required to hold respondent judge guilty for alleged violations of Section 3 (e) of R.A. 3019 and Article 206 of the Revised Penal Code, is proof beyond reasonable doubt.

3. **ID.; ID.; ID.; REQUIRES MORAL CERTAINTY.**— Proof beyond reasonable doubt requires moral certainty. If the inculpatory facts and circumstances are capable of two or more explanations or interpretations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, the evidence does not fulfill or hurdle the test of moral certainty and does not suffice to convict.

4. **ID.; ID.; ID.; ID.; CASE AT BAR.**— Here, the allegations of the complaint-affidavit are unsubstantiated. Respondent judge cannot, of course, be pronounced guilty on the basis of bare allegations. There has to be evidence on which conviction can be anchored. The evidence must truly be beyond reasonable doubt.

5. **JUDICIAL ETHICS; JUDGES; GRANTING BAIL IN NON-BAILABLE OFFENSES WITHOUT HEARING, GROSS IGNORANCE OF THE LAW.**— In the case of *Baylon vs. Sison,* it was succinctly held, "Quintessentially, and as a matter

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of law, the discretion of the court, in cases involving capital offenses may be exercised only after there has been a hearing called to ascertain the weight of the evidence against the accused. Peremptorily, the discretion lies, not in determining whether or not there will be a hearing, but in appreciating and evaluating the weight of the evidence of guilt against the accused. It follows that any order issued in the absence of the requisite evidence is not a product of sound judicial discretion but of whim and caprice and outright arbitrariness. 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 exercised in determining whether the evidence of 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 and caprice and outright arbitrariness. Granting bail in non-bailable offenses without hearing is gross ignorance of the law. Thus, the doctrine of *res ipsa loquitor*, *i.e.*, that the Court may impose its authority upon erring judges whose actuations, on their face, would show gross incompetence, ignorance of the law, or misconduct, is obviously applicable in the instant case.

6. **ID.; ID.; ID.; ABSENCE OF OBJECTION BY PROSECUTION THERETO, NOT AN EXCUSE.**— That the prosecutor interposed no objection to the release of the accused to the custody of the petitioner Chief of Police, on the ground that from the records of the case, accused's "indictment was based on circumstantial evidence," did not and should not excuse respondent judge from his judicial duty to conduct a summary proceeding to determine the strength of evidence against the accused, as to entitle him to post bail. What is more, as the Information itself categorically states that no bail is recommended for accused, the respondent judge should have been alerted to conduct a summary hearing.

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DECISION

PURISIMA, *J.*:

At bar is an administrative case initiated by the sworn affidavit-complaint[1] of Lucia F. Layola, dated 12 August 1997, charging Presiding Judge Basilio R. Gabo, Jr. of Branch 11 of the Regional Trial Court in Malolos, Bulacan, with a violation of Section 3 (e), R.A. 3019,[2] for issuing an unjust interlocutory order, and with gross ignorance of the law. Complainant sent said affidavit-complaint to Deputy Ombudsman for the Military, BGen. Manuel B. Casaclang (Ret.), of the Office of the Ombudsman who, in turn, indorsed the same affidavit-complaint to the Office of the Court Administrator (OCA) for appropriate action.

As culled by the OCA,[3] the facts that matter are as follows:

"On June 4, 1996, herein complainant Lucia F. Layola filed a complaint with the Office of the Deputy of the Ombudsman for the Military, charging SPO2 Leopoldo M. German and PO2 Tomasito H. Gagui, members of the Santa Maria Police Station, Santa Maria, Bulacan, with homicide for the death of complainant's son."

"On January 24, 1997, a resolution was handed down by the Ombudsman Investigator recommending the indictment for murder of SPO2 German and PO2 Gagui. The corresponding information for murder was drafted and thereafter, the case was indorsed to the

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[1] *Rollo*, p. 5.

[2] Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. x x x"

[3] *Rollo*, pp. 94-95.

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Provincial Prosecutor of Bulacan for filing with the appropriate court. The case was docketed as Criminal Case No. 209-M-97 and raffled to the sala of respondent Judge Basilio R. Gabo,[sic] RTC, Branch 11, Malolos, Bulacan."

"Sometime in March, 1997, a petition to take custody of accused SPO2 Leopoldo M. German was filed by the Chief of Police of the Sta. Maria Police Station based on the following grounds:

1. "that pursuant to the provisions of Presidential Decree 971, Presidential Decree 1184 and Executive Order No. 106, police personnel who are charged of any crime before any court of justice may be placed under the custody of his immediate superior officers upon request, [who shall] be responsible for the appearance of [such] police officer x x x during trials and when needed by the court; and

2. "that the x x x case is service connected and within the ambit of the above provisions of P.D. 971, 1184 and E. O. No. 106, because the offense imputed against [the accused] stemmed from the death of Pablo Loyola [sic], a violator of the law, who was then inside the cell of the Municipal Jail of Sta. Maria, Bulacan."

"Respondent Judge, relying on the provisions of law cited in the petition for custody, resolved to grant the petition through an order dated April 7, 1997."

"A motion for reconsideration of the above- mentioned order was filed by the Office of the Deputy Ombudsman for the Military, bringing to respondent's attention the applicable and relevant laws. However, the said motion for reconsideration was denied in an order dated June 25, 1997."

To repeat; respondent Judge Basilio R. Gabo, Jr. stands charged with a violation of Section 3 (e), R.A. 3019, for issuing an unjust interlocutory order, and with gross ignorance of the law. According to the complainant the respondent judge directed that accused SPO2 German be held in the custody of his immediate superior, the Chief of Police of Sta. Maria, Bulacan, an order sans any legal and factual basis, instead of ordering the arrest of the said accused being indicted for murder, a heinous and non-bailable crime. Thereafter, respondent judge denied the motion for reconsideration interposed by the Office of the Deputy Ombudsman for the Military.

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Asked to comment by the Court Administrator in the latter's first indorsement, dated October 27, 1997, the respondent judge, tried to justify his action; pointing out that:

"1. The questioned order dated April 7, 1997 was issued in the light of the Comment of the Assistant Provincial Prosecutor, to whose office the prosecution of the case was indorsed by the Office of the Deputy Ombudsman for the Military. Said Comment by the prosecutor interposes no objection to the release of the accused to the custody of the petitioner Chief of Police, on the ground that from the records of the case, accused's "indictment was based on circumstantial evidence," hence, not so strong as to deprive the accused of his right to bail."

"2. The motion for reconsideration of the above-mentioned order filed by the Deputy Ombudsman for the Military "did not raise strong arguments on why the order should be modified," hence, the denial of said motion."

"3. The disputed order is now the subject of a petition for certiorari in the Court of Appeals initiated by the Office of the Deputy Ombudsman for the Military."

The OCA found the charges of violating Section 3 (e), R.A. 3019 and of issuing an unjust interlocutory order, barren of merit but respondent judge was adjudged guilty of gross ignorance of the law.

As regards the charge of violating Section 3 (e) of the Anti-Graft and Corrupt Practices Act, the OCA stressed that the important element of the offense, which is damage or injury to the complainant, or manifest partiality shown to any party, is anemic of evidentiary support. There is no allegation of any injury suffered by the complainant as a result of the conduct or actuation of the respondent judge, nor was there any showing of undue benefit or advantage given to the adverse party under the orders complained of.

With respect to the alleged rendering of an unjust interlocutory order, in connection with the denial by respondent judge of the motion for reconsideration of the order granting the petition of the Chief of Police, Sta. Maria Station to take custody of accused SPO2 German, the OCA found such a charge to be unfounded.

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Knowingly rendering an unjust interlocutory order must have the elements: 1) that the offender is a judge; 2) that he performs any of the following acts: a) he knowingly renders unjust interlocutory order or decree; or b) he renders a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance.[4]

The OCA perceived no evidence that the respondent judge issued the questioned order knowing it to be unjust; and neither is there any proof of conscious and deliberate intent to do an injustice.

As to the propriety of the act of respondent judge in releasing accused SPO2 German to the custody of the immediate superior instead of ordering the arrest of said accused, the OCA found respondent judge liable for gross ignorance of the law for failing to conduct a summary proceeding to determine whether or not the evidence of guilt against subject accused was strong, considering that the charge of murder is a non-bailable offense.

Thus, the OCA recommended:

1. That Judge Basilio R. Gabo, Jr., RTC, Branch 11, Malolos, Bulacan be FINED ₱20,000 for granting bail in a capital offense without a hearing, with a stern warning that a repetition of the same or similar act in the future will be dealt with more severely;

2. That the charges of violation of Section 3 (e) of R.A. 3019 (Anti-Graft and Corrupt Practices Act) and issuance of an unjust interlocutory order be DISMISSED for lack of merit.

The aforestated recommendation of OCA is sustainable.

It is a settled doctrine that for a judge to be held liable for knowingly rendering an unjust judgment, it must be established beyond cavil that the judgment adverted to is unjust, contrary to law or unsupported by the evidence, and that the same was rendered with conscious and deliberate intent to do an injustice.[5] In other words, the quantum of proof required to hold respondent

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[4] Reyes, Luis B., *Revised Penal Code*, p. 319 (1993).

[5] *Pabalan vs. Guevarra*, 74 SCRA 53, 58 (1976).

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judge guilty for alleged violations of Section 3 (e) of R.A. 3019 and Article 206 of the Revised Penal Code, is proof beyond reasonable doubt.

Proof beyond reasonable doubt requires moral certainty. If the inculpatory facts and circumstances are capable of two or more explanations or interpretations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, the evidence does not fulfill or hurdle the test of moral certainty and does not suffice to convict.[6] Here, the allegations of the complaint-affidavit are unsubstantiated. Respondent judge cannot, of course, be pronounced guilty on the basis of bare allegations. There has to be evidence on which conviction can be anchored. The evidence must truly be beyond reasonable doubt.

On the matter of gross ignorance of the law, records on hand decisively warrant a finding against the respondent. Section 7 of Rule 114 of the Rules of Court, provides:

"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."

Respondent judge was acting upon a case of murder punishable by *reclusion perpetua* to death. Murder being a capital offense, respondent judge should have been mindful that bail cannot be allowed as a matter of right. In the case of *Baylon vs. Sison*,[7] it was succinctly held, "Quintessentially, and as a matter of law, the discretion of the court, in cases involving capital offenses may be exercised only after there has been a hearing called to ascertain the weight of the evidence against the accused. Peremptorily, the discretion lies, not in determining whether or not there will be a hearing, but in appreciating and evaluating the weight of the evidence of guilt against the accused. It follows

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[6] *People vs. Remorosa*, 200 SCRA 350, 360 (1991); citing *People vs. Ale*, 145 SCRA 64 (1986).

[7] 243 SCRA 284, 295; reiterating the ruling in *People vs. Nano, etc., et. al.*, 205 SCRA 155 (1992).

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that any order issued in the absence of the requisite evidence is not a product of sound judicial discretion but of whim and caprice and outright arbitrariness.[8]

In the case of *Cortes vs. Catral*,[9] the Court held:

"x x x. Inasmuch as the determination of whether or not the evidence of guilt against the accused is strong is a matter of judicial discretion, it may rightly be exercised only after the evidence is submitted to the court at the hearing. Since the discretion is directed to the weight of evidence and since evidence cannot properly be weighed if not duly exhibited or produced before the court, it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, xxx"

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 exercised in determining whether the evidence of 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 and caprice and outright arbitrariness.[10] Granting bail in non-bailable offenses without hearing is gross ignorance of the law.[11]

That the prosecutor interposed no objection to the release of the accused to the custody of the petitioner Chief of Police, on the ground that from the records of the case, accused's "indictment was based on circumstantial evidence," did not and should not excuse respondent judge from his judicial duty to conduct a summary proceeding to determine the strength of evidence against the accused, as to entitle him to post bail.

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[8] *Id.*

[9] 279 SCRA 1, 14 (1997).

[10] *Baylon, supra.*

[11] *Ibid*; *Sule vs. Biteng,* 243 SCRA 524 (1995).

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What is more, as the Information itself categorically states that no bail is recommended for accused,[12] the respondent judge should have been alerted to conduct a summary hearing.

Thus, the doctrine of *res ipsa loquitor*, *i.e.*, that the Court may impose its authority upon erring judges whose actuations, on their face, would show gross incompetence, ignorance of the law, or misconduct, is obviously applicable in the instant case.[13]

WHEREFORE, the Court finds Judge Basilio R. Gabo *GUILTY* of gross ignorance of the law and is hereby ordered to pay a *FINE* of ₱20,000.00, with the stern warning that a commission of similar acts in the future will be dealt with more severely.

The charges of graft and corruption under Section 3 (e) of R.A. 3019 and of issuing unjust interlocutory order are *DISMISSED* for lack of merit and for insufficiency of evidence.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and *De Leon, Jr., JJ.,* concur.

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[12] *Rollo*, p. 35.

[13] *Re: Judge Eduardo F. Cartagena*, 282 SCRA 370, 376 (1997).