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MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 62

**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 ₱20,000.00. 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 ₱20,000.00 to ₱50,000.00. 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

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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 recommended "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

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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 the 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 firearm 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.

"Section 1 of PD 1866 provides that "if homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed". The use of an unlicensed firearm for killing is a qualifying circumstance or an

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essential ingredient of the offense of qualified possession of firearm, the presence of which requires the imposition of the mandatory death penalty (now life imprisonment) (Lazaro vs. People 112 SCRA p. 438) It is not a separate felony.

"In accordance with the aforestated law, respondent, upon receipt of the report of the PNP Abra Command, should have amended the information in Criminal Case No. 996 alleging such fact, and not file a separate complaint for illegal possession of firearms against the accused.

"Respondent received the report of the PNP Abra Command on April 19, 1991, yet he acted on the report only on June 18, 1991, or a delay of two months. We find this reflective of his lack of zeal and dedication in the discharge of his duties and responsibilities.

"In Criminal Case No. 996, the accused are charged with murder qualified with the use of unlicensed firearm. Under the law, the imposable penalty for such crime is death which is now life imprisonment and, therefore, non-bailable, yet respondent in no justifiable circumstances did not object to the motion of the accused for admission to and reduction of bail. Respondent ignored the mandatory requirements laid down under Section 5, Rule 114, of the Rules of Court. Said Rule provides that 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 the evidence of guilt is strong. From the wordings of this provision, and as established by jurisprudence, the requirement of notice and hearing on the application for bail is mandatory. In accordance with this rule, respondent was duty bound to oppose the motion, considering that the accused are charged with a capital offense. There is nothing in the records that would justify respondent's reversal of his original recommendation that no bail should be granted. Had he opposed the motion, as was his duty, the Court would have conducted a hearing as mandated under the aforestated rule. This he failed to do, however, prompting the Court, in the exercise of its judicial discretion, not only to dispense with the hearing, but to grant the motion as well. In

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its order dated May 6, 1991, the Court stated that the hearing was considered unnecessary in view of respondent's notation of "No Objection" to the motion.

"In his comment, respondent explains that he noted "No Objection" to the motion because ultimately the issue rested on judicial discretion. Apparently, not only did respondent ignore the mandatory requirement under Rule 114, but also deliberately disregarded the fact that judicial discretion can be abused as it can be influenced by arguments and manifestation of counsel in their assiduous pursuance of what is just and proper for their clients. By committing a grave error, respondent not only caused damage to the service, but prejudiced the complainant, whose interest he was sworn to protect, since the granting of bail to the accused without notice and hearing has deprived her of her constitutional right to due process. (Rodil vs. Garcia, et al. 191 Phil. 671, May 31, 1981).

"In Criminal Case No. 653, the accused are charged with Multiple Murder and Attempted Murder qualified with the use of an unlicensed firearm punishable by death. With no basis in law, respondent conformed to the motion for dismissal filed by the accused Fernando Tadeo. Records show that he even wrote the word "Conformity" on the order of the Court, dated October 11, 1998. In his comment, respondent did not offer any explanation or justification of his conformity to the dropping of Tadeo from the criminal complaint. Based on the records, and in the absence of any explanation or justification from him, we find respondent's act highly questionable and irregular. Nothing in the records show that respondent conducted a reinvestigation and found that the evidence against the accused was insufficient as to warrant the dismissal of the complaint against him".

I concur.

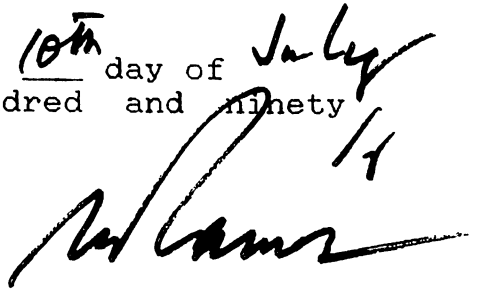
The respondent prosecutor apparently erred in filing an information of illegal possession of firearm separate from murder. Such act is seriously irregular for a prosecutor is duty bound to determine the proper or appropriate charge/charges to be filed against the accused. This manifests his lack of seriousness and dedication in the performance of his

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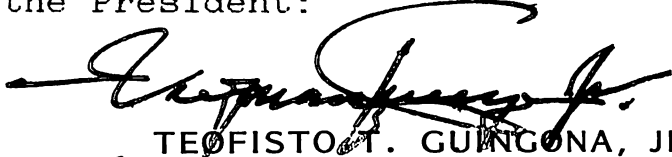
duties. On the other hand, the respondent prosecutor in noting "No Objection" to the motion to bail has really ignored the mandatory requirement under Rule 114 of the Rules of Court. He failed to protect the interest of the state and the complainant by disregarding the fact that judicial discretion may be abused. This has actually deprived the complainant of her right to due process. Furthermore, his act in conforming to the motion to dismiss filed by the accused Fernando Tadeo in Criminal Case No. 653 is indeed highly questionable and irregular. These things should not be countenanced.

WHEREFORE, premises considered, respondent Provincial Prosecutor Rodor S. Gayao of Abra is hereby found liable for serious irregularity and abuse of discretion and deserves the penalty of three (3) months suspension from the service.

Done in the City of Manila, this 10th day of July in the year of Our Lord, nineteen hundred and ninety three.



By the President:



TEOFISTO T. GUNGONA, JR.
Executive Secretary

