

SECOND DIVISION

[A.M. No. RTJ-96-1335, March 05, 1997]

**INOCENCIO BASCO, COMPLAINANT, VS. JUDGE LEO
H.RAPATALO, REGIONAL TRIAL COURT, BRANCH 32, AGOO, LA
UNION, RESPONDENT.**

R E S O L U T I O N

ROMERO, J.:

In a sworn letter-complaint dated August 14, 1995, complainant Inocencio Basco charged respondent Judge Leo M. Rapatalo of RTC, Branch 32, Agoo, La Union with gross ignorance or willful disregard of established rule of law for granting bail to an accused in a murder case (Criminal Case No. 2927) without receiving evidence and conducting a hearing.

Complainant, who is the father of the victim, alleged that an information for murder was filed against a certain Roger Morente, one of three accused. The accused Morente filed a petition for bail. The hearing for said petition was set for May 31, 1995 by petitioner but was not heard since the respondent Judge was then on leave. It was reset to June 8, 1995 but on said date, respondent Judge reset it to June 22, 1995. The hearing for June 22, 1995, however, did not materialize. Instead, the accused was arraigned and trial was set. Again, the petition for bail was not heard on said date as the prosecution's witnesses in connection with said petition were not notified. Another attempt was made to reset the hearing to July 17, 1995.

In the meantime, complainant allegedly saw the accused in Rosario, La Union on July 3, 1995. He later learned that the accused was out on bail despite the fact that the petition had not been heard at all. Upon investigation, complainant discovered that bail had been granted and a release order dated June 29, 1995^[1] was issued on the basis of a marginal note^[2] dated June 22, 1995, at the bottom of the bail petition by Assistant Prosecutor Manuel Oliva which stated: "No objection: P80,000.00," signed and approved by the assistant prosecutor and eventually by respondent Judge. Note that there was already a release order dated June 29, 1995 on the basis of the marginal note of the Assistant Prosecutor dated June 22, 1995 (when the hearing of the petition for bail was aborted and instead arraignment took place) when another hearing was scheduled for July 17, 1995.

In his comment dated October 16, 1995, respondent Judge alleged that he granted the petition based on the prosecutor's option not to oppose the petition as well as the latter's recommendation setting the bailbond in the amount of P80,000.00. He averred that when the prosecution chose not to oppose the petition for bail, he had the discretion on whether to approve it or not. He further declared that when he approved the petition, he had a right to presume that the prosecutor knew what he was doing since he was more familiar with the case, having conducted the preliminary investigation. Furthermore, the private prosecutor was not around at the

time the public prosecutor recommended bail.

Respondent Judge stated that in any case, the bailbond posted by accused was cancelled and a warrant for his arrest was issued on account of complainant's motion for reconsideration. The Assistant Provincial Prosecutor apparently conformed to and approved the motion for reconsideration.^[3] To date, accused is confined at the La Union Provincial Jail.

A better understanding of bail as an aspect of criminal procedure entails appreciating its nature and purposes. "Bail" is the security required by the court and given by the accused to ensure that the accused appears before the proper court at the scheduled time and place to answer the charges brought against him or her. In theory, the only function of bail is to ensure the appearance of the defendant at the time set for trial. The sole purpose of confining the accused in jail before conviction, it has been observed, is to assure his presence at the trial.^[4] In other words, if the denial of bail is authorized in capital offenses, it is only in theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the court. Hence the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of probability of evasion of the prosecution.^[5] In practice, bail has also been used to prevent the release of an accused who might otherwise be dangerous to society or whom the judges might not want to release."^[6]

It is in view of the abovementioned practical function of bail that it is not a matter of right in cases where the person is charged with a capital offense punishable by death, reclusion perpetua or life imprisonment. Article 114, section 7 of the Rules of Court, as amended, states, "No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment when the evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal action."

When the grant of bail is discretionary, the prosecution has the burden of showing that the evidence of guilt against the accused is strong. However, the determination of whether or not the evidence of guilt is strong, being a matter of judicial discretion, remains with the judge. "This discretion by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing. Since the discretion is directed to the weight of the evidence and since evidence cannot properly be weighed if not duly exhibited or produced before the court,^[7] it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner having the right of cross examination and to introduce his own evidence in rebuttal."^[8]

To be sure, the discretion of the trial court, "is not absolute nor beyond control. It must be sound, and exercised within reasonable bounds. Judicial discretion, by its very nature involves the exercise of the judge's individual opinion and the law has wisely provided that its exercise be guided by well-known rules which, while allowing the judge rational latitude for the operation of his own individual views, prevent them from getting out of control. An uncontrolled or uncontrollable discretion on the part of a judge is a misnomer. It is a fallacy. Lord Mansfield, speaking of the discretion to be exercised in granting or denying bail said: "But discretion when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and

fanciful; but legal and regular."^[9]

Consequently, in the application for bail of a person charged with a capital offense punishable by death, reclusion perpetua or life imprisonment, a hearing, whether summary or otherwise in the discretion of the court, must actually be conducted to determine whether or not the evidence of guilt against the accused is strong. "A summary hearing means such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of hearing which is merely to determine the weight of evidence for the purposes of bail. On such hearing, the court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted. The course of inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross examination."^[10] If a party is denied the opportunity to be heard, there would be a violation of procedural due process.

That it is mandatory for the judge to require a hearing in a petition for bail is emphasized in the following cases:

(1) People v. Sola decided in 1981.^[11] In this case seven separate information for murder were filed against the accused Sola and 18 other persons. After preliminary investigation, the municipal trial court issued warrants for their arrest. However without giving the prosecution the opportunity to prove that the evidence of guilt against the accused is strong. the court granted them the right to post bail for their temporary release. Citing People v. San Diego,^[12] we held: "We are of the considered opinion that whether the motion for bail of a defendant who is in custody for a capital offense be resolved in a summary proceeding or in the course of a regular trial, the prosecution must be given an opportunity to present, within a reasonable time, all the evidence that it may desire to introduce before the court should resolve the motion for bail. If, as in the criminal case involved in the instant special civil action, the prosecution should be denied such an opportunity, there would be a violation of procedural due process, and the order of the court granting bail should be considered void on that ground."

(2) People v. Dacudao decided in 1989.^[13] In this case, an information was filed against the accused for murder, a non-bailable offense. The judge, without conducting any hearing, granted bail on the ground that there was not enough evidence to warrant a case for murder because only affidavits of the prosecution witnesses who were allegedly not eyewitnesses to the crime were filed. We held: "Whatever the court possessed at the time it issued the questioned ruling was intended only for prima facie determining whether or not there is sufficient ground to engender a well founded belief that the crime was committed and pinpointing the persons who probably committed it. Whether or not the evidence of guilt is strong for each individual accused still has to established unless the prosecution submits the issue on whatever it has

already presented. To appreciate the strength or weakness of the evidence of guilt, the prosecution must be consulted or held. It is equally entitled to due process."

(3) *People v. Calo* decided in 1990.^[14] In this case, the prosecution was scheduled to present nine witnesses at the hearings held to determine whether the evidence against the private respondents was strong. After hearing the fifth witness, the respondent judge insisted on terminating the proceedings. We held: "The prosecution in the instant case was not given adequate opportunity to prove that there is strong evidence of guilt and to present within a reasonable time all the evidence it desired to present."

(4) *Libarios v. Dabalo* decided in 1991^[15] which involved an administrative complaint against the respondent judge for ignorance of the law and grave abuse of discretion. In this case, the respondent judge, without conducting any prior hearing, directed the issuance of a warrant of arrest against the accused charged with murder, fixing at the same time the bail at P50,000.00 each on the ground that the evidence against them was merely circumstantial. We held: "Where a person is accused of a capital offense, the trial court must conduct a hearing in a summary proceeding to allow the prosecution to present, within a reasonable time, all evidence it may desire to produce to prove that the evidence of guilt against the accused is strong before resolving the issue of bail for the temporary release of the accused. Failure to conduct a hearing before fixing bail in the instant case amounted to a violation of due process." The respondent judge was ordered to pay a fine of P20,000.00 and warned to exercise more care in the performance of his duties.

(5) *People v. Nano* decided in 1992.^[16] In this case, the judge issued an order admitting the accused in a kidnapping and murder case to bail without any hearing. We held: "The prosecution must first be given an opportunity to present evidence because by the very nature of deciding applications for bail, it is on the basis of such evidence that judicial discretion is weighed against in determining whether the guilt of the accused is strong."

(6) *Pico v. Combong, Jr.* decided in 1992.^[17] In this administrative case, the respondent judge granted bail to an accused charged with an offense punishable by reclusion perpetua, without notice and hearing and even before the accused had been arrested or detained. We held: "It is well settled that an application for bail from a person charged with a capital offense (now an offense punishable by reclusion perpetua) must be set for hearing at which both the defense and the prosecution must be given reasonable opportunity to prove (in case of the prosecution) that the evidence of guilt of the applicant is strong, or (in the case of the defense) that such evidence of guilt was not strong." The respondent judge was ordered to pay a fine of P20,000.00 and warned to exercise greater care and diligence in the performance of his duties.

(7) *De Guia v. Maglalang* decided in 1993,^[18] the respondent judge

issued a warrant of arrest and also fixed the bail of an accused charged with the non bailable offense of statutory rape without allowing the prosecution an opportunity to show that the evidence of guilt against the accused is strong. Respondent judge alleged that the only evidence on record — the sworn statements of the complaining witness and her guardian — were not sufficient to justify the denial of bail. We held: "It is an established principle that in cases where a person is accused of a capital offense, the trial court must conduct a hearing in a summary proceeding, to allow the prosecution an opportunity to present, within a reasonable time, all evidence it may desire to produce to prove that the evidence of guilt against the accused is strong, before resolving the issue of bail for the temporary release of the accused. Failure to conduct a hearing before fixing bail amounts to a violation of due process." It was noted that the warrant of arrest was returned unserved and that after the case was re-raffled to the complainant judge's sala, the warrant was set aside and cancelled. There was no evidence on record showing whether the approved bail was revoked by the complainant judge, whether the accused was apprehended or whether the accused filed an application for bail. Hence, the respondent judge was ordered to pay a fine of P5,000.00 instead of the usual P20,000.00 that the court imposes on judges who grant the application of bail without notice and hearing.

(8) *Borinaga v. Tamin* decided in 1993.^[19] In this case, a complaint for murder was filed against five persons. While the preliminary investigation was pending in the Municipal Circuit Trial Court, a petition for bail was filed by one of the accused before the respondent judge in the Regional Trial Court. The respondent judge ordered the prosecutor to appear at the hearing to present evidence that the guilt of the accused is strong. At the scheduled hearing, the public prosecutor failed to appear prompting the respondent to grant the application for bail. We held: "Whether the motion for bail of an accused who is in custody for a capital offense be resolved in a summary proceeding or in the course of a regular trial, the prosecution must be given an opportunity to present within a reasonable time all evidence it may desire to introduce before the court may resolve the motion for bail." The respondent judge was fined P20,000.00 and was warned that the commission of a similar offense in the future will be dealt with more severely.

(9) *Aurillo v. Francisco* decided in 1994.^[20] In this administrative case, the respondent judge issued two separate warrants of arrest against two persons charged with murder and parricide, but fixed the amount of bail for each accused without notifying the prosecution of any motion to fix bail nor of any order granting the same. Citing *People v. Dacudao*,^[21] we held: "A hearing is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is weak or strong. Hence, a denial of the prosecution's request to adduce evidence, deprives it of procedural due process, a right to which it is equally entitled as the defense. A hearing is required to afford the judge a basis for determining the existence of those factors set forth under Rule 114, Sec 6." The respondent judge was ordered to pay a fine of P20,000 with a warning that the commission of the same or similar acts in the future will be dealt