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FIRST DIVISION

[A.M. No. MTJ-00-1286, January 21, 2002]

NELLY J. TE, COMPLAINANT, VS. JUDGE ROMEO V. PEREZ, MUNICIPAL TRIAL COURT, BAUANG, LA UNION, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

In a Sworn Letter-Complaint dated July 21, 1997[1] filed with the Office of the Court Administrator, Nely J. Te charged Judge Romeo V. Perez, Presiding Judge of the Municipal Trial Court of Bauang, La Union with Bias and Partiality relative to Criminal Case No. 7258 for Rape entitled "*People v. Perry Meixsel*."

Complainant who is the rape victim of the aforecited criminal case alleged that respondent Judge ordered the issuance of a Warrant of Arrest with "No Bail" against accused Perry Meixsel, a foreign national. Said accused was arrested and detained at the Baguio City Jail but was released the following day to his lawyer instead of being transferred and committed to the law enforcers of Bauang, La Union where the case was filed.

Complainant further alleged that on July 9, 1997 respondent Judge issued another Warrant of Arrest fixing the amount of the bail bond at P200,000.00 without the knowledge of the Fiscal in Bauang, La Union. Upon motion of the defense, the bail bond was reduced to P75,000.00 and the accused was released on bail without the required preliminary hearing. Complainant expressed apprehension that such actuation of respondent Judge might jeopardize the case as the accused is free to leave the country.

Upon referral[2] by the OCA to respondent judge, the latter averred that he committed an error in issuing the order for issuance of a Warrant of Arrest with "No Bail" because upon review of the records and after consulting the 1996 Bail Bond Guide issued by the Department of Justice, he found out that the crime of Rape was bailable as a matter of right. According to him, the 1996 Bail Bond Guide provides that the crime of Rape is not bailable if committed with the use of a deadly weapon, or by two or more men or the victim becomes insane or a homicide is committed by reason or on occasion thereof,[3] and if committed under circumstances not mentioned above, the bail is P200,000.00. To rectify the error, he issued another order fixing the bail bond at P200,000.00. When counsel for the accused filed a motion to reduce bail bond from P200,000.00 to P75,000.00 without any opposition from the prosecution, he granted the same.

Respondent judge contended that complainant filed the criminal case in order to extort money from the accused who is a foreigner. He maintains that he is correct in ordering the dismissal of the case because when the case was formally filed with the RTC of Bauang, La Union, Branch 67, the same was dismissed for failure to

prosecute.

In a Resolution dated July 5, 2000[4] the court resolved to a.] docket the case as a regular administrative proceeding; and b.] require the parties to manifest if they are willing to submit the case for resolution on the basis of the pleadings already filed.

Respondent judge subsequently manifested his willingness to submit the case for resolution on the basis of the pleadings already filed.[5] Noting[6] that complainant failed to similarly manifest her willingness to submit the case for resolution on the basis of the pleadings filed and that the period had already lapsed, the Court issued a Resolution dated August 29, 2001[7] dispensing with the filing thereof.

Upon referral of the case for evaluation, report and recommendation, the OCA recommended, among others, that respondent judge be ordered to pay a fine of Five Thousand Pesos (P5,000.00) with a warning that a repetition of the same or similar offenses will be dealt with more severely for the following reasons:

Respondent Judge's explanation is utterly unacceptable and speaks poorly of his competence in applying the law and jurisprudence on the matter. Contrary to his stance, whether an offense charged is bailable or not is never dictated by the 1996 Bail Bond Guide but is governed by the principle laid down in Section 3 of Rule 114 of the Rules of Court which provides:

> *Sec. 3.* ***Bail, a matter of right; exception.*** *– All persons in custody shall before final conviction, be entitled to bail as a matter of right, except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time for the application for bail, is punishable by* ***reclusion perpetua****, when the evidence of guilt is strong.*

Section 5 of Rule 114 of the Rules of Court further states thus:

> Sec. 5. **Burden of proof in bail application.** – At the hearing of an application for admission to bail filed by any person who is in custody for the commission of an offense punishable by **reclusion perpetua or death**, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearings shall be considered automatically reproduced at the trial, but upon motion of either party, the court may recall the witness for additional examination unless the witness is dead, outside of the Philippines or otherwise unable to testify.

Hence, the rule is explicit that when an accused is charged with a serious offense punishable with **reclusion perpetua**, such as rape, bail may be granted only after a motion for that purpose has been filed by the accused and a hearing thereon conducted by a judge to determine whether or not the prosecution's evidence of guilt is strong.[8]

Applying the above-quoted rules, respondent Judge clearly acted irregularly when he **motu proprio** fixed and granted bail and subsequently reduced the amount thereof, in both instances, without hearing the side of the prosecution. Irrespective of his opinion that the evidence of guilt against the accused is not strong, the law and settled jurisprudence demands that a hearing be conducted before bail could be fixed for the temporary release of the accused, if bail is at all justified. And as held in **Lardizabal v. Reyes, supra**

> *While the Supreme Court does not require perfection and infallibility, it reasonably expects a faithful and intelligent discharge of duty by those who are selected to fill the position of administrators of justice.*

On ascribing bias and partiality on the same act of respondent Judge of granting bail after previously recommending no bail, said accusation is without basis. As held in **Castaños v. Escaño, Jr.**,[9] to wit:

> *A judge cannot be held administratively liable for an erroneous ruling on first impression, and malice cannot be inferred from his having rendered a decision rectifying an earlier impression without proof beyond of a conscious and deliberate intent on his part to commit an injustice by such acts.*

We adopt the findings and recommendation of the Office of the Court Administrator but find the recommended penalty not commensurate to the misdeed committed.

Respondent Judge should not have granted bail simply on the failure of the prosecution to prove that the evidence of guilt of the accused was strong but should have endeavored to determine the existence of such evidence.[10] Under the present rules, a hearing is required in granting bail *whether it is a matter of right or discretion*.[11] A motion to reduce the amount of bail likewise requires a hearing before it is granted in order to afford the prosecution the chance to oppose it.[12] In this jurisdiction, whether bail is a matter of right or discretion, reasonable notice of hearing is required to be given to the prosecutor or fiscal, or at least he must be asked for his recommendation.[13] If the prosecution refuses to adduce evidence or fails to interpose an objection, *it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions*.[14] In fact, *even in cases where there is no petition for bail, a hearing should still be held.*[15]

In ***Narciso v. Sta. Romana-Cruz,***[16] we ruled: "[J]urisprudence is replete with decisions compelling judges to conduct the required hearings in bail applications, in which the accused stands charged with a capital offense. *The absence of objection from the prosecution in such cases is* ***never*** *a basis for the grant of bail in such cases for the judge has no right to presume that the prosecutor knows what he is doing on account of the familiarity with the case.* 'Said reasoning is tantamount to ceding to the prosecutor the duty of exercising judicial discretion to determine whether the guilt of the accused is strong. Judicial discretion is the domain of the judge before whom the petition for provisional liberty is will be decided. The mandated duty to exercise discretion has never been reposed upon the prosecutor.'"