

FIRST DIVISION

[A.M. No. MTJ-97-1142, November 06, 1997]

**JOEL ALMERON AND EVANGELINE ALMERON, COMPLAINANTS,
VS. JUDGE AGUSTIN T. SARDIDO, MUNICIPAL TRIAL COURT,
KORONADAL, SOUTH COTABATO, RESPONDENT.
D E C I S I O N**

BELLOSILLO, J.:

JOEL ALMERON and his wife EVANGELINE in a letter complaint dated 18 October 1996 alleged that their twelve-year old daughter Jojielyn was raped sometime in April and again in September 1996 by one Wilfredo Pino. As a result, two (2) criminal complaints for rape were filed with the Municipal Trial Court (MTC) of Koronadal, South Cotabato, presided over by respondent Judge Agustin T. Sardido.

[1] However, without conducting a hearing and without forwarding the records to the Office of the Public Prosecutor, respondents Judge granted bail to the accused in the amount of P200,000.00 for each count of rape. The amount upon motion of the accused was reduced to P120,000.00. In addition, complainant spouses alleged that bail was posted using property of a person who has already been dead for seven (7) years.

On 22 January 1997 the Court directed Judge Sardido to answer the accusation which he did in his "Comment/Compliance" dated 20 February 1997.

In his defense respondent Judge alleged that he initially wrote the words "NO BAIL" on the face of the criminal complaints; however before he could issue a warrant of arrest, Atty. Bonifacio Pagunsan, counsel of the accused, engaged him in a legal argument inside his chambers about the feasibility of granting bail to the accused; that according to the "1996 Bail Bond Guide" of the Department of Justice rape not committed with the use of deadly weapon, by two or more men or not resulting in the insanity of the victim, or in the commission of a homicide by reason or on the occasion thereof, is penalized with reclusion temporal and bailable in the amount of P200,000.00; accordingly he change "No Bail" to P200,000.00 and reduced it to P120,000.00 after finding that the amount was excessive for the provincial folk; that he approved tha property bond not knowing that the bondsman was already dead relying instead on the presumption of regularity in the performance by the notary public of his notarial function.

On 30 April 1997 this case was referred to the Office of the Court Administrator for evaluation, report and recommendation. In a Memorandum dated 11 August 1997 the Office of the Court Administrator recommended that respondent Judge be fined P10,000.00 for granting bail to the accused charged with rape on two (2) counts without a hearing thereby denying the prosecution the opportunity to prove that the evidence of guilt of the accused was strong.

We adopt the foregoing recommendation. Any self-respecting member of the bench

or bar knows, or should know with little effort, that simple rape is punishable with reclusion perpetua as provided in Art. 335 of the Revised Penal Code.^[2] Likewise, as lucidly provided in Sec. 7, Rule 114^[3] of the Revised Rules on Criminal Procedure, no person charged with such an offense, when evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal prosecution. Hence a litany of cases emphasizes that bail is discretionary and not a matter of right on the part of the accused.^[4] In exercising such judicial discretion, however, a judge is required to conduct a hearing wherein both the prosecution and the defense present evidence that would point to the strength or weakness of the evidence of guilt.^[5] The discretion of the judge lies solely in the appreciation and evaluation of the weight of the evidence presented during the hearing but not in the determination of whether or not the hearing itself should be held^[6] for such a hearing is considered mandatory and absolutely indispensable before a judge can aptly be said to be in a position to determine whether the evidence for the prosecution is weak or strong.^[7]

Thus, when a judge grants bail to a person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment without conducting the required hearing, he is considered guilty of ignorance or incompetence the gravity of which cannot be excused by a claim of good faith or excusable negligence.^[8] This is because members of the judiciary are supposed to exhibit more than just a cursory acquaintance with the statutes and procedural rules,^[9] more so with legal principles and rules so elementary and basic that not to know them, or to act as if one does not know them, constitutes gross ignorance of the law.^[10]

In the instant case, respondent Judge does not deny that he granted bail without a hearing to a person accused of two (2) counts of rape. He attempts to excuse himself by saying that he was misled by the "1996 Bail Bond Guide" of the Department of Justice which provides that simple rape is punishable by reclusion temporal and bailable at P200,000.00.^[11] However, as already stated, ignorance of this type cannot be excused by a claim of good faith or excusable negligence.^[12] Besides, the fact that he was even misguided only manifests his weakness and reinforces his gross ignorance. As early as in their freshmen year, aspiring members of the legal profession are already taught that felonies are defined and their corresponding penalties found in the Revised Penal Code, probably one of the most important codes in the legal profession. Hence, respondent Judge should not have been misled, purportedly at the prodding of the counsel for the accused, that the "1996 Bail Bond Guide" of the Department of Justice prevails over the explicit provisions of the Revised Penal Code on rape, especially considering that the Guide is addressed and intended for the guidance of all regional state prosecutors, city/provincial prosecutors and their assistants, and provides in its "whereas" clauses that bail shall not be recommended where the penalty is death, reclusion perpetua, or life imprisonment.^[13]

In his ignorance respondent Judge not only deprived the prosecution due process of law by denying it the opportunity to contest the application for bail^[14] but likewise acted in a manner contrary to Rule 2.01, Canon 2, of the Code of Judicial Conduct^[15] in allowing counsel for the accused to engage him in a legal discussion inside his chambers, without the presence of any representative of the prosecution, about the possibility of granting bail to the accused.