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[A.M. No. MTJ-97-1139, October 16, 1997]

ROBERTO ESPIRITU, COMPLAINANT, VS. JUDGE EDUARDO JOVELLANOS, 8TH MUNICIPAL CIRCUIT TRIAL COURT, ALCALA-BAUTISTA, PANGASINAN, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

Respondent is judge of the 8th Municipal Circuit Trial Court of Alcala-Bautista, Pangasinan. He is charged with ignorance of the law, grave abuse of authority, and gross partiality in connection with the preliminary investigation of Criminal Case No. 2346 for frustrated murder which the herein complainant, Roberto Espiritu, had filed against Weny Dumlao.

The facts are as follows:

> In his affidavit[1] in Criminal Case No. 2346, Roberto Espiritu, as complainant, alleged that at around 7:30 in the evening of July 16, 1994, while he was with a group which included Eulogio Pabunan, Arnel Guerra, Januario Peregrino, and Marcelino Bautista, Weny Dumlao approached him and fired at him three times, as a result of which complainant was wounded; that complainant was able to run away; and that Dumlao wanted to kill complainant because the latter had filed a case against Dumlao's brother, Victor, for the murder of complainant's son Rolly. On the basis of this affidavit and those of Arnel Guerra[2] and Eulogio Pabunan,[3] SPO II Eduardo R. Yadao filed a criminal complaint for frustrated murder on August 10, 1994[4] in respondent's court.
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> After conducting a preliminary examination, respondent judge ordered on August 18, 1994 the arrest of Dumlao and fixed the amount of bail for his provisional liberty at P20,000.00.[5] However, in an order dated September 7, 1994, he reduced the amount of the bail to P10,000.00, stating that Dumlao's father had asked for the reduction. On September 12, 1994, he ordered "any peace officer under whose custody [Dumlao] may be found" to release the latter in view of the fact that Dumlao had posted bail for P10,000.00.[6] Then on October 12, 1994 he dismissed the complaint, citing, among other reasons, the fact that Dumlao had filed a case against Roberto Espiritu and others as a result of the same incident complained of in Criminal Case No. 2346.
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> It appears that Dumlao had filed on July 27, 1994 a countercharge against complainant and others with the Office of the Provincial Prosecutor in Villasis, Pangasinan for attempted murder and illegal

possession of firearm. The case was docketed as I.S. No. V-94-30. Dumlao claimed that as he approached Espiritu's group, Arnel Guerra shot him, although Guerra missed him; that as he ran towards his house, other members of the group also fired at him; and that Espiritu's group challenged him and his father to come out and fight.

Dumlao's complaint (I.S. No. V-94-30) was dismissed on August 15, 1994 for insufficiency of evidence.[7] After a reinvestigation of the two cases, however, Assistant City Prosecutor Paz de G. Peralta directed the filing of an information for attempted murder against complainant Roberto Espiritu, Arnel Guerra, Andres Espiritu, Marlino Bautista, Januario Peregrino, Abrillo Peregrino, Eulogio Pabunan, Dario Pabunan, and Landio Pabunan even as she affirmed the dismissal of Criminal Case No. 2346 against Dumlao.[8]

Espiritu sought a review in the Department of Justice, but his petition was denied[9] for having been filed late and for his failure to attach the affidavits submitted during the preliminary investigation.

Espiritu filed the complaint in this case, alleging irregularities committed by respondent judge in the conduct of the preliminary investigation of his complaint against Dumlao.[10]

Respondent judge filed a comment,[11] denying the charges. Complainant, on the other hand, filed a reply. Among other things, complainant claimed that this was not the first time that respondent judge had shown ignorance of the rules on criminal procedure, because on September 29, 1994, in People of the Philippines v. Cesario Sanchez, Criminal Case No. V-0092, respondent judge had been reprimanded by the Regional Trial Court of Villasis, Pangasinan (Branch 50) for approving the bail bond of the accused when the latter had not yet been arrested.

On June 26, 1995, the Court referred the case to Judge Pedro C. Cacho of the Regional Trial Court, Branch 52, at Tayug, Pangasinan for investigation, report, and recommendation. On October 6, 1995, Judge Cacho submitted his report, recommending that respondent judge be fined in the amount of P3,000.00 and reprimanded for "neglect of duty, partiality, and/or inefficiency tantamount to grave ignorance of the law."

Except as to the amount of the fine recommended, the Court concurs in the report of the investigating judge.

The charges against respondent judge relate to basically two acts committed by him: (1) granting bail to Weny Dumlao in the reduced amount of P10,000.00 and (2) dismissing the criminal complaint against Dumlao.

I. With respect to the granting of bail to Weny Dumlao and the reduction of its amount to P10,000.00, complainant alleges:

2. The municipal courts are now courts of records. Per order dated September 7, 1994. . . . the Honorable Judge reduced the amount of bail His Honor set in a previous order (Page 12, Ibid.), from P20,000.00 to P10,000.00 acting supposedly upon the request of the father of the accused. However, there is no such request for reduction of bail on file with the records of the case;

3. At the time the Honorable Judge acted on the "request" for reduction of bail, the accused was not under detention as he was not arrested nor had he voluntarily surrendered as borne by the records. Accordingly, the Court has not yet acquired jurisdiction over the person of the accused, so the Honorable Judge cannot act on such "request" for reduction of bail even if interceded by the father of the accused;

4. The amount at which the bail was reduced: P10,000.00 is not commensurate with the gravity of the crime charged, an evident manifestation of the Judge's injudiciousness in the exercise of his authority and discretion. The bail bond guide of 1981 provides for the amount P12,500.00;

Simply stated, the complaint is that respondent judge is guilty of ignorance of the law, bias, and partiality for Dumlao as shown by the following: (a) respondent judge granted bail and later reduced its amount when the fact was that, at that time, Dumlao was not in the custody of the court; (b) there was no written motion presented for the reduction of bail, which is a necessity since MCTCs are courts of record; and (c) pursuant to the 1981 Bail Bond Guide the bail for frustrated murder should be P12,500.00.

A. It is indeed true that, in general, bail presupposes that the applicant is under arrest, detained, or otherwise deprived of his liberty.[12] In this case, it appears that on July 16, 1994, shortly after the incident, Weny Dumlao surrendered to the police, but the next day (July 17, 1994) he was released to the custody of Assistant Provincial Prosecutor Emiliano Matro.[13]

Prosecutor Matro testified that upon DECS Supervisor Nuelito Dumlao's request, he agreed to take custody of Dumlao for which reason Weny Dumlao was released by the police.[14] According to Matro, this was not the first time that he took custody of one who was under investigation.[15]

Apparently, therefore, when Dumlao applied for bail on September 7, 1994 to respondent judge, Dumlao was not in custody. Nor was his release to the custody of Assistant City Prosecutor Matro in accordance with law. Under Rule 114, §15 of the Rules of Court, the release on recognizance of any person under detention may be ordered only by a court and only in the following cases: (a) when the offense charged is for violation of an ordinance, a light felony, or a criminal offense, the imposable penalty for which does not exceed 6 months imprisonment and/or P2,000 fine, under the circumstances provided in R.A. No. 6036; (b) where a person has been in custody for a period equal to or more than the minimum of the imposable

principal penalty, without application of the Indeterminate Sentence Law or any modifying circumstance, in which case the court, in its discretion, may allow his release on his own recognizance; (c) where the accused has applied for probation, pending resolution of the case but no bail was filed or the accused is incapable of filing one; and (d) in case of a youthful offender held for physical and mental examination, trial, or appeal, if he is unable to furnish bail and under the circumstances envisaged in P.D. No. 603, as amended (Art. 191).[16]

But although then not in legal custody, Dumlao subsequently submitted himself to the jurisdiction of the court when on September 7, 1994 he personally asked respondent judge to admit him to bail and reduce its amount. In Paderanga v. Court of Appeals,[17] Miguel Paderanga was one of the accused in a case for multiple murder. Before the arrest warrant could be served on him, he filed through counsel a motion for admission to bail which the trial court set for hearing on November 5, 1992 with notice to both public and private prosecutors. As Paderanga was then confined at a hospital, his counsel manifested that they were submitting custody over Paderanga's person to the chapter president of the Integrated Bar of the Philippines and asked that, for purposes of the hearing on his bail application, he be considered as being in the custody of the law. On November 5, 1992, the trial court admitted Paderanga to bail in the amount of P200,000.00. The next day, Paderanga in spite of his weak condition, managed to personally appear before the clerk of court of the trial court and posted bail. He was arraigned and thereafter he attended the hearings. We held that the accused was in the constructive custody of the law when he moved for admission to bail through his lawyers (1) by filing the application for bail with the trial court, (2) by furnishing true information of his actual whereabouts, and (3) by unequivocably recognizing the jurisdiction of said court.

Respondent judge thus correctly granted bail to Dumlao.

B. Respondent judge erred, however, in fixing the amount of bail at P20,000.00 and reducing it to P10,000.00[18] and in doing so without a hearing.

Under the 1981 Bail Bond Guide (Ministry Circular No. 36, September 1, 1981), the amount of bail in cases of frustrated murder is P12,500.00.[19] In its Circular No. 10 dated July 3, 1987, the Department of Justice noted that the amounts fixed in the Bail Bond Guide had become "unrealistic and impractical for the purpose of assuring the presence and/or appearance of persons facing charges in court" and accordingly directed that the amount of bail be computed at the rate of P10,000.00 per year of imprisonment based on the medium penalty imposable for the offense. Judged by this standard, the P10,000.00 bail fixed in this case was inadequate. The penalty for frustrated murder prior to R.A. No. 7659 is prision mayor in its maximum period (10 years and 1 day to 12 years) to reclusion temporal in its medium period (14 years, 8 months, and 1 day to 17 years and 4 months). So that, applying Art. 50, in relation to Art. 248 of the Revised Penal Code, the medium penalty would be reclusion temporal in its minimum period (12 years and 1 day to 14 years and 8 months). Under Circular No. 10, the amount of the bail should have been fixed between P120,000.00 and P140,000.00.

Either respondent judge was grossly ignorant of the law or he deliberately disregarded it to favor the accused. Considering that part of his duties as a judge is conducting preliminary investigations, it is his duty to keep abreast of the laws,

rulings, and jurisprudence regarding this matter. It is apparent that he has not. In failing to do so he failed to live up to the injunction of the Code of Judicial Conduct to "maintain professional competence."[20] The maxim ignorance of the law excuses no one has special application to judges.

Further demonstrating either deliberate disregard of the law or gross ignorance of the same, respondent judge granted bail to Weny Dumlao without notice to the prosecution, in violation of Rule 114, § 18. In Chin v. Gustilo,[21] this Court ruled that notice of application for bail to the prosecution is required even though no charge has yet been filed in court and even though under the circumstances bail is a matter of right. The failure to observe the above requirement constitutes ignorance or incompetence which cannot be excused by any protestation of good faith.[22]

In this case, the failure to give notice to the prosecution may be due to the fact that there was no written motion filed but only, as respondent judge himself admitted, an oral request by Dumlao and his father that the amount of the bail be reduced. What respondent judge should have done was to have Dumlao put his request in writing and then schedule the incident for hearing with notice to the prosecution. Instead, he readily granted the request, which indicates rather clearly respondent judge's partiality. This partiality was nowhere more evident than in the private conference which he had with the Dumlaos in his chambers without the presence of the opposing party, the complainant in this case. Time and again we have admonished judges not only to be impartial but also to appear to be so. For appearance is an essential manifestation of reality.[23] Departing from this established norm, respondent judge signed his September 7, 1994 order reducing the amount of bail to P10,000.00 and then told Dumlao to inform the police about it so that he would be released.

II. With respect to the charge that respondent judge, with grave abuse of authority, dismissed the case filed by complainant against Weny Dumlao, it is alleged that:

> 1. The Honorable Judge of the MCTC subpoenaed Dr. Marcelo S. Patawaran, Jr. (Page 15, Records of the Case-Annex "A") and conducted examination upon the doctor without notice, nay presence, of the parties of the case. . . . It is significant to note that the "searching questions" propounded upon the doctor tended to diminish the significance and importance of the medical certificate (Page 5, Ibid.) which may have been achieved, but the whole of the proceedings unmasked the partiality of the Court towards the accused. Moreover, it is unbelievable that the Honorable Judge is not aware of the plenitude in our jurisprudence of proceedings undertaken by courts and tribunals without notice and presence of the parties that were declared null and void by the Supreme Court;
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> 5. On September 12, 1994, the Honorable Judge issued a subpoena upon the accused, requiring the accused to submit his counter-affidavits of his witnesses and his other pieces of evidence, if any. Under the rule, and as contained in the subpoena, the accused was given ten (10) days to do