



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

MARILOU CASAS USAMA,
Complainant,

A.M. No. RTJ-21-017 [Formerly
OCA IPI No. 19-4935-RTJ]

Present:

- versus -

**(RET.) HON. OSCAR D.
TOMARONG, BRANCH 28,
REGIONAL TRIAL COURT,
LILOY, ZAMBOANGA DEL
NORTE,**

Respondent.

**GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,*
MARQUEZ,**
KHO, JR., and
SINGH, JJ.**

Promulgated:

March 8, 2023

X ----- X

DECISION

ROSARIO, J.:

Before the Court is a Complaint-Affidavit¹ filed by Marilou Casas Usama (*complainant*), charging Judge Oscar D. Tomarong (*respondent*) of

* On leave.

** No part due to prior action as Court Administrator.

¹ *Rollo*, pp. 2-10.

Regional Trial Court, Branch 28, Liloy, Zamboanga Del Norte (*RTC-Branch 28*) for Gross Ignorance of the Law, Grave Misconduct and Conduct Prejudicial to the Best Interest of Service.

Antecedents

Alson Chan and Angeles Carloto ran for the position of Mayor at the municipality of Tampilisan, Zamboanga Del Norte during the May 9, 2016 National and Local Elections.²

On May 4, 2016, around 10:00 p.m., the police station at Tampilisan received a tip that a gray Hilux van, owned by Alson Chan, was roaming around suspiciously on the street of Barangay Camul of the same municipality. Acting on the tip, police officers Mirdan Usama, Jimmy Panganiban, and Melvin Padela conducted a security roving patrol in the vicinity. They noticed that there were two men holding long firearms inside the van. Thereupon, the police officers approached the vehicle. Suddenly, gunfight ensued between the police officers, and Alson Chan and his campaign volunteers.³

The shooting incident led to the death of PO1 Mirdan Usama, complainant's husband.⁴

In the morning of the following day, May 5, 2016, Alson Chan and his campaign volunteers were arrested and brought to the Tampilisan Police Station.⁵

On the same day, at 2:00 p.m., Alson Chan, through counsel, filed with RTC-Branch 28, presided by respondent, an "Application to Post Bail and to Release the Detained Person Pending Filing of Proper Information,"⁶ docketed as Misc. Sp. Proc. No. MSP-328.⁷

Also, on the same day, respondent, in Misc Sp. Proc. No. MSP-328, issued an Order⁸ granting Alson Chan's application to post bail fixed at ₱200,000.00.⁹

Despite the Tampilisan Police Station's receipt of a copy of respondent's Order, Officer-in-Charge (*OIC*) Allan Tingas refused to release Alson Chan.¹⁰

² Id. at 296.

³ Id. at 296-297.

⁴ Id. at 297.

⁵ Id.

⁶ Id. at 18-19.

⁷ Id. at 297.

⁸ Id. at 20.

⁹ Id. at 297.

¹⁰ Id.

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On May 6, 2016, Alson Chan and his campaign volunteers namely: Alfred F. Geronimo, Lito H. Jumawan, and Nilo C. Malanog (campaign volunteers) were subjected to inquest proceedings before the Office of the Provincial Prosecutor of Zamboanga del Norte.¹¹

On the same day, Provincial Prosecutor Gabino S. Saavedra II prepared and signed Informations¹² against Alson Chan and his campaign volunteers. They were charged with Murder, two counts of Attempted Murder, Illegal Possession of Firearms under Section 28 (b) of Republic Act No. (RA) 10591, and Illegal Possession of Explosives under Section 1, RA 9616.¹³

Also, on the same day, Alson Chan and his campaign volunteers filed before RTC-Branch 28 an Extremely Urgent *Ex Parte* Motion for Preliminary Investigation, Suspension, and Bail.¹⁴ A copy thereof was furnished to the Provincial Prosecutor's Office.¹⁵

On May 7, 2016, Alson Chan's wife, Edna Bernardita Chan filed with RTC-Branch 28 a Petition for *Habeas Corpus*,¹⁶ docketed as Sp. Proc. No. SR-763.¹⁷ Alson Chan's wife alleged the following in the petition: (1) Alson Chan was unlawfully arrested; (2) assuming that the arrests were validly conducted without a warrant, the permissible period of detention, *i.e.*, thirty-six (36) hours for the most serious offense, has already elapsed since four o'clock in the afternoon of May 6, 2016; thus, the continued detention after 36 hours is illegal and arbitrary, and is a violation of Article 125 of the Revised Penal Code; and (3) Alson Chan was ordered released by the RTC-Branch 28 in the Order dated May 5, 2016 in Misc. Sp. Proc. No. MSP-328 after posting a bond of ₱200,000.00; thus, his continued detention amounts to a criminal offense of delaying release under Article 126 of the Revised Penal Code and is an open defiance of a lawful order of the court which is punishable by contempt of court.¹⁸

On May 9, 2016, acting on the petition for *habeas corpus*, respondent issued an Order¹⁹ and a Writ of *Habeas Corpus*²⁰ directing the Chief of Police of Tampilisan to produce before the court Alson Chan and his campaign volunteers, and to make the corresponding Return.²¹

¹¹ Id.

¹² Id. at 21-22, 24-25, 27-28, 30-31, 33-34.

¹³ Id. at 55.

¹⁴ Id. at 36-38.

¹⁵ Id. at 4, 36-39.

¹⁶ Id. at 48-53.

¹⁷ Id. at 297.

¹⁸ Id. at 50.

¹⁹ Id. at 46-47. Penned by Judge Oscar D. Tomarong.

²⁰ Id. at 43-45.

²¹ Id. at 298.

In compliance with the said Order, OIC Allan Tingas filed the Return of the Writ²² and presented Alson Chan and his campaign volunteers before the RTC.²³

On May 10, 2016, a hearing was conducted in the *habeas corpus* case. In the said hearing, the counsel for therein respondents police officials manifested that the Informations against Alson Chan and his campaign volunteers will be filed within the day.²⁴ Thereafter, Judge Tomarong directed the release of Alson Chan and his campaign volunteers after the filing of the Informations. Specifically, Judge Tomarong insisted on ordering the release of Alson Chan considering that he has already issued his Order of Release after Alson Chan posted a bail on May 5, 2016.²⁵ Further, upon being asked for clarification if Alson Chan's campaign volunteers who were also apprehended will also be included in the order of release to be issued by the RTC, respondent answered that he will release the other "accused" on bail, in the same amount of ₱200,000.00 each.²⁶

Thereafter, respondent, in Sp. Proc. No. SR-763, issued the following Order²⁷ dated May 10, 2016:

ORDER

The Court orders the release of accused Alson Chan and the released (sic) of the three other accused Alfred M. Geronimo, Lito H. Jumawan and Nilo C. Malanog after posting a bail of Two Hundred Thousand Pesos (₱200,000.00) each in all cases that will be filed against them.

SO ORDERED.²⁸

Likewise, on the same day, complainant filed with the RTC-Branch 28 a "Very Urgent Motion to Inhibit"²⁹ praying that respondent [recuse] himself from hearing the cases involving the death of his husband on the ground that respondent's "action demonstrates bias and partiality."³⁰

On July 26, 2016, respondent issued a Joint Order³¹ granting complainant's motion and inhibited himself.³²

²² Id. at 54-56.

²³ Id. at 298.

²⁴ Id. at 68.

²⁵ Id. at 69.

²⁶ Id. at 70-71.

²⁷ Id. at 42. Penned by Judge Oscar D. Tomarong.

²⁸ Id.

²⁹ Id. at 73-83.

³⁰ Id. at 298.

³¹ Id. at 96-98. Penned by Judge Oscar D. Tomarong.

³² Id. at 298.

On April 8, 2019, respondent filed with the Office of the Court Administrator an application for optional retirement effective April 1, 2019.³³

The Complaint

In her Complaint-Affidavit³⁴ dated February 19, 2019, complainant alleged that the bail application was filed by Alson Chan on May 5, 2016, a Muslim Holiday, and therefore, all the courts in Zamboanga Del Norte were closed. Still, respondent received the application and acted thereon even if his court was closed that day. Moreover, respondent granted the application for bail only “hours if not minutes” after it was filed without conducting a hearing or notifying the prosecutor.³⁵

Finally, complainant claimed that respondent’s acts, in violation of the Rules and jurisprudence, constitute Gross Ignorance of the Law, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service.³⁶

Respondent’s Comment

In his Comment³⁷ dated January 16, 2020, respondent averred that although May 5, 2016 (the day he issued the Order granting the application for bail) is a Muslim Holiday, his action was authorized by Supreme Court Circular No. 95-96 dated December 5, 1996 directing the courts to maintain a skeletal force on Saturdays to act on petitions/applications for bail and other urgent matters. Respondent relied on Section 6 of Supreme Court Circular No. 95-96 which he quoted in this wise:

Sec. 6. – Duty during weekends and holidays. All Executive Judges whether in single sala courts or multiple sala stations shall assign, by rotation, Metropolitan Trial Judges, Municipal Trial Judges and (*sic*) Municipal Circuit Trial Judges within their respective territorial areas to be on duty on Saturday from 8:00 a.m. to 1:00 p.m. assisted by a skeletal force, also on rotation, primarily to act on petitions for bail and other urgent matters.

On Saturday afternoons, Sundays and non-working holidays any Judge may act onailable offenses conformably with the provisions of Section 7 Rule 112 of the Rules of Court.³⁸

Respondent stressed that he granted the application for bail because it was meritorious. Alson Chan’s wife and her lawyer “pleaded and argued” that the former was arrested without warrant and detained to prevent him from pursuing his election campaign. Thus, he lost. Before fixing the bail, he

³³ Id. at 93-95, 299.

³⁴ Id. at 2-10.

³⁵ Id. at 5-7, 299.

³⁶ Id. at 6-7, 299.

³⁷ Id. at 86-92.

³⁸ Id. at 89-90.

“analyzed” that the crime charged was only homicide, a bailable offense, and therefore conducting a hearing was not required.³⁹

Moreover, the complaint stemmed from his official act, and is judicial in nature. Such being the case, no civil, criminal or administrative liability was incurred by respondent.⁴⁰

Report and Recommendation of the Judicial Integrity Board (JIB)

In its Report and Recommendation⁴¹ dated June 28, 2021, the JIB recommended that the administrative complaint against respondent be re-docketed as a regular administrative matter. The JIB also found respondent administratively liable for Gross Ignorance of the Law and Gross Misconduct.⁴²

In finding that respondent was administratively liable for Gross Ignorance of the Law, the JIB ruled that respondent did not conduct a hearing of Alson Chan’s application for bail. Nor did respondent notify the Provincial Prosecutor. He merely based his Order granting bail on his estimation or belief that the crime committed by Alson Chan was only homicide, a bailable offense. Respondent based his finding and conclusion on the statements of the complainant and her lawyer based on the version of the police. The JIB noted that based on the records, Alson Chan and his campaign volunteers were charged with murder, among others, where bail is a matter of discretion, the grant or denial of which hinges on the issue of whether the evidence against the accused, specifically Alson Chan, is strong. Thus, the JIB ruled that such determination requires hearing.⁴³

In finding that respondent was administratively liable for Gross Misconduct when he failed to conduct a hearing, the JIB ruled that respondent willfully brushed aside the law, jurisprudence and rules of procedure on applications for bail.⁴⁴

As to the penalty, the JIB compared Rule 140 of the Rules of Court then prevailing when respondent committed the offenses charged and the amendments to Rule 140 thru the Supreme Court Resolution in A.M. No 18-01-05-SC⁴⁵ dated October 2, 2018 establishing the JIB and supplemented by

³⁹ Id. at 88-89, 299-300.

⁴⁰ Id. at 90, 300.

⁴¹ Id. at 296-308. Submitted by Vice Chairperson Justice Angelina Sandoval-Gutierrez (Ret.), and with the concurrence of Chairperson Justice Romeo J. Callejo, Sr. (Ret.), First Regular Member Justice Sesinando E. Villon (Ret.), Second Regular Member Justice Rodolfo A. Ponferrada (Ret.) and Third Regular Member Justice Cielito N. Mindaro-Grulla (Ret.).

⁴² Id. at 301, 303, 306.

⁴³ Id. at 301.

⁴⁴ Id. at 303.

⁴⁵ Titled “Establishment of the Judicial Integrity Board (JIB) and the Corruption Prevention and Investigation Office (CPIO).”

the Supreme Court Supplemental Resolution dated July 7, 2020 in A.M. No. 18-01-05-SC as the prevailing rules.⁴⁶

The JIB noted that the penalty for gross ignorance of law and gross misconduct has remained consistent under Rule 140 then prevailing at the time respondent committed the offenses charged, the Supreme Court Resolution in A.M. No 18-01-05-SC dated October 2, 2018 establishing the JIB, and its Supplemental Resolution, *i.e.*:⁴⁷

Section 25. Sanctions.

A. If the respondent is guilty of a serious charge, any of the following may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Thus, the JIB ruled that the mandate in *Dela Rama v. De Leon*⁴⁸ to apply Rule 140 as amended retroactively will not apply.⁴⁹

In determining the penalty to be imposed upon respondent, the JIB was convinced that considering the charge of gross ignorance of the law against respondent as compounded by the charge of gross misconduct, the appropriate penalty imposable upon him is suspension from office without salary and other benefits for one (1) year. However, considering that per verification with RTC, Branch 28, Liloy, Zamboanga Del Norte, respondent has effectively retired on April 1, 2019 by way of optional retirement, the JIB recommended that respondent be meted the penalty of forfeiture of his one-year salary and other benefits with stern warning.⁵⁰

Issue

The issue in this case is whether respondent is administratively liable for Gross Ignorance of the Law and Gross Misconduct.

The Court's Ruling

After a judicious review of the records, the Court finds respondent administratively liable for (2) counts of Gross Ignorance of the Law and two

⁴⁶ Id. at 304-305.

⁴⁷ Id. at 306.

⁴⁸ A.M. No. P-14-3240, March 2, 2021.

⁴⁹ Id. at 306.

⁵⁰ Id. at 305-306.

(2) counts of Gross Misconduct, all arising from two separate acts. Considering that each act constitutes both Gross Ignorance of the Law and Gross Misconduct, the Court imposes upon him the penalty of a fine in the amount of ₱110,000.00 for each act as provided under Section 17(1)(c) in relation to Section 18 (b) as well as Section 21 of the Revised Rule 140 of the Rules of Court, or a total of ₱220,000.00.

At the outset, the Court takes note that pending the resolution of the present administrative case against respondent, the Court promulgated its Decision in *Tallado v. Racoma*⁵¹ (*Tallado*) on August 23, 2022. In the said case, the Court formulated rules to guide the JIB in the evaluation of administrative disciplinary cases filed against judges, justices and court personnel. The purpose of the rules was to provide a safeguard against the abuse of the administrative disciplinary mechanism. The Court laid down the following rules:

- (1) If a judicial remedy is still available to the complainant, the administrative complaint shall be dismissed outright, without prejudice to re-filing should the complainant succeed in a judicial action in proving that the public respondent's assailed act or omission was indeed wrong and ill motivated.
- (2) If the administrative case is meant to harass, threaten or merely vex the public respondent. In determining this, the following factors may be considered:
 - (a) the existence of other cases filed against the public respondent by the same complainant or related complainants;
 - (b) the position and influence of the complainant, particularly in the locality where the public respondent is stationed;
 - (c) the number of times that the public respondent has been charged administratively and the corresponding dispositions in these cases;
 - (d) any decisions or judicial actions previously rendered by the public respondent for or against the complainant;
 - (e) the propensity of the complainant for filing administrative cases against members and personnel of the Judiciary; and
 - (f) any other factor indicative of improper pressure or influence.⁵²

One of the rules laid down in *Tallado* is that “[i]f a judicial remedy is still available to the complainant, the administrative complaint shall be dismissed outright, without prejudice to re-filing should the complainant succeed in a judicial action in proving that the public respondent's assailed act or omission was indeed wrong and ill motivated.”

⁵¹ A.M. No. RTJ-22-022, August 23, 2022.

⁵² *Id.*

However, such rule finds no application in the present case considering that herein complainant had no judicial remedy to question the grant of bail by respondent in favor of Alson Chan in Misc. Sp. Proc. No. MSP-328. The well-settled rule is that in criminal cases, the State is the real-party in interest and the role of the private offended party is limited to that of a witness for the prosecution. Further, the interest of the private offended party in a criminal case is limited to the aspect of civil liability arising from it.⁵³ Thus, herein complainant, being the wife of PO1 Mirdan Usama, is merely a private offended party who has no legal personality to question the grant of bail by respondent in favor of Alson Chan since her interest is limited to the civil liability of the criminal case.

Thus, there is no ground to dismiss outright the administrative complaint against respondent. Consequently, the Court will proceed to resolve the merits of the present administrative case against respondent.

The applicable rule in the present case is Rule 140 of the Rules of Court as amended thru A. M. No. 21-08-09-SC⁵⁴ dated February 22, 2022 (*Revised Rule 140*). The latest amendment to Rule 140 of the Rules of Court was published in the Manila Bulletin on April 3, 2022 and took effect on April 4, 2022.⁵⁵

The Revised Rule 140 of the Rules of Court provides for its retroactive effect, thus:

SECTION 24. *Retroactive Effect.* – All the foregoing provisions shall be applied to all pending and future administrative cases involving the discipline of Members, officials, employees, and personnel of the Judiciary, without prejudice to the internal rules of the Committee on Ethics and Ethical Standards of the Supreme Court insofar as complaints against Members of the Supreme Court are concerned.

The annotated version of the Revised Rule 140 of the Rules of Court provides for an explanatory note to Section 24 thereof which reads as follows:

NOTES: Jurisprudence provides that, as a rule, all laws are prospective in application unless the contrary is expressly provided, or unless the law is procedural or curative in nature. (*Eastern Mediterranean Maritime Ltd. V. Surio*, G.R. No. 154213, August 23, 2012; Article 4 of the Civil Code)[.] By expressly stating that these new provisions will apply to “all pending and future administrative cases,” the court effectively abandons the ruling in *Dela Rama v. De Leon* (A.M. No. P-14-3240, March 23, 2021)

⁵³ *Pili, Jr. v. Resurreccion*, G.R. No. 222798, June 19, 2019; *Guy v. Tulfo*, G.R. No. 213023, April 10, 2019.

⁵⁴ Titled, “Further Amendments to Rule 140 of the Rules of Court.”

⁵⁵ *Office of the Court Administrator v. Salao*, A.M. No. P-22-056, June 22, 2022; Section 26 of the Revised Rule 140 of the Rules of Court provides:

SECTION 26. *Effectivity Clause* - These Rules shall take effect following their publication in the Official Gazette or in two newspapers of national circulation.

(i.e. “if the application of Rule 140, as amended, would be prejudicial to the employee, then the framework of rules prevailing at the time of the Commission of the offense should apply.”) It bears noting that no vested rights are impaired by increasing the imposable periods of suspension or by making Rule 140 applicable to court personnel. Moreover, the Court may, in its discretion, make the necessary changes in this regard pursuant to its constitutional power to exercise administrative supervision and to discipline justices and judges of the lower courts, as well as all court personnel. (Sections 6 and 11, Article VIII of the Constitution)

Section 24 of Revised Rule 140 and its explanatory note are clear that all of the provisions of the Revised Rule 140 shall apply retroactively even if their application would be prejudicial to the employee. Thus, the Revised Rule 140 shall be “uniformly applicable to all cases, regardless of when the infractions are committed.”⁵⁶ This rule is only subject to the qualification that the retroactive effect of Revised Rule 140 shall be “without prejudice to the internal rules of the Committee on Ethics and Ethical Standards of the Supreme Court insofar as complaints against Members of the Supreme Court are concerned.”

In the present case, respondent was charged with Gross Ignorance of the Law and Grave Misconduct.

In *Department of Justice v. Judge Mislang*,⁵⁷ the Court discussed what constitutes Gross Ignorance of the Law, to wit:

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Mislang. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.

⁵⁶ *Office of the Court Administrator v. Salao*, id. citing the 15th Whereas Clause of A.M. No. 21-08-09-SC, which states:

WHEREAS, Senior Associate Justice Estela M. Perlas-Bernabe was assigned by Chief Justice Alexander G. Gesmundo to conduct a comprehensive review and revision of Rule 140, which is envisioned to institutionalize a complete, streamlined, and updated administrative disciplinary framework for the entire Judiciary that is wholly independent from the Civil Service rules, harmonizes existing jurisprudence, and is uniformly applicable to all cases, regardless of when the infractions are committed;

⁵⁷ 791 Phil. 219, 227-228 (2016).

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. *Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts.* Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.⁵⁸ (citations omitted)

On the other hand, the Court in *First Great Ventures Loans, Inc. v. Mercado*⁵⁹ discussed what constitutes Misconduct and Grave Misconduct. Grave Misconduct is the same as Gross Misconduct.⁶⁰ The Court ruled:

Misconduct is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.⁶¹ (Citations omitted)

In the present case, Alson Chan and his campaign volunteers were charged in one of the Informations, not with Homicide (which is punishable by *reclusion temporal*),⁶² but with Murder, among others. Article 248⁶³ of the

⁵⁸ Id.

⁵⁹ A.M. No. P-17-3773, October 1, 2019.

⁶⁰ See *Anonymous Complaint v. Dagala*, 814 Phil. 103, 117 (2017), where the Court used the terms "grave misconduct" and "gross misconduct" interchangeably.

⁶¹ *First Great Ventures Loans, Inc. v. Mercado*, supra.

⁶² Article 249 of the Revised Penal Code provides:

Art. 249. *Homicide*. - Any person, who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and shall be punished by *reclusion temporal*.

⁶³ Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659 provides:

Art. 248. *Murder*. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

Revised Penal Code, as amended by Republic Act No. 7659, provides that the penalty for murder is *reclusion perpetua* to death.⁶⁴

Section 13 of the 1987 Constitution provides in part that “[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as provided by law.”

Under Section 7 of Rule 114 of the Rules of Court, “no person *charged* with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.”⁶⁵

In other words, bail is a matter of discretion when a person is *charged* with a capital offense or an offense punishable by *reclusion perpetua* or life imprisonment, and the Judge’s determination of the requisite evidence as to whether the evidence of guilt of the person in custody of the law is strong can only be reached after due hearing.⁶⁶

Thus, under Section 8, Rule 114 of the Rules of Court, “[a]t 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 evidence of guilt is strong.”

Necessarily, under Section 18, Rule 114 of the Rules of Court, in applications for bail filed by a person who is in custody for the commission

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

⁶⁴ *Casilac v. People*, G.R. No. 238436, February 17, 2020. As discussed by the Court in *People v. Abon* (569 Phil. 298, 307 (2008)), pursuant to Republic Act No. 9346 which took effect on June 29, 2006, the imposition of death penalty has been prohibited. As provided under Section 2 thereof, the following penalties shall be imposed in lieu of the death penalty: (a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

⁶⁵ Italics supplied.

⁶⁶ *Office of the Court Administrator v. Judge Flor, Jr.*, A.M. No. RTJ-17-2503, July 28, 2020.

of an offense punishable by death, *reclusion perpetua*, or life imprisonment, “the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation.”

Equally important, the Court in *Villanueva v. Judge Buaya*⁶⁷ discussed that “[u]nder the present Rules of Court, xxx, notice and hearing are required whether bail is a matter of right or discretion.” The Court explained that “whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for the court to consider the guidelines set forth in Section 9, Rule 114 of the Rules of Court in fixing the amount of bail.” The Court emphasized that “[i]t has repeatedly held in past cases that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require the prosecution to answer questions in order to ascertain, not only the strength of the State’s evidence, but also the adequacy of the amount of bail.”

In sum, the duties of a judge in resolving bail applications, as reiterated by the Court in *Office of the Court Administrator v. Judge Flor, Jr.*,⁶⁸ are as follows:

1. In all cases, whether bail is a matter of right or of discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation;
2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion;
3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond x x x; otherwise petition should be denied.⁶⁹ (citations omitted.)

Here, respondent failed to notify the Provincial Prosecutor of the bail application and failed to conduct a hearing on Alson Chan’s bail application in Misc. Sp. Proc. No. MSP-328. Admittedly, there was not a single Information filed against Alson Chan at the time that he filed his bail application. However, the absence of any Information on May 5, 2016 charging Alson Chan with a non-bailable offense did not excuse respondent from the requirement of giving notice to the prosecutor and the conduct of a hearing on Alson Chan’s bail application. Notably, Alson Chan stated in his bail application that while no Information has been filed at the time of his

⁶⁷ 650 Phil. 9, 21 (2010).

⁶⁸ *Supra* note 66.

⁶⁹ *Id.*

detention on May 5, 2016, the Information will be filed by the Office of the Provincial Prosecutor of Zamboanga del Norte anytime on May 6, 2016.⁷⁰ Having knowledge of this circumstance, respondent should have exercised prudence by, at the very least, giving the prosecutor the opportunity to submit his recommendation on Alson Chan's bail application.

Evidently, respondent acted with haste when it granted Alson Chan's bail application on the same day that the bail application was filed on May 5, 2016.

Even more, respondent should have exercised caution in acting on the bail application especially considering that he was aware that the cause of Alson Chan's detention is his alleged involvement in the commission of a crime involving the killing of a person. Respondent's awareness of such circumstance is made evident by his defense in his Comment⁷¹ that before fixing the bail, he "analyzed" that the crime charged was only homicide, a bailable offense, and therefore conducting a hearing was not required.⁷²

Furthermore, considering that Alson Chan was subsequently charged with Murder, among other offenses, a bail hearing became all the more necessary in order to determine whether the evidence of guilt against Alson Chan was strong. It must be emphasized that respondent's appreciation that the crime committed by Alson Chan was only Homicide cannot do away with the requirement of conducting a hearing. This is considering the clear import of Sections 7 and 8 of Rule 114 of the Rules of Court that the conduct of a hearing for the purpose of determining whether the evidence of guilt is strong against a person in custody of the law is dependent on the gravity of the offense charged.

In *Office of the Court Administrator v. Judge Flor, Jr.*,⁷³ the Court ruled that a "judge's patent disregard of elementary rules in the grant of bail applications constitutes gross ignorance of the law which merits administrative sanction."

Here, respondent's failure to take cognizance of these basic rules when he granted Alson Chan's bail application constitutes Gross Ignorance of the Law for which he should be administratively liable.

Equally important, respondent's failure to notify the prosecutor of the bail application and to conduct a hearing on Alson Chan's bail application showed his flagrant disregard of the law, jurisprudence and rules of procedure governing applications for bail. Thus, the Court finds respondent administratively liable for Gross Misconduct.

⁷⁰ *Rollo*, p. 18.

⁷¹ *Id.* at 86-92.

⁷² *Id.* at 88.

⁷³ *Supra* note 66.

Further, in ordering the release of Alson Chan's campaign volunteers "after posting a bail of ₱200,000.00 each in all the cases that will be filed against them," in the *habeas corpus* case, respondent granted relief to persons who are not parties to the case and thus, could not have sought any relief from the court. It bears emphasis that Alson Chan's wife filed the petition for *habeas corpus* for the release of her husband only. Alson Chan's campaign volunteers who were also arrested and detained were not parties to the *habeas corpus* case. This constitutes a separate act constituting Gross Ignorance of the Law for which respondent should also be administratively liable.

It also does not escape the attention of the Court that respondent also disregarded the scope and limitations of a *habeas corpus* proceeding as well as the rules in the grant of bail applications.

As provided under Rule 102, Section 1 of the Rules of Court, [e]xcept as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." As the Court elucidated in *In re Salibo v. Warden*,⁷⁴ the primary purpose of the writ is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal.

However, the *habeas corpus* proceeding is not the proper forum for the trial court to act on an application for bail or order the release of a person upon the posting of a bail. Specifically, in *Galvez v. Court of Appeals*,⁷⁵ the Court explained that "a petition for *habeas corpus* is not the appropriate vehicle for asserting a right to bail or vindicating its denial."

Likewise, respondent's act of ordering in the *habeas corpus* proceedings the release of Alson Chan's campaign volunteers conditioned upon the posting of bail and despite them not being parties to the *habeas corpus* case showed his flagrant disregard of the law, jurisprudence and rules of procedure governing *habeas corpus* cases. Thus, the Court finds respondent administratively liable for Gross Misconduct.

As to the penalty, Section 17 of Revised Rule 140 provides:

SECTION 17. *Sanctions.* –

- (1) If the respondent is guilty of a serious charge, any of the following sanctions shall be imposed:
 - (a) Dismissal from service, forfeiture of all or part of the benefits as the Supreme Court may determine, and disqualification from

⁷⁴ 757 Phil. 630, 644 (2015).

⁷⁵ 307 Phil. 708, 735 (1994).

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reinstatement or appointment to any public office, including government-owned or -controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits.

- (b) Suspension from office without salary and other benefits for more than six (6) months but not exceeding one (1) year; or
- (c) A fine of more than ₱100,000.00 but not exceeding ₱200,000.00.

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Section 21 of Revised Rule 140 also provides the rule for the imposition of penalty when the respondent is found liable for more than one (1) offense arising from separate acts or omissions in a single administrative proceeding, thus:

SECTION 21. *Penalty for Multiple Offenses.* - If the respondent is found liable for more than one (1) offense arising from separate acts or omissions in a single administrative proceeding, the Court shall impose separate penalties for each offense. Should the aggregate of the imposed penalties exceed five (5) years of suspension or ₱1,000,000.00 in fines, the respondent may, in the discretion of the Supreme Court, be meted with the penalty of dismissal from service, forfeiture of all or part of the benefits as may be determined, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations. *Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits.

On the other hand, if a single act/omission constitutes more than one offense, the respondent shall still be found liable for all such offenses, but shall, nonetheless, only be meted with appropriate penalty for the most serious offense.

Here, respondent's administrative liability is based on two acts, both of which constitute Gross Ignorance of the Law and Gross Misconduct. These are (1) respondent's act of granting the application for bail without hearing and without notifying the Provincial Prosecutor of Alson Chan's bail application, and (2) respondent's act of ordering in the *habeas corpus* proceedings the release of Alson Chan's campaign volunteers conditioned upon the posting of bail and despite them not being parties to the *habeas corpus* case.

Thus, while respondent is administratively liable for both Gross Ignorance of the Law and Gross Misconduct in connection with the grant of Alson Chan's bail application in Misc. Sp. Proc. No. MSP-328, he shall only be meted with a single penalty for the said act.

Likewise, while respondent is administratively liable for both Gross Ignorance of the Law and Gross Misconduct in connection with his act of ordering in the *habeas corpus* proceedings the release of Alson Chan's

campaign volunteers conditioned upon the posting of bail, he shall also be meted with a single penalty for the said act.

Considering that both Gross Ignorance of the Law and Gross Misconduct are serious offenses, the Court finds as commensurate with respondent's offenses the penalty of suspension from office without salary and other benefits for one (1) year under Section 17(b) of the Revised Rule 140 of the Rules of Court for *each* of the two separate acts committed by respondent.

However, considering that respondent has retired effective April 1, 2019 by way of optional retirement, respondent can no longer serve the penalty of suspension.

Thus, the Court deems that the appropriate penalty to be imposed upon respondent for *each* separate act constituting both Gross Ignorance of the Law and Gross Misconduct should be a fine within the range of ₱100,000.00 to ₱200,000.00 as provided under Section 17(1)(c) in relation to Section 18 (b) as well as Section 21 of Revised Rule 140.

Section 18 of Revised Rule 140 states:

SECTION 18. Penalty in Lieu of Dismissal on Account of Supervening Resignation, Retirement, or Other Modes of Separation of Service. — If the respondent is found liable for an offense which merits the imposition of the penalty of dismissal from service but the same can no longer be imposed due to the respondent's supervening resignation, retirement, or other modes of separation from service except for death, he or she may be meted with the following penalties in lieu of dismissal:

(a) Forfeiture of all or part of the benefits as the Supreme Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned-or-controlled corporations. *Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits; and/or

(b) Fine as stated in Section 17 (1) (c) of this Rule.

To recall, on the premise that respondent was administratively liable for a single act constituting both Gross Ignorance of the Law and Gross Misconduct, the JIB recommended that respondent be meted with forfeiture of his one-year salary and other benefits in lieu of suspension from office without salary and other benefits for one (1) year. However, the imposition of the penalty recommended by the JIB, which is essentially a fine, is a practice derived from civil service rules.⁷⁶ The Court should no longer perpetuate this

⁷⁶ Section 52(1)(d) of the 2017 Rules on Administrative Cases in the Civil Service reads:

Section 52. Penalty of Fine. The following are the guidelines for the penalty of fine:

practice and instead, should impose penalties strictly in accordance with the Revised Rule 140 as this is in consonance with the overarching intent of the Court “to institutionalize a complete, streamlined, and updated administrative disciplinary framework for the entire Judiciary that is wholly independent from the Civil Service Rules, harmonizes existing jurisprudence, and is uniformly applicable to all cases, regardless of when the infractions are committed.”⁷⁷

Notably, Section 18 of Revised Rule 140 addresses the situation wherein a respondent who is guilty of a serious charge can no longer serve the penalty of dismissal because of a supervening event other than death. On the other hand, there is nothing in Rule 140 which categorically addresses the situation wherein a respondent who deserves the penalty of suspension considering the gravity of his offense can no longer serve the penalty of suspension because of a supervening event other than death. Nevertheless, the solution offered under Section 18 (b) should apply by analogy in determining the penalty to be imposed in lieu of suspension against an erring respondent considering the occurrence of a supervening event.

Thus, the Court deems it proper to impose upon respondent the penalty of a fine in the amount of ₱110,000.00 for *each* of the two acts for which the Court found respondent administratively liable, or a total of ₱220,000.00. In accordance with Section 22⁷⁸ of Revised Rule 140, respondent shall pay the fine within a period not exceeding three (3) months from the time this Decision is promulgated. If unpaid, such amount shall be deducted from his retirement benefits including his accrued leave credits.

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1. The disciplining authority may allow payment of fine in place of suspension if any of the following circumstances is present:

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- d. when the respondent has already retired or otherwise separated from government service and the penalty of suspension could not be served anymore, the fine may be sourced from the accumulated leave credits or whatever benefits due the respondent.

2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day of suspension from the service to one (1) day salary fine; Provided, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance, the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.

⁷⁷ See the final whereas clause of A.M. No. 21-08-09-SC.

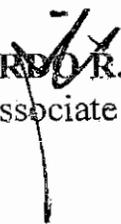
⁷⁸ Section 22 of the Revised Rule 140 of the Rules of Court states:

SECTION 22. Payment of Fines. - When the penalty imposed is a fine, the respondent shall pay it within a period not exceeding three (3) months from the time the decision or resolution is promulgated. If unpaid, such amount may be deducted from the salaries and benefits, including accrued leave credits, due to the respondent. The deduction of unpaid fines from accrued leave credits, which is considered as a form of compensation, is not tantamount to the imposition of the accessory penalty of forfeiture covered under the provisions of this rule.

Lastly, considering respondent's abovementioned retirement, it is no longer viable to indicate that he should be sternly warned for repetition of the same or similar offense.⁷⁹

WHEREFORE, the Court finds Retired Judge Oscar D. Tomarong, former Presiding Judge of Branch 28, Regional Trial Court of Liloy, Zamboanga Del Norte, **GUILTY** of two (2) counts of Gross Ignorance of the Law and two (2) counts Gross Misconduct, all arising from two separate acts, and would have been meted with the penalty of **SUSPENSION** from office without salary and other benefits for one (1) year for each act constituting Gross Ignorance of the Law and Gross Misconduct, had he not retired on April 1, 2019. Respondent retired Judge Oscar D. Tomarong is hereby ordered to pay a **FINE** in the amount of ₱110,000.00 for each act constituting Gross Ignorance of the Law and Gross Misconduct, or a total of ₱220,000.00 within a period not exceeding three (3) months from the time this Decision is promulgated. If the fine is unpaid, such amount shall be deducted from his retirement benefits including his accrued leave credits.

SO ORDERED.

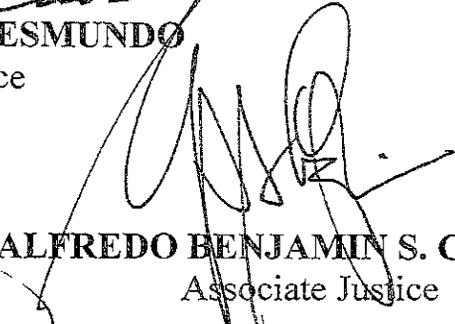

RICARDO R. ROSARIO
Associate Justice

⁷⁹ See *Tabao v. Cababin*, 785 Phil. 335, 349 (2016).

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice

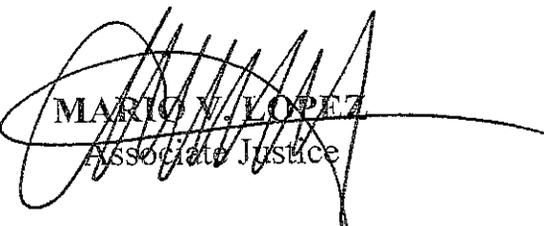

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

On leave
JAPAR B. DIMAAMPAO
Associate Justice

No part
JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice