466 Phil. 284

SECOND DIVISION

[A.M. MTJ No. 04-1526 (Formerly A.M. OCA IPI No. 01-1001-MTJ), February 02, 2004]

JOCELYN V. GRAGEDA, COMPLAINANT, VS. JUDGE NIETO T. TRESVALLES,* MUNICIPAL TRIAL COURT, VIRAC, CATANDUANES, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

The instant administrative case arose when Jocelyn V. Grageda filed an Affidavit-Complaint[1] dated January 18, 2000 charging Judge Nieto T. Tresvalles, Municipal Trial Court, Virac, Catanduanes, with gross ignorance of the law and abuse of authority relative to Criminal Case No. 5307 entitled *People v. Bernardo Tablizo, Jr.* for murder.

The facts that led to the filing of the complaint as summarized by Executive Judge Romulo P. Atencia, are as follows:

> The complainant in this administrative case was the wife of Gil Grageda who died at about 8:30 in the evening of November 24, 2000 in Constantino, Virac, Catanduanes due to multiple stab wounds. On December 1, 2000, a complaint charging Bernardo Tablizo, Jr. y Pitajen for the murder of Gil Grageda was filed for preliminary investigation with the Municipal Trial Court, 5th Judicial Region, Virac, Catanduanes, presided by respondent Judge Nieto T. Tresvalles, docketed therein as Criminal Case No. 5307.
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> After Criminal Case No. 5307 was filed in his court for preliminary investigation, Judge Nieto T. Tresvalles conducted a preliminary examination on December 5, 2000. On the same day, December 5, 2000, he issued an Order which textually reads, as follows:
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> > "After conducting the preliminary investigation, the Court believes that a prima facie case exists that the crime charged has been committed and that the accused is probably guilty thereof. Let therefore a warrant of arrest issue for his arrest. The bail bond of P30,000.00 is hereby fixed for his provisional liberty on the ground that the evidence of guilt of the accused is not strong.
> >
> > "SO ORDERED."
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> The corresponding warrant for the arrest of Bernardo Tablizo, Jr. was issued on the same day, stating that the bail for the accused's temporary liberty was in the amount of P30,000.00.

> The accused surrendered on December 11, 2000. The respondent Judge immediately issued an order committing the person of the accused Bernardo Tablizo, Jr. y Pitajen to the Municipal Jail Warden, Bureau of Jail Management and Penology, Virac, Catanduanes. Also on the same day, the accused, through counsel, filed a motion to strike out the testimony of witness Perlita Tablizo (wife of the accused) and to grant accused bail.
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> The following day, December 12, 2000, the respondent Judge issued an Order releasing accused Bernardo P. Tablizo, Jr. from the custody of law after the latter posted a personal bail bond in the amount of P30,000.00.
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> In an Order dated February 28, 2001, the respondent transmitted the records of the case to the Office of the Provincial Prosecutor, which contained a denial of the accused's motion to strike out the testimony of Perlita Tablizo.
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> First Assistant Provincial Prosecutor Antonio C.A. Ayo, Jr. of the Office of the Provincial Prosecutor thereafter conducted preliminary investigation (I.S. No. 00-30), ultimately recommending the filing of an information for murder against Bernardo P. Tablizo, Jr. with the aggravating circumstances of use of motor vehicle, treachery and evident premeditation. No bail was recommended for the temporary liberty of the accused.
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> Thereafter, an information charging Bernardo P. Tablizo, Jr. for murder was filed with the Regional Trial Court, Branch 43, which is now awaiting decision.[2]

The respondent was, thereafter, charged with gross ignorance of the law, conduct unbecoming of a member of the Bench, failure to conduct himself in a manner that would justify his continued stay in the judiciary, and violation of the Code of Judicial Conduct.[3] According to the complainant, the respondent judge granted bail to the accused in Criminal Case No. 5307 without the requisite bail hearing, despite the fact that there was an eyewitness to the murder who made a positive identification of the accused. The complainant also alleged that the amount of P30,000.00 printed on the Warrant of Arrest issued by the respondent judge appeared to be "snowpaked," an indication that another entry was previously made, possibly a "no bail recommendation." Furthermore, no counter-affidavit or answer was filed by the accused during the preliminary investigation conducted by the respondent judge, and it took the police authorities seven days to arrest the accused after the issuance of the warrant of arrest. Thus:

> 16. I hereby execute this Affidavit to respond to the call in (sic) to encouraging the public to report erring judges to the Supreme Court and not to the media, as I am also very much concerned, not only of being a victim of injustice, but also of being prejudicial to [the] government's interest as a consequence of incompetence, gross ignorance, misconduct of the Presiding Judge Nieto T. Tresvalles of the Municipal Trial Court of Virac, Catanduanes in the granting of bail to the accused, even when the evidence of his guilt was strong and without an Application for Bail, considering that a Complaint for Murder was filed, and without an Order,

> to which the judge is to make as Summary of Evidence filed by the complainant and her witnesses to immediately cut short his membership in the Bench, be terminated and dismissed from the judicial service with forfeiture of all his benefits and leave credits with prejudice to his re-employment in any public office.[4]

In his Comment, the respondent admitted that no bail hearing was conducted in Criminal Case No. 5307, but reasoned that the evidence of the guilt of the accused was not strong. According to the respondent, the matter of granting bail is an exercise of judgment, and that the accused should not be denied his constitutional right to bail.

> It is true that a hearing is necessary before an accused should be released on bail in cases where the granting of bail is discretionary on the part of the judge. However, it is also equally true that in the exercise of his sound discretion and opinion, he is not also precluded in seeing to it that the evidence of the prosecution is adduced in support for the denial of bail to the accused to guide the court on what to do on the matter. But the public prosecutor failed during the hearing.[5]

The respondent also explained that a judge issuing a warrant of arrest is not an arresting officer. Thus, if it took seven days for the accused to be arrested after the issuance of the warrant, it was no longer his concern.

In its Report[6] dated June 19, 2003, the Office of the Court Administrator opined that Sections 7 and 8 of Rule 114 of the Rules of Court make it mandatory for the court to conduct a hearing before an accused charged with a capital offense is granted bail, and that failure to do so amounts to gross ignorance of the law. It was recommended that the complaint be re-docketed as a regular administrative matter and that the respondent judge be fined in the amount of P10,000.00 with a stern warning that a repetition of the same act shall be dealt with more severely.

In a Resolution dated July 28, 2003, the Court referred the matter to Executive Judge Romulo P. Atencia. Thereafter, the Executive Judge submitted his Report and Recommendation dated November 6, 2003.

According to the Executive Judge, the actual implementation of a warrant of arrest is the responsibility of other functionaries of the government. In fact, the respondent issued the warrant of arrest on December 5, 2000, only four days after the case was filed in his *sala* on December 1, 2000. Thus, the respondent cannot be blamed in any wise if the accused was not arrested or held in custody prior to December 11, 2000.

According to the Executive Judge, the charge that no bail was really granted for the provisional liberty of the accused in the sum of P30,000 and that the said amount was merely superimposed on the warrant of arrest is not supported by the records. Since the respondent issued an Order on December 5, 2000 fixing the bail at P30,000, the contention that no such order granting bail was issued is, likewise, devoid of merit. Thus, the Executive Judge concluded, even assuming that there was such a superimposition on the warrant of arrest, the same was merely made to conform to the said Order.

Anent the charge that the accused was not required to file a comment on the complaint, the Executive Judge found that no fault could be attributed to the respondent on this regard, as it is the prerogative of the accused to submit any pleading in his defense. However, the respondent judge failed to make any findings of facts and the law supporting his action as mandated by Section 5, Rule 112 of the Rules of Court.

The Executive Judge also stated that at the time the respondent judge granted bail to the accused on December 5, 2000, no application for bail had as yet been filed by the accused. Furthermore, no hearing was held to determine whether the evidence of the prosecution on the guilt of the accused was strong or not.[7] According to the Executive Judge, a hearing is required to afford the judge a basis for determining the existence of the facts set forth under Section 6, Rule 114 of the Rules of Court in granting or rejecting a plea of bail. Thus, the grant of bail without due hearing deprives the prosecution of procedural due process, a right to which it is equally entitled to as the defense. Thus:

> The respondent Judge seeks to justify his grant of bail by claiming that "the testimonies of the witnesses will not warrant the charge of murder." This claim, however, is belied by his own Order granting bail when he stated that "the Court believes that a prima facie case exists that the crime charged has been committed and that the accused is probably guilty thereof." The offense for which he found the accused to be probably guilty of is "Murder," since it was "the crime charged" … The warrant of arrest issued by the respondent Judge designated the offense as "Murder."…[8]

The Executive Judge agreed with the finding of the Court Administrator that the respondent is guilty of gross ignorance of the law.

We agree that the respondent judge is administratively liable for granting bail to an accused charged with murder without conducting the requisite bail hearing.

The importance of a hearing in applications for bail should once more be emphasized. Section 8, Rule 114 provides as follows:

> Sec. 8. *Burden of proof in bail application.* — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment, the prosecution has the burden of showing that the evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, or otherwise, unable to testify.

The importance of the Rule lies on the fact that on the result of the bail hearing depends the right of an accused to provisional liberty *vis-à-vis* the duty of the State to protect the people against dangerous elements. The resolution of the issue affects important norms in our society: liberty on one hand, and order on the other. To minimize, if not eliminate, error and arbitrariness in a judge's decision, the Rules require the judge to hear the parties and then make an intelligent assessment of