

[ADMINISTRATIVE ORDER NO. 62, July 10, 1993]

IMPOSING THE PENALTY OF SUSPENSION OF THREE (3) MONTHS FROM THE SERVICE AGAINST RODOR S. GAYAO, PROVINCIAL PROSECUTOR OF ABRA.

This refers to the administrative complaint filed by Apolonia vda. de Carino against Provincial Prosecutor Rodor S. Gayao of Bangued, Abra for grave abuse of discretion tantamount to neglect of duty.

Records disclose that a murder case was filed by the complainant with the Provincial Prosecution Office of Bangued, Abra on account of the killing of her husband last November 11, 1990, in Gaddani, Tayum, Abra. After preliminary investigation respondent Gayao filed on February 4, 1991, the following cases: (1) Criminal Case No. 996 for murder against Alejandro Alagao and Agibis Tugcay, (2) Crim. Case No. 1027, PP vs. Felix Dimaandal and Junie Bides for Murder, (3) Crim. Case No. 1028, PP vs. Felix Dimaandal for Illegal Possession of Firearms and (4) Crim. Case No. 653, PP vs. Fernando Tadeo, et al. for Multiple Murder with Attempted Murder.

On February 20, 1991, the accused filed a motion for admission to and reduction of bail. Respondent Gayao offered no opposition to the motion and summarily wrote "No objection". On the basis of which the court, on the same day and without notice and hearing, granted the motion and the bail was reduced to only P20,000.00. Consequently, the court ordered the release of the accused upon posting of bail. The complainant, however, filed an appeal with the court and prosecutor's office alleging that the granting and reduction of bail without notice and hearing is null and void. During the hearing on the motion of 17 April 1991, the court ordered Gayao to submit his comment within the period, prompting the court to issue an order on May 6, 1991, sustaining its earlier approval of the motion of the accused but increased the amount of bail from P20,000.00 to P50,000.00. On May 21, 1991, the complainant filed a motion for reconsideration. This time, respondent Gayao reverted to his former position that no bail should be granted, and if there is any grant of bail a preliminary hearing should be conducted as mandated under Rule 114 of the Rules of Court. Complainant also claimed that respondent Gayao did not file a complaint for illegal possession of firearm against the accused even after the lapse of three (3) months since Criminal Case No. 996 was filed, although the gun had already been surrendered. This saved the accused from posting bail of P200,000.00 each. Complainant also points out that in a later case (Criminal Case No. 1027, PP vs. Felix Dimaandal and Junie Bides), respondent Gayao simultaneously filed with the criminal action a complaint for Illegal Possession of Firearms against the accused although the firearm has not yet been recovered.

Complainant further alleges that in an earlier case, Crim. Case No. 653, PP vs. Fernando Tadeo, et al. for Multiple Murder and Attempted Murder, respondent Gayao gravely abused his discretion. In this case, Gayao recommend "No Bail". On August 22, 1980, the accused Tadeo filed a motion to dismiss but Gayao opposed the

motion alleging that there were four eyewitnesses who positively identified the accused. On August 24, 1988, Gayao filed an amended complaint to include three (3) more accused. A new motion to dismiss was again filed by Tadeo, this time Gayao surprisingly manifested his conformity. On the basis of which the court issued an order dated October 14, 1988, dismissing the case and ordering Tadeo's release. Complainant points out that Gayao wrote the word. "Conformity" on the order of the court to confirm his earlier manifestation.

Asked to comment, respondent Gayao alleges that when accused Alejandro Alagao and Agibis Tugcay in Crim. Case No. 996 were arrested, they immediately filed with his office a motion for admission to a reduction of bail. That after he noted "No Objection" to the motion, the case was immediately brought to Hon. Benjamin Bongolan, Executive Judge, who inscribed thereon the word "Granted". Consequently, Judge Bongolan ordered the release of the accused upon posting a bond of P20,000.00 each. He avers that he did not object to the motion because the question of granting bail is a matter of judicial discretion, citing the Mogul doctrine (G.R. No. 53373, June 30, 1987) that once a complaint or information is filed in court any disposition of the case rests in the sound discretion of the court. He stated that the court failed to calendar the motion for admission to bail, thus prompting the complainant to file an appeal with the Provincial Prosecutor and the court, alleging the nullity of the granting of bail. According to him, the court resolved the issue by increasing the bail to P50,000.00 again without a hearing for which complainant filed a motion for reconsideration. On June 16, 1991, the court ordered, among others, that respondent is not in full accord with the arguments of the movant, thus reverting to his original stand that the evidence of guilt is strong and, therefore, the accused should not be granted bail.

As to the charge that he failed to file that complaint for illegal possession of firearm against the accused simultaneously with the criminal action, he explains that it was only on April 19, 1991 or three (3) months later that the corresponding complaint for illegal possession of firearms was filed. Thus, the investigation, resolution and filing of information for murder were made ahead of the illegal possession of firearm. He states that in the Dimaandal Case (Crim. Case No. 1027 and 1028) the action for illegal possession of firearm was filed together with the criminal action on the basis of the certification of Mayor Reynaldo Sarte, Chief of Investigation, dated April 19, 1991 that the accused is not a licensee of any firearm. As regards the dropping of Fernando Tadeo from the criminal complaint, respondent avers that the same is the subject of a petition for review, and he would refrain from commenting thereon. Also, the case is still pending in court.

The then Acting Secretary of Justice found the respondent liable for serious irregularity, lacking in zeal and dedication to his work and reckless in the exercise of discretion and recommended that the respondent be suspended for three (3) months. The pertinent portion of the explanation of the Secretary reads:

"By filing on June 16, 1991, a separate complaint for Illegal Possession of Firearms (CC No. 1041) against the accused charged with Murder in Criminal Case No. 996, and a similar complaint (CC No. 1028) against Felix Dimaandal charged with Multiple Murder and Attempted Murder in Crim. Case No. 1027, respondent can be faulted for serious irregularity in the performance of duties.