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FIRST DIVISION

[A.M. No. RTJ- 03-1767 [OCA-IPI No. 01-1314-RTJ], March 28, 2003]

ROSALIA DOCENA-CASPE, COMPLAINANT, VS. JUDGE ARNULFO O. BUGTAS, REGIONAL TRIAL COURT, BRANCH II, BORONGAN, EASTERN SAMAR, RESPONDENT.

R E S O L U T I O N

YNARES-SANTIAGO, J.:

The refusal or failure of the prosecution to adduce evidence or to interpose objection to a petition for bail will not dispense with the conduct of a bail hearing.[1] Neither may reliance to a previous order granting bail justify the absence of a hearing in a subsequent petition for bail,[2] more so where said order relied upon was issued without hearing and while the accused was at large.[3]

The instant administrative case for gross ignorance of the law and incompetence against respondent judge stemmed from a murder case filed against accused Celso Docil and Juan Docil for the death of Lucio Docena. In her sworn complaint, complainant alleged that on September 3, 1993, Judge Gorgonio T. Alvarez of the Municipal Trial Court of Taft, Eastern Samar, conducted a preliminary investigation on the said murder case, and thereafter issued the corresponding warrants of arrest. No bail was recommended for the two (2) accused who were at large since the commission of the offense on August 29, 1993.

Complainant further stated that the information for murder was filed with the Regional Trial Court of Borongan, Eastern Samar, Branch II, then presided by Judge Paterno T. Alvarez. The latter allegedly granted a P60,000.00 bailbond each to both accused without conducting a hearing, and while the two were at large. Meanwhile, accused Celso Docil was apprehended on June 4, 2000.

Subsequently, Provincial Prosecutor Vicente Catudio filed before the Regional Trial Court of Borongan, Eastern Samar, Branch II, now presided by respondent Judge Arnulfo O. Bugtas, a motion praying that an alias warrant of arrest be issued for the other accused, Juan Docil; and that both accused be denied bail. Said motion was granted by the respondent Judge. Thereafter, accused Celso Docil filed a motion for reconsideration praying that he be allowed to post bail on the grounds that – (1) he is entitled to bail as a matter of right because he is charged with murder allegedly committed at the time when the imposition of the death penalty was suspended by the Constitution; and that (2) both the investigating Judge and the First Assistant Prosecutor recommended P60,000.00 bail for his temporary liberty.

On August 11, 2000, the respondent Judge denied said motion.[4] He explained that notwithstanding the suspension of the imposition of the death penalty at the time the accused committed the offense, bail for the crime of murder remains to be a

matter of discretion. He cited Section 13, Article III, of the Constitution which explicitly provides that "(a)ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law." The respondent Judge added that contrary to the accused's claim, there is nothing in the records which show that bail was recommended for his temporary liberty.

Accused Celso Docil filed a motion for reconsideration reiterating his previous contentions. Then, he filed a manifestation pointing out that on page 49 of the records is an order granting him and his co-accused the recommended bail of P60,000.00. The court gave the prosecution five (5) days within which to file a comment to the accused's motion for reconsideration but the former failed to do so.

On January 15, 2001, the respondent Judge issued a Resolution granting the said motion for reconsideration on the basis of a previous order granting bail to the accused.[5] He ratiocinated that on page 49 of the records, there indeed appears a final and executory order dated July 22, 1994 issued by his predecessor, Judge Paterno T. Alvarez granting bail of P60,000.00 to the accused, hence, the inevitable recourse is to grant bail to accused Celso Docil.

On August 16, 2001, the complainant filed the instant administrative case against the respondent Judge for granting bail to accused Celso Docil without conducting a bail hearing.

In his Comment,[6] the respondent insisted that he committed no gross ignorance of the law or incompetence. He contended that the prosecution is estopped from objecting to the grant of bail to accused Celso Docil because it questioned the said order issued by his predecessor Judge only on February 4, 2000, or after six (6) years from the issuance thereof on July 22, 1994. He added that despite the five-day period given to the prosecution, it failed to file a comment to the motion for reconsideration of the accused, warranting the presumption that it has no objection to the accused's petition for bail.

On the basis of its evaluation, the Office of the Court Administrator recommended that the instant case be re-docketed as a regular administrative matter and that respondent Judge be fined in an amount equivalent to one (1) month salary, with a warning that the commission of the same or similar acts in the future will be dealt with more severely.[7]

In a Resolution dated February 6, 2002, the Court required the parties to manifest whether they are submitting the case for resolution on the basis of the pleadings filed.[8] On April 24, 2002, the respondent Judge manifested his conformity to the said Resolution.[9] The complainant's manifestation, on the other hand, was dispensed with by the Court.

Jurisprudence is replete with decisions on the procedural necessity of a hearing, whether summary or otherwise, relative to the grant of bail especially in cases involving offenses punishable by death, *reclusion perpetua*, or life imprisonment, where bail is a matter of discretion.[10] Under the present rules, a hearing is

required in granting bail whether it is a matter of right or discretion.[11] It must be stressed that the grant or the denial of bail in cases where bail is a matter of discretion hinges on the issue of whether or not the evidence on the guilt of the accused is strong, and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the latter to properly exercise his discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong.[12]

In *Santos v. Ofilada*,[13] it was held that the failure to raise or the absence of an objection on the part of the prosecution in an application for bail does not dispense with the requirement of a bail hearing. Thus –

> Even the alleged failure of the prosecution to interpose an objection to the granting of bail to the accused will not justify such grant without hearing. This Court has uniformly ruled that even if the prosecution refuses to adduce evidence or fails to interpose any objection to the motion for bail, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions from which it may infer the strength of the evidence of guilt, or lack of it, against the accused. Where the prosecutor refuses to adduce evidence in opposition to the application to grant and fix bail, the court may ask the prosecution such questions as would ascertain the strength of the State's evidence or judge the adequacy of the amount of the bail. Irrespective of respondent judge's opinion that the evidence of guilt against the accused is not strong, the law and settled jurisprudence demand that a hearing be conducted before bail may be fixed for the temporary release of the accused, if bail is at all justified.
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> Thus, although the provincial prosecutor had interposed no objection to the grant of bail to the accused, the respondent judge therein should nevertheless have set the petition for bail for hearing and diligently ascertain from the prosecution whether the latter was not in fact contesting the bail application. In addition, a hearing was also necessary for the court to take into consideration the guidelines set forth in the then Section 6, Rule 114 of the 1985 Rules of Criminal Procedure for the fixing of the amount of the bail. Only after respondent judge had satisfied himself that these requirements have been met could he then proceed to rule on whether or not to grant bail.

Clearly therefore, the respondent Judge cannot seek refuge on the alleged belated objection of the prosecution to the order dated July 22, 1994 issued by his predecessor, Judge Paterno T. Alvarez; nor on the prosecution's failure to file a comment to the accused's motion for reconsideration of the August 11, 2000 order denying the application for bail.

It is certainly erroneous for the respondent to rely on the order of Judge Paterno T. Alvarez. As a responsible judge, he should have looked into the real and hard facts of the case before him and ascertained personally whether the evidence of guilt is strong.[14] To make things worse, respondent Judge relied on the said July 22, 1994 order despite the fact that the same appears to have been issued by his predecessor Judge also without a hearing and while the accused was at large. In addition to the requirement of a mandatory bail hearing, respondent judge should have known the