THIRD DIVISION

[A.M. No. MTJ-02-1388, August 12, 2003]

FELISA TABORITE AND LUCY T. GALLARDO, COMPLAINANTS, VS. JUDGE MANUEL S. SOLLESTA, MUNICIPAL CIRCUIT TRIAL COURT, SURALLAH, SOUTH COTABATO, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Judges should be the epitome of competence, integrity and independence to be able to render justice and uphold public confidence in the legal system. They are expected to demonstrate mastery of the principles of law, keep abreast of prevailing jurisprudence and discharge their duties in accordance therewith, more than just a cursory acquaintance with statutes and procedural rules.

This administrative case arose from a sworn complaint[1] dated May 4, 1999, filed with the Office of the Court Administrator (OCA) by Felisa L. Taborite and Lucy T. Gallardo, charging Judge Manuel S. Sollesta with oppression and knowingly rendering unjust judgment in Criminal Case No. 3398[2] for murder. Respondent is the acting presiding judge of the Municipal Circuit Trial Court (MCTC), Surallah-Lake, South Cotabato.

Felisa Taborite and Lucy Gallardo alleged in their complaint that they are the widow and sister, respectively, of Bienvenido Taborite. On June 26, 1998, he was killed by Reynaldo Divino. The following day, a complaint for murder was filed with the said MCTC. On September 1, 1998, the Philippine National Police - Criminal Investigation Group (PNP-CIG) of Koronadal, South Cotabato arrested the accused. He then filed with the MCTC a petition for bail which was set for hearing on September 23, 1998. Complainants and the PNP-CIG did not receive any subpoena. The hearing was again set on September 30, 1998. This time, SPO2 Wilfredo D. Bautista of the PNP-CIG was notified, but not the public prosecutors. Thus, during the hearing, only counsel for the accused and SPO2 Bautista appeared.

On October 21, 1998, respondent issued an Order[3] granting the petition and fixing the bail bond at P50,000.00. On January 14, 1999, the accused posted his bail and on January 20, 1999, he was ordered released.

Complainants further alleged that respondent, in ordering the release of the accused **charged with murder, without the requisite hearing and recommendation from the prosecutor**, committed (1) oppression and (2) knowingly rendering unjust judgment.

In his comment[4] dated August 5, 1999, respondent averred that after several hearings, he granted the petition for bail because the evidence against the accused was weak. He further stated that on January 28, 1999, he forwarded the case to the

Office of the Provincial Prosecutor for the filing of the corresponding information.

In his evaluation[5] of this administrative complaint, Court Administrator Presbitero J. Velasco found that respondent granted bail to the accused without notice to the prosecution, thus, depriving it the opportunity to oppose the petition for bail. Thus, he recommended that the instant case be re-docketed as a regular administrative matter and that respondent be fined in the amount of P20,000.00,[6] with a warning that the commission of the same or similar offense will be dealt with more severely. [7]

Pursuant to the Resolution[8] dated December 10, 2001 of this Court, the parties manifested that they are submitting the case for resolution on the basis of the pleadings filed.

We agree with the findings and recommendation of the Court Administrator.

In this jurisdiction, before a judge may grant an application for bail, whether bail is a matter of right or discretion, the **prosecutor must be given reasonable notice of hearing or he must be asked to submit his recommendation**.[9] Section 18, Rule 114 of the Revised Rules of Criminal Procedure, as amended, provides:

> "SEC. 18. *Notice of application to the prosecutor.* - In the application for bail under Section 8[10] of this Rule, **the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation."** (Emphasis ours)

In **Cortes vs. Catra**l,[11] we laid down the following rules outlining the duties of the judge in case an application for bail is filed:

1. In all cases whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation (Section 18, Rule 114 of the Revised Rules of Court, as amended);

2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion (Sections 7 and 8, *id.*);

3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;

4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, *id*); otherwise, the petition should be denied.

With such clear procedural guidelines now incorporated in the Revised Rules of Criminal Procedure, as amended, judges have been enjoined to study them well and be guided accordingly.

It is to be noted that in the present case, respondent was acting upon a case of

murder punishable by *reclusion perpetua* to death.

In *Baylon vs. Sison*,[12] we 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 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.[13]

In the present case, only the accused and his counsel, Atty. Bonifacio Pagunsan, were present during the hearing of the petition for bail. No government prosecutor appeared for lack of notice. Indeed, there was no opportunity on the part of the prosecution to show that the evidence of guilt against the accused is strong.

As earlier pointed out, the prosecution must first be accorded an opportunity to present evidence. 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.[14]

Granting bail in non-bailable offenses without hearing is gross ignorance of the law.[15] When the law is so elementary, as in this case, not to be aware of it constitutes ignorance of the law.[16] Indeed, everyone is presumed to know the law. [17] Ignorance of the law, which everyone is bound to know, excuses no one - certainly not a judge[18] from compliance therewith.

Obviously, respondent judge fell short of his vow to live up to the injunction of the Code of Judicial Conduct to "maintain professional competence."[19]

It bears stressing that judges are duty-bound to be faithful to the law and to maintain professional competence at all times. Their role in the administration of justice requires a continuous study of the law and jurisprudence, lest public confidence in the judiciary be eroded by incompetence and irresponsible conduct. [20]

Anent the imposable penalty, in *Rosalia Docena-Caspe vs. Judge Arnulfo O. Bugtas,* [21] this Court imposed a P20,000.00 fine on respondent judge for gross ignorance of the rules. He granted bail to the two accused charged with murder without conducting a hearing and while they were at large. Similarly, in *Panganiban vs. Cupin-Tesoro,*[22] this Court fined respondent judge in the amount of P20,000.00 for gross ignorance of the law and conduct prejudicial to the best interest of the service in hastily granting bail to the accused, without notice to the prosecutor and without conducting a hearing. Also, in *Layola vs. Gabo, Jr.,*[23] a Regional Trial Court judge was fined in the amount of P20,000.00 for granting bail to the accused in a murder case without the requisite bail hearing.