

FIRST DIVISION

[A.M. No. RTJ-99-1473, February 16, 2000]

JESSICA GOODMAN, COMPLAINANT, VS. JUDGE LORETO D. DE LA VICTORIA, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 06, CEBU CITY, RESPONDENT.

R E S O L U T I O N

PARDO, J.:

What is before the Court is a petition^[1] for the dismissal of Judge Loreto D. de la Victoria, presiding judge, Regional Trial Court, Branch 06, Cebu City, for abuse of authority, oppressive conduct and gross ignorance of the law in relation to his handling of the application for bail of Moalboal Mayor Abrenica and Adriano Cabantugan in Special Proceedings No. 6204-CEB entitled "In the Matter of the Application for Bail of Mayor Marcelo Abrenica and Adriano Cabantugan."

On November 8, 1996, assassins gunned down Jerome Goodman, an American national, and struck him with a blunt instrument in Moalboal, Cebu. Before he died, he identified his assailants as Marcelo Abrenica, Mayor of Moalboal, and Mario Dumogho, bodyguard of the mayor.

On November 9, 1996, Mayor Abrenica and Adriano Cabantugan presented themselves to the police authorities. Mario Dumogho surrendered himself later.

On November 11, 1996, the Criminal Investigation Command (CIC), after securing the sworn statements of witnesses to the killing, filed with the Office of the Provincial Prosecutor of Cebu the charge sheet for murder against Mayor Abrenica, Adriano Cabantugan and Mario Dumogho. A supplemental charge sheet was later filed by the CIC for the inclusion of Tani Abrenica and Ikay Gabales in the murder charge. Both Tani Abrenica and Ikay Gabales are still at large.

Also, on November 11, 1996, Mayor Abrenica and Cabantugan, assisted by their counsel, filed with the Office of the Provincial Prosecutor of Cebu a "Request for Preliminary Investigation and Waiver of Article 125 of the Revised Penal Code." They agreed to remain under police custody pending completion of the preliminary investigation. The preliminary investigation was set for November 18, 1996.

On November 15, 1996, Mayor Abrenica and co-accused, Adriano Cabantugan, filed with the Regional Trial Court, Cebu City, an application for bail.^[2] The petition was raffled to two judges in succession, as one after another voluntarily inhibited themselves in view of their close association and friendship with the accused mayor.

The case was re-raffled and assigned to respondent Judge Loreto D. de la Victoria. On November 20, 1996, respondent set the petition for bail for hearing on November 25, 1996, and sent notices to the Office of the Deputy Ombudsman,

counsel for the accused and counsel of private complainant, Jessica Goodman. However, on the day of the hearing, respondent did not allow complainant's counsel, Atty. Cornelio Mercado, to be heard, stating that counsel was "without standing" before the court because he failed to secure the authority of the public prosecutor to appear at the hearing. After a brief inquiry as to the non-appearance of the public prosecutor, the date when subpoena was received by accused or counsel, and the fact that the Office of the Ombudsman was conducting a preliminary investigation, respondent granted the application for bail and fixed bail for the temporary liberty of accused mayor at sixty thousand pesos (P60,000.00). Respondent likewise reiterated that the notice sent to complainant's counsel did not signify that he had been recognized by the court as possessing legal standing to appear without authority of the public prosecutor.

Hence, this complaint.

Complainant alleged that respondent's uncommon bias and patent abuse of authority to strip her counsel of any standing in court deprived her of her day in court. Complainant also stated that respondent exhibited oppressive conduct in requiring the parties to attend the hearing and thereafter embarrassed her and counsel by declaring them to be without any standing in court. Furthermore, respondent displayed ignorance of the law for failing to comply with the provisions of the Rules of Court, particularly those pertaining to denial or grant of bail, considering the seriousness of the offense charged against the accused.

In his Comment dated August 12, 1997,^[3] respondent Judge denied the charges of abuse of authority and oppressive conduct, alleging that the notice sent to complainant's counsel to attend the hearing of the petition for bail did not necessarily confer upon said parties the legal standing to intervene in the proceedings. He rationalized his position as follows:

"...to allow the private complainant and/or her counsel to intervene and entertain their opposition which would then entail the presentation of evidence by the private complainant, the result would be to convert this kind of proceeding into one of preliminary investigation. I firmly believe that that would then be anomalous and irregular as this Court - which has already been disenfranchised to conduct a preliminary investigation under the new rules - would then be encroaching and usurping upon the functions and duties of the public prosecutor (the Ombudsman), and pre-empting the outcome of the investigation of the latter."^[4]

Respondent justified his decision to grant bail by citing the failure of the Ombudsman or any of his prosecutors to appear at the hearing for bail to inform the court of any finding of strong evidence of guilt or that murder had been committed, and in consonance with the presumption of innocence.

Respondent judge maintained that his action found support in the provisions of the Rules of Court, particularly Section 7, paragraph 2, Rule 112, which provides:

"However, before the filing of such complaint or information, the person arrested may ask for a preliminary investigation by a proper officer in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, with the assistance

of a lawyer and in case of non-availability of a lawyer, a responsible person of his choice. *Notwithstanding such waiver, he may apply for bail as provided in the corresponding rule and the investigation must be terminated within fifteen (15) days from its inception.*"

and Section 17 (c) of the Supreme Court Administrative Circular No. 12-94, amending Rule 114 of the Rules on Criminal Procedure, which provides:

"Any person in custody who is not yet charged in court may apply for bail with any court in the province, city or municipality where he is held."

He asked this Court to reject the accusation of gross ignorance of the law.

Respondent also alleged that the prosecution filed a comment on the petition for bail, but failed to attend the hearing. He attached a copy of the comment filed by the graft investigation officer, Office of the Ombudsman, Visayas, which stated as follows:

- "1) Mayor Marcelo Abrenica, et al. are charged of the crime of Murder which carries a penalty of *Reclusion Perpetua* to Death;
- 2) This being so, this crime is non-bailable;
- 3) At this stage of the proceedings, wherein undersigned is still conducting the preliminary investigation of this case, undersigned cannot recommend bail for the temporary liberty of the accused;
- 4) We leave this matter to the sound discretion of the Honorable Court.

"Cebu City, Philippines, 22 November 1996.

"Respectfully submitted:

"ARTURO C. MOJICA

"Deputy Ombudsman for the Visayas

"By: (s/t) RICARDO A. REBOLLIDO

"Graft Investigation Officer II"[5]

However, complainant attached to her petition the order issued by the Office of the Ombudsman dated November 25, 1996, stating in part, to wit:

"It is the undersigned investigator's assessment that the evidence on record of the guilt of the respondent, Marcelo Abrenica, is strong."[6]

In its Memorandum dated May 31, 1999, the Office of the Court Administrator, through Deputy Court Administrator Bernardo T. Ponferrada, recommended that respondent judge be ordered to pay a fine of P20,000.00 with stern warning that the commission of a similar offense in the future will be dealt with more severely.[7]

We find merit in this petition.

The respondent judge was wrong in refusing to hear complainant's counsel at the hearing of the application for bail.