

FIRST DIVISION

[A.M. No. MTJ-02-1457 [Formerly OCA IPI No. 01-1070-MTJ], August 11, 2004]

NENA D. YPIL, COMPLAINANT, VS. JUDGE PERLA C. VILO, MCTC-BOGO, CEBU, RESPONDENT.

RESOLUTION

QUISUMBING, J.:

Eight-year-old Mariles Ypil was allegedly rape by Edilberto Bacaldo at around 8:00 a.m. of March 9, 2000. A complaint for rape against Bacaldo was filed on September 4, 2000 at the Bogo-San Remigio Municipal Circuit Trial Court. The preliminary investigation was scheduled for October 26, 2000. However, on October 2, 2000, Acting Judge Perla Vilo issued a warrant of arrest for Bacaldo with bail fixed at P200,000. Bacaldo was able to post bail and could no longer be located at present.

It is in relation to the grant of bail that Nena Ypil, mother of Mariles Ypil, wrote to the Supreme Court on May 24, 2001 to complain against Judge Vilo for allegedly failing to follow the procedural requirements in granting bail.

Respondent avers that bail may be granted even in instances where the crime charged is punishable by *reclusion perpetua* as long as the evidence of guilt is not strong. Respondent explains that in the case complained of, the accused was able to put up strong defenses, hence, she allowed the bail to be set at P200,000. She maintains that her finding on the apparent strength of the accused's defense was confirmed by both the Provincial Prosecutor and Acting Presiding Judge Jesus dela Peña. The Provincial Prosecutor recommended the dismissal of the case for lack of *prima facie* evidence and Judge dela Peña ordered the dismissal of the case on the ground of insufficiency of evidence.

Though respondent is correct in her comment that bail may be granted at the discretion of the judge as long as the evidence of guilt to a capital offense is not strong, we agree with complainant that respondent judge lapsed into procedural error in granting bail to the accused.

First, it must be stressed that the discretion of the judge to grant bail is not absolute nor without limitations. The discretion must be sound, and exercised within reasonable bounds. Admission to bail as a matter of discretion presupposes the exercise thereof in accordance with law and guided by the applicable legal principles.^[1] This discretion may be rightly exercised only after the evidence is submitted to the court at the hearing and properly weighed. Since evidence cannot be properly weighed if not duly exhibited or produced before the court, it is obvious that a proper exercise of judicial discretion requires that the evidence be submitted to the court with the accused having the right to cross-examination and to introduce his own evidence in rebuttal.^[2]

Second, the trial court cannot *motu proprio* grant bail. The records show that the respondent issued the warrant of arrest, wherein she granted bail to the accused, even before she conducted the searching questions and answers. There is no showing that the accused filed a petition for bail and that a hearing for the allowance of bail was held.

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 statutory rape, a capital offense punishable by *reclusion perpetua*.^[3]

Under Section 7, Rule 114 of the 1985 Rules of Court, the applicable rule in the instant case, 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 bail regardless of the stage of the criminal prosecution. When evidence of guilt is not strong, bail becomes a matter of discretion. 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.^[4]

Though the determination of whether or not the evidence of guilt is strong is a matter of judicial discretion, this discretion lies NOT in the 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. ^[5]

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.^[6] 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; otherwise, a violation of due process occurs.^[7]

Third, a bail application does not only involve the right of the accused to temporary liberty, but likewise the right of the State to protect the people and the peace of the community from dangerous elements. These two rights must be balanced by a magistrate in the scale of justice, hence, the necessity for hearing to guide his exercise of discretion.^[8]

To grant an application for bail and fix the amount thereof without a hearing duly called for the purpose of determining whether the evidence of guilt is strong constitutes gross ignorance or incompetence whose grossness cannot be excused by a claim of good faith or excusable negligence. This is in violation of Rule 3.01^[9] of the Code of Judicial Conduct. Furthermore, the Court has held that the failure of the 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.^[10]

The act of Judge Vilo in fixing the bail without hearing took place on October 2,