Supreme Court E-Library

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. MTJ-99-1205. November 29, 2000]

OFELIA DIRECTO, *complainant, vs.* **JUDGE FABIAN M. BAUTISTA,** *respondent.*

SYNOPSIS

Instead of waiting for the conclusion of the preliminary investigation in a case for murder, respondent judge issued a warrant for the accused immediately after his determination of existence of probable cause. In the same order, he also granted the accused bail in the amount of ₱60,000.00 each, later reducing it to ₱30,000.00.

The Supreme Court held: that the hearing on the petition for bail is separate from the initial hearing to determine probable cause; that respondent judge cannot grant bail nor reduce the same without a hearing, more so when accused is charged with a capital offense, because there is need to determine if the evidence of guilt is strong; and that even if there was no petition for bail, a hearing should still be held.

Respondent judge's failure to conduct a hearing required prior to the grant of bail in capital offenses reflects gross ignorance of the law and a cavalier disregard of its requirement; worse even when bail is granted to the accused despite the absence of a petition for bail. Respondent Judge was fined in the amount of ₱5,000.00.

Supreme Court E-Library

SYLLABUS

LEGAL AND JUDICIAL ETHICS; JUDGES; COMPLAINT AGAINST JUDGES; GROSS IGNORANCE OF THE LAW; FAILURE TO CONDUCT A HEARING PRIOR TO THE GRANT OF BAIL IN CAPITAL OFFENSES, A CASE OF.— Every judge should be faithful to the law and maintain professional competence (Rule 3.01, Code of Judicial Conduct). The failure of a judge to conduct the hearing required prior to the grant of bail in capital offenses is inexcusable and reflects gross ignorance of the law and a cavalier disregard of its requirement (*Bantuas vs. Pangadapun, supra*); worse even when bail is granted to the accused despite the absence of a petition for bail (*Delos Santos-Reyes vs. Judge Montesa,* 247 SCRA 85 [1995]). Respondent judge's actions were inconsistent with the Code of Judicial Conduct which requires judges to act with competence, integrity and independence (Rule 1.01, Code of Judicial Conduct; *Pico vs. Judge Combong, Jr.*, 215 SCRA 421 [1992]).

RESOLUTION

MELO, *J.*:

On December 24, 1996 at around 8 o'clock in the evening, Baltazar Directo was shot to death. The police of the Municipality of Santol, La Union arrested Herminigildo Acosta, Jaime Acosta, and Maximino Acosta in connection with Baltazar's death and filed a criminal complaint against the three for the crime of murder. The Municipality of Santol having no public prosecutor of its own, Judge Fabian M. Bautista, Acting Municipal Trial Court Judge conducted a preliminary investigation based on the criminal complaint. Thereafter, Judge Bautista issued an order dated January 10, 1997 stating:

> After conducting the preliminary examination in writing and under oath of the complainant and his/her witnesses in the above-entitled case, the Court finds reasonable ground to believe the crime charged has been committed and all the accused are probably guilty thereof.

Supreme Court E-Library

However, inasmuch as the evidence for the conspiracy angle which implicated Jaime & Maximino Acosta to the crime charged for which Herminigildo is the alleged triggerman is not strong, and further because there is practically nothing to support the qualifying circumstance of evident premeditation, and that the evidence of the qualifying circumstance of treachery is not strong, this Court has decided to grant to the accused their constitutional right to bail.

WHEREFORE, let a warrant be issued for the arrest of all the accused who enjoy their provisional liberty by posting a bail bond in the amount of ₱60,000.00 each.

It is in relation with this order that Ofelia Directo, private complainant in the criminal case and wife of the victim, filed a letter-complaint with the Court Administrator against respondent on May 6, 1997 for allegedly failing to follow the procedural requirements in the allowance of bail. She alleged that respondent judge granted bail to the accused and further reduced it without notice or hearing.

Respondent comments, in justification of his actions, that an application for admission to bail is filed only in instances when the investigating judge issues an order finding probable cause against the accused for a capital offense, and when there was initially a denial of bail. Such petition for bail necessitates a hearing. In the particular case at hand, however, respondent judge contended that there was no need for a hearing in order to give the prosecution a chance to prove that the evidence of guilt on the charge of murder was strong, due to the earlier determination made by the investigating judge that in fact the evidence of guilt was not strong. In view of this finding, bail was granted for all the accused and since there was no petition for bail filed, no hearing was required or had.

The Court agrees with complainant that respondent judge lapsed into procedural error in granting bail to the accused.

When a preliminary investigation is conducted by a municipal trial court judge, he is obligated, upon conclusion of the preliminary investigation, to transmit to the provincial or city fiscal, for appropriate action, the resolution of the case which must contain a brief statement of findings of fact and of the law supporting

Supreme Court E-Library

said resolution. The resolution shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused; (d) the order of release of the accused and cancellation of his bail bond, if the resolution is for the dismissal of the complaint (Section 5, Rule 112, Rules of Court).

In the case at bar, instead of waiting for the conclusion of the preliminary investigation, respondent judge issued a warrant for the arrest of the accused immediately after his determination of existence of probable cause. In the same order, he also granted the accused bail in the amount of ₱60,000.00 each, later reducing this to ₱30,000.00 over the objection of private complainant. These pronouncements should have been included in the resolution of the case and not in a separate order. Further, respondent judge cannot *motu proprio* grant bail.

Although the Rules of Court authorize the investigating judge to determine the amount of bail, such authority does not include the outright granting of bail without a preliminary hearing on the matter, more so in a case where the crime charged is murder, a capital offense punishable by *reclusion perpetua* to death (Article 248, Revised Penal Code). In cases where the penalty for the crime committed is that of death, *reclusion perpetua*, or life imprisonment, when evidence of guilt is strong, bail becomes a matter of discretion (Section 7, Rule 114, Rules of Court). When bail is discretionary, a hearing is mandatory to determine whether the evidence of guilt is strong before bail can be granted to the accused (*Bantuas vs. Pangadapun*, 292 SCRA 622 [1998]; *Aguirre vs. Belmonte,* 237 SCRA 778 [1994]; *Baylon vs. Judge Sison,* 243 SCRA 284 [1995]; *Cortes vs. Agcaoili*, 294 SCRA 423 [1998]).

Respondent judge contends that even if the crime charged was a capital offense, the evidence of guilt was not strong. The accused were, therefore, entitled to their constitutional right to bail. Respondent judge is mistaken. While it may be true that the determination of whether or not the evidence of guilt is strong is a matter of judicial discretion (*Aleria, Jr. vs. Velez*, 298 SCRA 611 [1998]), this discretion lies NOT in the

Supreme Court E-Library

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 (*Bantuas vs. Pangadapun, supra; Gimeno vs. Arcueno, Sr.*, 250 SCRA 376 [1995]).

Respondent judge also contends that there was no longer any need for a hearing as there was no petition for bail. Again, this contention is wrong. Even in cases where there is no petition for bail, a hearing should still be held. This hearing on the petition for bail is separate and distinct from the initial hearing to determine probable cause. In the determination of probable cause, the court merely ascertains whether or not there is sufficient ground to engender a well-founded belief that a crime has indeed been committed and that respondents are probably guilty of such crime (*People vs. Dacudao*, 170 SCRA 489 [1989]). Whether or not the evidence of guilt is strong still has to be established. The prosecution must be given a chance to prove the strength or weakness of its evidence (*People vs. Dacudao, supra; Baylon vs. Judge Sison, supra*); otherwise, a violation of due process occurs (*People vs. Mayor Pablo Sola,* 103 SCRA 393 [1981]; *People vs. San Diego*, 26 SCRA 522 [1968]). As aptly stated in the case of *People vs. Mayor Pablo Sola, supra*, citing the words of Justice Cardozo in the case of *Snyder vs. Massachusetts* (291 U.S. 97, 122 [1933]):

> Justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained 'til it is narrowed to a filament. We are to keep the balance true. This norm which is of the very essence of due process as the embodiment of justice requires that the prosecution be given the opportunity to prove that there is strong evidence of guilt.

(At p. 400.)

Every judge should be faithful to the law and maintain professional competence (Rule 3.01, Code of Judicial Conduct). The failure of a judge to conduct the hearing required prior to the grant of bail in capital offenses is inexcusable and reflects gross ignorance of the law and a cavalier disregard of its requirement (*Bantuas vs. Pangadapun, supra*); worse even when bail is granted to the accused despite the absence of a petition

Supreme Court E-Library

for bail *(Delos Santos-Reyes vs. Judge Montesa*, 247 SCRA 85 [1995]). Respondent judge's actions were inconsistent with the Code of Judicial Conduct which requires judges to act with competence, integrity and independence (Rule 1.01, Code of Judicial Conduct; *Pico vs. Judge Combong, Jr.*, 215 SCRA 421 [1992]).

WHEREFORE, respondent Judge Fabian M. Bautista is hereby found guilty of ignorance of the law, and he is consequently ordered to pay a fine of Five Thousand Pesos (₱5,000.00) with a warning that a future infraction will merit a severe chastisement of the Court.

SO ORDERED.

Vitug, Panganiban, and *Gonzaga-Reyes, JJ.*, concur.

FIRST DIVISION

[A.M. No. RTJ-99-1494. November 29, 2000]

ROMAN A. VILLANUEVA, JR., *complainant, vs.* **JUDGE APOLINARIO F. ESTOQUE, RTC, Branch 3, Butuan City,** *respondent.*

SYNOPSIS

In a letter-complaint received by the Office of the Court Administrator (OCA), Judge Apolinario F. Estoque of the Butuan City Regional Trial Court was charged with "Gross Ignorance of the Law, Grave Abuse of Discretion and Unjust Decision." Allegedly, respondent judge issued an order granting a Motion for Extension of Time to File Position Paper in violation of the Rules of Summary Procedure, and that after the filing of the position papers, respondent judge rendered a decision beyond the reglementary period in violation of the Rules of