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[A.M. No. RTJ-96-1347, June 29, 1999]

PROSECUTOR LEO C. TABAO, COMPLAINANT, VS. JUDGE PEDRO S. ESPINA, RESPONDENT.

A.M. NO. RTJ-96-1348

REGIONAL STATE PROSECUTOR FRANCISCO Q. AURILLO, JR., COMPLAINANT, VS. JUDGE PEDRO S. ESPINA, RESPONDENT.

R E S O L U T I O N

PER CURIAM:

Judge Pedro S. Espina was dismissed from the service pursuant to this Court's Decision[1] dated June 14, 1996, the dispositive portion of which reads:

> "For these two (2) acts constituting grave misconduct, ignorance of the law and gross incompetence, respondent Judge Pedro S. Espina, now Acting Presiding Judge of the Regional Trial Court, Branch 19, of Malolos, Bulacan, is hereby DISMISSED from the service, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to re-employment in any branch or instrumentality of the government including government-owned or controlled corporations. Let copies of this decision be furnished all trial courts in the country with a warning that further violations of the requirement of hearing prior to the grant of bail in cases where the imposable penalty is death, *reclusion perpetua*, or life imprisonment, will merit the same sanctions imposed in this case. This decision is immediately executory.
>
> SO ORDERED."

The penalty of dismissal from service was imposed when Judge Espina granted bail without a hearing in Criminal Case No. 93-04-197,[2] a case where imposable penalty at that time was life imprisonment; and for having promulgated a decision in the said case before the defense had rested its case and without giving the prosecution a chance to present rebuttal evidence. The first charge was aggravated by his failure to file his comment thereon as directed by this Court.

Judge Espina thereafter filed his motion for reconsideration[3] praying, among others, that he be reinstated and that in lieu of the penalties imposed on him in this Court's Decision dated June 14, 1996, he be fined in an amount the Court may see fit with a warning that a repetition of the same or similar offenses as those involved will be dealt with more severely because:

> "[A]lthough this Honorable Court did not put it categorically, it would appear from its Decision that the above-stated acts have raised strong

suspicions of the respondent's integrity, and that it was actually because of these suspicions that he was dismissed.

There was no equivocal finding of dishonesty against the respondent, only a wondering aloud by the Court over the `deliberate haste' that attended the grant of bail and the decision of the case acquitting the accused. For such suspicions, it is respectfully submitted, the penalty of dismissal was less than condign."[4]

In the motion for reconsideration, respondent argues, in sum, that -

I. The grant was not precipitate and the omission of the evidentiary hearing was made in good faith and that he actually made his explanation in the comment[5] he filed with the Office of Court Administrator Reynaldo L. Suarez on November 14, 1993. Respondent manifested that he presumed the comment he filed with the Office Court Administrator Reynaldo L. Suarez would be transmitted to the Honorable Court along with the report and recommendation of the said office assuming that his comment thereon would form part of the records of the instant administrative matters. The omission to reproduce such explanation in the comment he filed understandably led to the surmise that he had no explanation to offer. With the turn of events, and the finding of the Honorable Court that he exhibited "gross misconduct even outright disrespect" for this shortcoming, he accepts the blame regretful of his failure to reproduce said comment in these cases.

Addressing the basic issue of precipitate granting of bail, respondent asserts good faith and prosecution's waiver of due process or right of hearing on bail."[T]he motion for bail was calendared for hearing on April 20, 1993, precisely to enable the prosecution to adduce evidence to support its objection. On that date, City Prosecutor Rosabella Tormiz asked that she be given until April 23, 1993, to file her written Opposition. As recounted in the respondent's Order dated June 23, 1993, she "agreed that thereafter the incident will be deemed submitted for resolution of the Court."[6] The request was granted in an Order dictated in open court which added that `thereafter the petition will be deemed submitted for resolution'[7] It was only after the Opposition was filed on April 21, 1993, in which she did not object, that the bail was granted.

While it is true that no proceeding was held at which the prosecution presented oral arguments to show that the petition for bail should be denied because the evidence against the accused was strong, the objections to the granting of bail was made in its Opposition. Moreover, the prosecution agreed, expressly or at least impliedly, that the issue would be resolved on the basis thereof. By not protesting, the prosecution waived its right to support its Opposition at the hearing that usually attends a petition for bail. It is also noteworthy that the prosecution could have immediately moved for the reconsideration of the order granting bail to the accused on April 22, 1993 but it did not apparently acquiescing to the action of respondent notwithstanding the lack of a hearing and it was only on June 3, 1993, when complainant Tabao took over, that he sought for a reconsideration of the order.

Respondent may have deviated from the usual procedure, but not in violation of due process as held in *Stronghold Ins. Co. v. Court of Appeals*[8] and *Zaldivar v. Sandiganbayan,*[9] he maintains good faith relying on the aforecited jurisprudence, too late to realize that a contrary view would be taken by the Honorable Court in the case of *Santos v. Ofilada.*[10]

With the passage of R.A. No. 7659, the crime charged in the *Padernal case*, ceased to be punishable by *reclusion perpetua*, thus, the accused therein became retroactively entitled to bail as a matter of constitutional right. While these facts do not condone respondent's omissions, they nevertheless show that the petition for bail despite the lack of an evidentiary hearing thereon, had actually not been improvidently granted.

II. There was no "deliberate haste" in the rendition of the decision in Criminal Case No. 93-04-197 acquitting the accused, the truth being that it was rendered way beyond the constitutional deadline. The trial of Criminal Case No. 93-04-197 commenced on July 12, 1993, with the presentation of the first witness for the prosecution and ended on June 23, 1995 when the defense was considered to have rested its case. This covered a period of 2 years and 10 days or 740 days, from which should be deducted 253 days representing the period when the trial was suspended pending the decision of the Court of Appeals of the petition for *certiorari* questioning the grant of bail. This leaves a difference of 415 days which is far in excess of the reglementary 90-day period for the decision of cases by regional trial courts. Respondent also noted the manner in which the decision was reached and not the merits of the decision is what is being questioned.

The evidence sought to be submitted by the defense was never submitted despite the lapse of sixty-five days, thus, the Order of June 23, 1995 was issued to speed up the disposition of the criminal case, which already exceeded the constitutional limit. To quote:

The period allowed to submit those permits having expired without counsel for accused asking for extension of time, the court deemed the case submitted for decision without those permits, it being the opinion of the Court that those permits do not go to the core of the issue of whether or the accused committed the offense of selling shabu or not.

The order setting the case for promulgation on June 27, 1995 stands.

The defense has the prerogative to choose what evidence to present and the judge the authority to reject it if he believed it was irrelevant. The prosecution had no right to compel the defense to submit particular evidence, neither could it demand that the trial judge to freeze all proceedings indefintely until the defense has done so. It would be quizzical procedure to say the least if the trial judge were to be required to place everything "on hold" simply to give one party the chance to

rebut evidence that the other party does not intend to present at all.

III. Respondent's character is not in issue. It appears `that it has been taken into consideration in the decision of these cases, judging from the oblique statements made by the Honorable Court that he was being punished for the suspicious circumstances under which Criminal Case No. 93-04-17 was tried and decided.[11] Complainant Aurillo, who previously filed four administrative cases against respondent (i.e. Administrative Matters No. RTJ-839, No. RTJ-111, No. RTJ-984 and RTJ-1097), all of which were dismissed for lack of merit, appears to have succeeded to sully respondent's honor in the present administrative cases. Reading between the lines of the Decision of the Honorable Court, one would suppose that it too believes the respondent to be tainted with corruption."

Complainants subsequently filed their Joint Comment dated July 16, 1996,[12] contending in sum that -

I. The grant of bail was in bad faith, gravely irregular and against the law and jurisprudence. The question is not much on the waiver of due process as it is on the departure from the correct procedure as found by the Honorable Court. The profession of good faith is allegedly false as respondent was properly advised not to apply the equitable principle of waiver in resolving the motion for bail. The prosecution in its "Motion for Reconsideration" on the Order granting bail, informed the respondent that bail hearings under the law for capital offenses may not be waived, not even by the prosecution and that it has been consistently held by the Honorable Tribunal in *Feliciano v. Pasicolan*[13] and in *People v. Dacudao*.[14] Noteworthy to mention is that respondent avoided dwelling on the merits of the motion denying it instead on the alleged finality of his order granting bail.

Respondent further stands corrected on his allegation that the waiver from the City Prosecutor as the trial prosecutor was not the city prosecutor but an assistant city prosecutor.

II. The Decision in Criminal Case No. 93-04-197 was attended with undue haste, suspicion and bad faith. The reglementary period starts from the time the case is submitted for decision, specifically in this case, on June 23, 1995, when respondent deemed the case submitted for decision for failure of the defense to present documentary evidence but without allowing the prosecution opportunity to rebut defense evidence so far presented. The 415 days respondent claimed as beyond the ninety (90) day constitutional deadline represents the actual trial days. It took respondent an impossibly short time of four (4) days to decide the subject case from the time it was submitted for decision on June 23, 1995 until June 27, 1995 when the actual decision was promulgated. Noteworthy of mentioning is that the decision acquitting the accused was dated June 1, 1995, not anywhere between the two dates. That the decision was finalized on June 1, 1995 explains why respondents could not allow rebuttal evidence to take place as this might create problems for the defense. His order of June 23, 1995 considering the case

submitted for resolution was sham, farcical and fraudulent.

With reference to the prosecution's failure to adduce evidence, it is the testimonial evidence of the witness already given, and not the documentary evidence yet to be presented, that it wanted to rebut. Respondent was not forthright when he stated there was no evidence to rebut. Moreover, it is not so much on whether the prosecution had rebuttal evidence to present as to the prosecution's right to present it if so desired.

Finally, complainants made the observation that respondent charges the Honorable Court of "dismissing him from the judiciary without categorically pronouncing him guilty, in short, without evidence."

By way of Reply[15] to the Joint Comment, respondent pointed out that -

I. Respondent is not accusing the Honorable Court of injustice. There is no reason for him to make an accusation against the Honorable Court as he pleads for its mercy. Respondent was merely stating that, given the nature of the offense, the penalty of dismissal was less deserved, especially if considered in the light of similar cases. Furthermore, what he seeks is not exoneration but a moderation of his punishment.

II. Prosecution was properly represented by the Assistant City Prosecutor. It is incumbent upon the superior prosecutors to monitor their trial prosecutor to see to it that she does not make any move prejudicial to the prosecution. Respondent may have been at fault but it still was error and the Honorable Court has not found otherwise.

III. Judges have the unfortunate problem of being "damned if they do and damned if they don't" whether they decide a case early or decide it late regardless of the issues involved. Criminal Case No. 93-04-197 was a simple prosecution for violation of the Dangerous Drugs Act, where the only question involved was the credibility of the witnesses, and this was for the trial judge alone to ascertain in the exercise of his own discretion.

No misrepresentation was committed since the case was considered for more than 400 days before actually coming to a formal decision.

IV. Complainants have changed their stand from claiming that they had been deprived of the chance to rebut the documents the defense said it would produce to contending that they wanted to rebut the testimony of witnesses already presented. If complainants felt that the termination of the case would prevent them from submitting rebuttal evidence, they still had a remedy in the circumstances, and that was to make an offer of proof, or tender of excluded evidence, under Rule 132, Sec. 40 of the Rules of Court.

The Office of the Court Administrator (OCA), to whom the matter was referred to for evaluation and report favorably recommends a mitigation of the penalty imposed on