

SECOND DIVISION

[A.M. No. MTJ-02-1454, August 27, 2002]

**ARIEL Y. PANGANIBAN, COMPLAINANT, VS. JUDGE MA.
VICTORIA N. CUPIN-TESORERO, PRESIDING JUDGE, SECOND
MUNICIPAL CIRCUIT TRIAL COURT, SILANG-AMADEO, CAVITE,
RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is a complaint against Judge Ma. Victoria N. Cupin-Tesorero, Presiding Judge of the Second Municipal Circuit Trial Court, Silang-Amadeo, Cavite, for gross ignorance of the law, grave misconduct, and conduct prejudicial to the best interest of the service in connection with her grant of bail to Jayson Toledo Marte, the accused in Crim. Case No. TG-3266-00 for rape.

The facts are undisputed:

On July 26, 1999, Maricel Toledo-Panganiban, wife of complainant Ariel Panganiban, filed a complaint against Jayson Toledo Marte for violation of R.A. No. 7610 for allegedly inserting his finger into the private parts of Peewai Panganiban, their two-year old minor daughter.^[1] The said criminal complaint was filed with the Second Municipal Circuit Trial Court of Silang-Amadeo, Cavite for preliminary examination by respondent Judge Ma. Victoria N. Cupin-Tesorero. Respondent judge issued an order, dated August 9, 1999, finding probable cause for the continued detention of the accused Jayson Marte for violation of R.A. No. 7610.^[2]

After conducting a preliminary investigation, respondent judge issued a resolution, dated October 27, 1999, finding probable cause for the filing of criminal charges against the accused Jayson Marte for violation of Art. 266-A, par. 2 of the Revised Penal Code, as amended by R.A. No. 8353, otherwise known as the Anti-Rape Law of 1997. She recommended bail of P120,000.00 for the provisional liberty of the accused and ordered the transmittal of the entire records of the case to the Office of the Provincial Prosecutor in Cavite City.^[3] Hence, on November 17, 1999, the records of the said case were forwarded to the Provincial Prosecutor of Cavite for appropriate action.^[4]

On January 6, 2000, an information was filed against the accused Jayson Marte for rape in violation of Art. 266-A of the Revised Penal Code, as amended by R.A. No. 8353 in relation to R.A. No. 7610, before the Regional Trial Court, Branch 18, Cavite City. No bail was recommended for the provisional liberty of the accused.^[5]

The present administrative complaint alleges that on February 26, 2000, despite the fact that an information had already been filed against the accused Jayson Marte in the RTC and no bail had been recommended for his provisional liberty, respondent judge nevertheless issued an order approving the bail bond of Jayson Marte in the

amount of P120,000.00 and directing the provincial jail warden of Trece Martinez City to cause his release from custody.^[6] Complainant alleges that, in so doing, respondent judge committed grave misconduct, conduct grossly prejudicial to the best interest of the service, dishonesty, and violation of R.A. No. 3019.^[7]

In her comment, dated July 10, 2000, respondent judge does not deny that she issued the questioned order. She states, however, that after the accused Marte was released on bail as a result of her February 26, 2000 order, the Hon. Alfonso S. Garcia, the Presiding Judge of the RTC, Branch 18, Tagaytay City, issued an order directing her to explain why she approved the said bail and ordered the release of the accused considering that she no longer had jurisdiction over the case^[8] and that Judge Garcia had cancelled the bail bond, previously approved, of the accused Jayson Marte and had ordered the accused to be remanded to the custody of the provincial jail warden of Cavite City.^[9]

Respondent judge maintains that her grant of bail to Jayson Marte was proper because he was charged with a non-capital offense as the penalty for rape committed under Art. 266-A, par. 2, in relation to Art. 266-B, of the Revised Penal Code, as amended by R.A. No. 8353, was only prision mayor. Thus, respondent judge claims that the accused Jayson Marte is entitled to bail as a matter of right. She alleges that the Office of the Provincial Prosecutor and the Presiding Judge of the Regional Trial Court, Branch 18, Tagaytay City violated the constitutional rights of the accused Jayson Marte as the information against him failed to specify which particular provision of R.A. No. 8353 was violated by him and no bail was recommended for his provisional liberty. Respondent judge likewise relies on Rule 114, §17 of the Revised Rules of Criminal Procedure in support of her position that she had authority to issue an order granting bail even though a case has already been filed in court considering that the judge was unavailable at that time or was unable to act on the request. She says that she was the only judge present on February 26, 2000, a Saturday, when Melito Cuadra, the process server of the Regional Trial Court, Tagaytay City, came to her for the approval of the accused Jayson Marte's bail bond. She claims that Melito Cuadra represented to her that Judge Garcia, Presiding Judge of the RTC, Branch 18, Tagaytay City, was absent and that she was the only judge who could approve the bail bond. She disclaims knowledge of the fact that, at the time she issued her order granting bail to the accused Jayson Marte, the information filed by the Office of the Provincial Prosecutor made no recommendation for bail. She pleads good faith in approving the bail bond in question.^[10]

For his part, Melito Cuadra, process server of the RTC, Branch 18, Tagaytay City, executed an affidavit admitting that he approached respondent judge on February 26, 2000 to seek the approval of a bail bond involving a case filed in RTC, Branch 18, Tagaytay City. However, he claimed that he did so at the instance of a bondsman who requested his assistance. He also claimed that, upon seeing the application for bail in question in the amount of P120,000.00, respondent judge remarked, "Dapat P40,000.00 lang. Sabagay, mas malaki sa akin sa 2%. Ibalik na lang ninyo sa akin sa next working day ang balanse sa aking 2%." ("It should only have been P40,000.00. In any event, my 2% is bigger. Just return to me on the next working day the remaining balance from my 2%.") Cuadra said that respondent judge never mentioned anything about any documents he was supposed to bring her nor did she inquire about any changes that may have been made in the case. He also pointed to

several cases wherein respondent judge granted bail even when the judge before whom the said cases were pending were not absent.^[11]

This case was referred to Executive Judge Manuel M. Mayo, RTC, Cavite City, for investigation, report, and recommendation.^[12]

After due investigation, Executive Judge Manuel Mayo recommended that respondent judge be reprimanded for granting bail without authority in the following cases: (1) Jayson Marte y Toledo in Criminal Case No. TG-3266-00; (2) Joselito Borja in Criminal Case No. TG-3085-99; (3) Rodelio Guardo in Criminal Case Nos. TG-3186-99 and TG-3187-99; (4) Rodolfo Sangalang Borja in Criminal Case No. TG-3210-99; (5) Modesto Javier y Roxas in Criminal Case No. TG-3214-99; and (6) Elmer B. Daan in Criminal Case No. TG-3131-99.^[13]

Respondent judge invokes Rule 114, §17(a) of the Revised Rules of Criminal Procedure^[14] to justify the issuance by her on February 26, 2000 of an order approving the accused Jayson Marte's bail bond and directing his immediate release from custody. She says that Melito Cuadra, process server of the RTC of Cavite, Branch 18, Tagaytay City, told her that the judge before whom the case of Jayson Marte was pending was unavailable on February 26, 2000, a Saturday, so that she was compelled to act on Jayson Marte's bail bond. She claims she was unaware that no bail was recommended by the Provincial Prosecutor with respect to Jayson Marte's case.

These contentions are without merit. Under Rule 114, §17(a) of the then Rules of Criminal Procedure:

SEC. 17. *Bail, where filed.* - (a) Bail in the amount fixed may be filed with the court where the case is pending, or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may be filed also with any regional trial court of said place, or, if no judge thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein.

The case of *Cruz v. Yaneza*^[15] has explained this provision in this wise:

The foregoing provision anticipates two (2) situations. First, the accused is arrested in the same province, city or municipality where his case is pending. Second, the accused is arrested in the province, city or municipality other than where his case is pending. In the first situation, the accused may file bail in the court where his case is pending or, in the absence or unavailability of the judge thereof, with another branch of the same court within the province or city. In the second situation, the accused has two (2) options. First, he may file bail with any regional trial court in the province, city or municipality where he was arrested. When no regional trial court judge is available, he may file bail with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein.

Jayson Marte was not arrested in a province, city, or municipality other than where his case is pending. To the contrary, it appears that the accused Jayson Marte, a resident of Silang, Cavite,^[16] was detained at the Municipal Jail of Silang, Cavite^[17] and later transferred to the Cavite Provincial Jail, Trece Martires City.^[18] He was