

FIRST DIVISION

[A.M. No. MTJ-05-1609 [OCA-IPI No. 03-1490-MTJ], September 20, 2005]

TRINIDAD O. LACHICA, COMPLAINANT, VS. JUDGE ROSABELLA M. TORMIS, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 4, CEBU CITY, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

In an Affidavit dated October 2, 2003,^[1] Trinidad O. Lachica charged Judge Rosabella M. Tormis of the Municipal Trial Court in Cities of Cebu City, Branch IV, with Abuse of Authority relative to Criminal Cases Nos. 57220-R to 57223-R.^[2] Complainant alleged that since the filing of the information, accused Domugho has remained at large. Thus, the cases were ordered archived^[3] but an alias warrant of arrest^[4] was issued by respondent judge on January 14, 2000.

On July 2, 2003, Domugho was apprehended by PO3 Epifanio G. Sanjorjo at around 8:45 p.m. and was brought to the police station for booking and custody at 9:30 p.m.^[5]

However, on July 3, 2003, at around 8:30 a.m., complainant was surprised to receive a call from the accused informing her that she was released from confinement on July 2, 2003 at 10:00 p.m. Complainant inquired from the police station if an Order of Release was issued by the court, but she was informed that the accused was released because the respondent judge called the police station and told the desk officer that the accused had posted a cash bail bond and may already be released.

Complainant checked the case records but the expediente contained no copy of the release order. It was only at 1:00 p.m. that she was shown a copy thereof. Meanwhile, the case records could not be located. It was only on 4:30 p.m. of July 3, 2003 that the same was found.

The police blotter showed no entry that an order of release was received by the police. Only a notation that the accused had put up a cash bail bond was entered therein.

Complainant also averred that it was improper for the respondent judge to receive the cash bail bond as the function belongs exclusively to the Office of the Clerk of Court. She claimed that respondent judge committed an act of impropriety when she called the police station to verbally order the release of the accused. She claimed that it was irregular that no copy of the release order was found in the expediente in the morning of July 3, 2003 considering that it was supposedly issued

on July 2, 2003.

In her Comment^[6] dated December 3, 2003 respondent judge denied the charges of complainant. She maintained that on July 2, 2003 at 7:00 p.m., she issued the Order of Release after the accused posted a cash bond. She claimed that the accused was released by virtue of the Order of Release and not on the basis of her alleged telephone call to the police station.

On August 2, 2004, the Court resolved to refer the case to the Executive Judge, Regional Trial Court, Cebu City for investigation, report and recommendation.^[7]

The investigating judge submitted a Report^[8] dated November 18, 2004 recommending that respondent judge be fined in the amount of P20,000.00 or suspended for three (3) months based on the following findings:

1. The accused was arrested at 8:45 in the evening of July 2, 200[4], was booked at the Waterfront Police Station at 9:00 p.m., and released without a Release Order at 10:00 that same night.
2. The arresting officer and the accused never appeared before the respondent judge on the night of July 2, 200[4], as claimed by respondent judge. The accused was arrested at 8:45 p.m., after her classes at Southwestern University. She could not have appeared before respondent judge prior to her arrest since she was in school. Had it been true that the arresting officer appeared before the judge that night, it would have been highly improbable for the arresting officer not to have asked for a copy of the Release Order.
3. No one saw the Release Order on July 2, 200[4], except the respondent judge, as per testimony of the complainant and Helen Mongoya, and as shown by the police blotter, and the affidavit of the arresting officer claiming that they were reprimanded by their Chief because they released the accused without a Release Order.
4. The accused was released without the Release Order, and only upon the telephone call of respondent judge.
5. The Release Order was never issued on the night of July 2, 200[4]. No judge in his right mind would issue a Release Order without the record of the case, more so if the case had been "archived".
5. The Release Order appeared only in the afternoon of July 3, 200[4].
6. The record of the case was found by court aide, Juan Años, in the bodega of MTCC, Branch 4, together with the records of other archived cases, at about 4:30 in the afternoon of July 3, 200[4].
7. Respondent judge was in Manila early morning of July 3, 200[4].
8. It was physically impossible for the respondent judge to have signed the Release Order before 1:00 p.m. of July 3, 200[4], since she was in Manila. Questions may be raised whether the Receipt

for the Cash Bond and the Release Order were signed by a person other than the respondent judge. As can be gleaned from the record, the signature appearing on the Receipt for the Cash Bond, the Release Order and the signature of the respondent judge on her Comment dated December 10, 2003, do not appear to be signed by the same person.

9. Respondent judge authenticated the Release Order during the Investigation proper as the Release Order she issued on July 2, 2003.^[9]

The Office of the Court Administrator (OCA) agreed with the findings of the investigating judge but recommended that respondent judge be suspended for three (3) months.^[10]

We agree with the findings of the investigating judge and the OCA except for the recommended penalty.

During the investigation, it was established that the accused was arrested on July 2, 2003 at 8:45 p.m. and was brought directly to the Waterfront Police Station where she was booked at 9:00 p.m. At about 10:00 p.m. the accused was set free without a release order.^[11]

Respondent judge, however, claimed that she issued the Order of Release on July 2, 2003 at around 7:00 p.m. after the accused and her counsel, together with the arresting officer, came to her office and posted a cash bond. It was by virtue of this order that the accused was released.

A circumspect scrutiny of the testimonies given by respondent judge reveals that she made several untruthful statements possibly with the intent to mislead the Court.

It was improbable that, as claimed by respondent judge, she issued the Order of Release on July 2, 2003 at around 7:00 p.m. considering that the accused was apprehended at 8:45 p.m. The complainant and the arresting officer, as well as the entry in the police blotter all declared that the arrest was made at 8:45 p.m. and not earlier. Verily, respondent judge could not have issued the release order at around 7:00 p.m. as the accused has not yet been arrested at that time.

She also insisted that on July 2, 2003, the accused and her counsel, and the arresting officer went to her office and posted a bond whereupon she issued the Order of Release. However, this is belied by the testimonies of the arresting officer and the complainant who both claimed that the accused was brought directly to the police station after the arrest. We agree with the observation of the OCA that, it would be impossible for complainant or the arresting officer not to have mentioned anything regarding this incident if the same actually transpired. Likewise, as pointed out by the investigating judge, it is highly improbable for the arresting officer not to have demanded a copy of the release order if he really appeared before the respondent.

Incidentally, the arresting officer denied receiving any order of release from