



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CABIB ALONTO TANOG,
 Petitioner,

G.R. No. 187464

Present:

- versus -

VELASCO,*
 BRION,** *Acting Chairperson,*
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, *JJ.*

HON. RASAD G. BALINDONG, Acting
Presiding Judge, Regional Trial Court,
Branch 8, 12th Judicial Region, Marawi
City, and GAPO SIDIC,

Promulgated:

25 NOV 2015

Respondents.

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DECISION

BRION, J.:

This is a petition for *certiorari*¹ filed by petitioner Cabib Alonto Tanog (*Cabib*) assailing the orders dated February 11, 2009; February 13, 2009; and March 2, 2009, respectively, issued by respondent Hon. Rasad G. Balindong (*Judge Balindong*), then Acting Presiding Judge of the Regional Trial Court (*RTC*), Branch 8, Marawi City, in Criminal Case No. 4471-04.

The Antecedents:

On July 5, 2004, Cabib Tanog, Jr. was shot to death by a group of armed persons inside the canteen of Dansalan College Foundation, Inc. in Marawi City, Lanao del Sur.

* Designated as Acting member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 2282 dated November 13, 2015.

** Designated as Acting Chairperson in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 2281 dated November 13, 2015.

¹ Under Rule 65 of the Rules of Court.

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On the same day, members of the Marawi City police apprehended Gapo Sidic (*Sidic*) at a police checkpoint while he was on board a Tamaraw FX vehicle bound for Iligan City.

On July 8, 2004, the petitioner filed a complaint for murder before the Office of the City Prosecutor in Marawi City against Sidic, Anwar Bonsalagan, Papas Balindong, Nago Balindong, and Arsad Balindong for the death of his son, Cabib, Jr.

In its resolution dated August 3, 2004, the Office of the City Prosecutor found probable cause to indict the five (5) accused, and recommended the filing of an information² for murder against them.

The prosecution filed an Information for murder before the Regional Trial Court of Marawi City against the accused, docketed as Criminal Case No. 4471-04. This case was raffled to Branch 9, which was presided by Judge Amer Ibrahim. Thereafter, Judge Ibrahim issued an “order of arrest” against the accused.

On January 8, 2005, Sidic filed a *motion to fix bail* before the RTC, claiming that the evidence of guilt against him was not strong.³ After the prosecution presented four witnesses, the RTC, Branch 9: (a) considered the presentation of evidence by the prosecution for the purposes of the motion to fix bail deemed terminated; and (b) set the presentation of Sidic’s counter evidence on May 21, 2008.

Due to the death of Judge Ibrahim, Judge Lacsaman Busran of the RTC, Branch 11, Marawi City, was designated as Acting Presiding Judge of Branch 9. The records of Criminal Case No. 4471-04 was re-raffled to Branch 10 because Judge Busran had been previously designated as its Acting Presiding Judge.

On February 4, 2009, Sidic filed an *urgent ex parte motion to direct special raffle* before the RTC, Branch 10 since he had been in detention for more than four years, and Branch 10 was already overburdened with numerous cases.

² The Information reads:

That on or about July 5, 2004, in Marawi City, Philippines, and within the jurisdiction of this Honorable Court, said accused Gapo Sidic conspiring and confederating with Anwar Bonsalagan, Papas Balindong, Nago Balindong alias Hilal, and Arsad Balindong who are still at large, mutually aiding and assisting one another, then armed with .45 Caliber Pistol and other firearms, with deliberate intent and decided purpose to kill, with treachery, evident premeditation, taking advantage of superior strength and with the use of motor vehicles, a maroon FX Tamaraw bearing plate no. ATF-754 and a Blue Sky Toyota Corona with no plate number did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Cabib Tanog, Jr. with said weapons with which they were then provided for the purpose, thereby inflicting upon the latter gunshot wounds on the head and other vital parts of the body of the said Cabib Tanog, Jr. which caused his instantaneous death, to the damage and prejudice of the heirs of the deceased victim.

CONTRARY TO LAW.

³ Gapo Sidic was arraigned on March 28, 2005, and pleaded “not guilty.”

In its Order of February 4, 2009, Judge Busran granted Sidic's motion to direct a special raffle, and directed his Branch Clerk of Court to forward the records of Criminal Case No. 4471-04 to the Office of the Clerk of Court (OCC).

On the next day, the OCC transmitted the records of Criminal Case No. 4471-04 to RTC, Branch 8, presided by respondent Judge Balindong.

In its order dated February 11, 2009,⁴ the RTC, Branch 8 granted Sidic's motion to fix bail, and fixed the amount at ₱30,000.00. It essentially held that evidence of guilt against Sidic was not strong since the witnesses presented by the prosecution did not actually see the victim shot.

In its order⁵ of February 13, 2009, the RTC, Branch 8 directed the City Warden to release Sidic after the latter had posted the ₱30,000.00 cash bond.

The prosecution filed an *omnibus motion for reconsideration to cancel bond posted for the provisional liberty of the accused and for inhibition*⁶ before the RTC, Branch 8.

In his order⁷ dated March 2, 2009, Judge Balindong held that "[t]he motion to fix bail was resolved justly and fairly in accordance with the law, rules and jurisprudence."⁸ He, however, opted to inhibit himself "from further taking action on the other incidents"⁹ of the case out of "delicadeza." The dispositive portion of this order provides:

WHEREFORE, the undersigned Acting Presiding Judge is inhibiting himself from trying and deciding the case of accused Gapo Sidic. The rest of the accused are at large, hence, the most that the next Judge/Acting Judge can do is to archive the case insofar as they are concerned and issue alias Warrant of Arrest.

Let the record in its entirety be forwarded to the Office of the Clerk of Court for appropriate action considering that it cannot be re-raffled to RTC Branch 9 as the latter sala is presided by Judge Lacsaman M. Busran of RTC, Branch 10 who earlier inhibited himself from trying this case.

SO ORDERED.¹⁰

The Petition for Certiorari:

In the present petition, the petitioner alleged that Judge Balindong committed grave abuse of discretion amounting to lack or excess of

⁴ *Rollo*, pp. 38-41.

⁵ *Id.* at 42.

⁶ *Id.* at 44-52.

⁷ *Id.* at 43.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

jurisdiction when he granted Sidic's motion to fix bail despite the strong evidence of guilt against him, and in fixing the amount of bail at only ₱30,000.00. He maintained that Judge Balindong should have inhibited himself from taking part in Criminal Case No. 4471-04 since the latter is related to the accused within the prohibited degree under Rule 137 of the Rules of Court.

OUR RULING

After due consideration, we resolve to **DISMISS** the petition.

The case is already moot

A case is said to be moot or academic when it ceases to present a justiciable controversy by virtue of supervening events, so that a ruling would be of no practical use or value. Courts generally decline jurisdiction over moot cases because there is no substantial relief to which petitioner would be entitled and which would anyway be negated by the dismissal of the petition.¹¹

In *Republic Telecommunications Holdings, Inc. v. Santiago*,¹² we held that:

The rule is well-settled that for a court to exercise its power of adjudication, there must be an actual case or controversy—one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extralegal or other similar considerations not cognizable by a court of justice. Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereon would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.

The events which took place during the pendency of the present case have rendered the present petition for *certiorari* moot. The record shows that during the pendency of this petition, the RTC, Branch 28, Catbalogan City, presided by Judge Sibannah E. Usman,¹³ rendered a decision on January 20, 2015, in Criminal Case No. 4471-04 finding Sidic guilty beyond reasonable doubt of the crime of murder, and sentenced him to suffer the

¹¹ See *Ilusorio v. Baguio City Country Club Corporation*, G.R. No. 179571, July 2, 2014, 728 SCRA 592, 598.

¹² 556 Phil. 83, 91-92 (2007), citing *People v. Peralta*, G.R. No. 145176, March 30, 2004, 426 SCRA 472.

¹³ The records showed that after Judge Balindong inhibited himself from Criminal Case No. 4471-04, the Court issued a resolution designating Judge Oscar Badelles of RTC, Branch 5, Iligan City, to hear and decide this case. However, Judge Badelles issued an order of inhibition on December 29, 2009. The Court designated Judge Anisah Umpa of RTC, Branch 2, Iligan City to try this case, but she also inhibited herself on account of relationship to one of the accused and heavy case load. On June 24, 2010, the case was re-raffled to RTC, Branch 8, presided over by Judge Gamor Disalo. When Judge Disalo was transferred to RTC, Branch 75, Valenzuela City, the Court issued a Memorandum to Judge Usman denying his request to be exempted from trying the case on account of distance from Catbalogan City to Marawi City.

penalty of *reclusion perpetua*. The decision became final and executory on March 26, 2015.

We recall that the present petition questioned Judge Balindong's orders granting the motion to fix bail filed by Sidic and setting the amount of bail at only ₱30,000.00. Sidic was charged with a capital offense, and his conviction clearly imports that the evidence of guilt against him of the offense charged was strong. Thus, whatever judgment is reached in this case would no longer have any practical legal effect or, in the nature of things, can no longer be enforced. Simply put, the petitioner's conviction of a capital offense, **which had already attained finality**,¹⁴ warranted his incarceration. Any resolution on the propriety of Judge Balindong's challenged orders relating to Sidic's provisional release would be of no useful or practical value.

The petitioner failed to observe the doctrine of judicial hierarchy.

We also point out that the present petition for *certiorari* should have been filed with the Court of Appeals (CA) and not with this Court pursuant to the doctrine of hierarchy of courts. Although this Court, the CA, and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, and injunction, **the commonality does not give the petitioner unrestricted freedom of choice in the forum to be used**.¹⁵ The appropriate forum is the court lowest in the judicial hierarchy.

The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases that some of these cases may have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or because these courts are better equipped to resolve the issues given that this Court is not a trier of facts.¹⁶

In *Dy v. Bibat-Palamos*,¹⁷ the Court recognized various exceptions to the strict application of the principle of hierarchy of courts, as follows:

x x x, the invocation of this Court's original jurisdiction to issue writs of *certiorari* has been allowed in certain instances on the ground of special and important reasons clearly stated in the petition, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case.

¹⁴ Per Office of the Executive Judge, Records, p. 654.

¹⁵ See *Lacson Hermanas, Inc. v. Heirs of Ignacio*, 500 Phil. 673, 676 (2005).

¹⁶ See *Chamber of Real Estate and Builders Association, Inc. (CREBA) v. Secretary of Agrarian Reform*, G.R. No. 183409, June 18, 2010, 621 SCRA 295, 310.

¹⁷ G.R. No. 196200, September 11, 2013, 705 SCRA 613, 621-622 (citation omitted).

Thus, this Court, as a rule, will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances (such as cases of national interest and of serious implications) justify the use of the extraordinary remedy of *certiorari*, calling for the exercise of its primary jurisdiction.¹⁸ Exceptional and compelling circumstances were held present in the following cases: (a) *Chavez v. Romulo* on citizens' right to bear arms; (b) *Government of the United States of America v. Purganan* on bail in extradition proceedings; (c) *Commission on Elections v. Quijano-Padilla* on government contract involving modernization and computerization of voters' registration list; (d) *Buklod ng Kawaning EIIB v. Zamora* on status and existence of a public office; and (e) *Fortich v. Corona* on the so-called "Win-Win Resolution" of the Office of the President which modified the approval of the conversion to agro-industrial area.¹⁹

In the present case, the petitioner failed to offer any explanation on why he failed to comply with the principle of judicial hierarchy; he gave no justification why he did not challenge the assailed RTC orders before the CA. We thus reaffirm the judicial policy that this Court will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate courts below, and exceptional and compelling circumstances justify the resort to this Court through the extraordinary remedy of writ of *certiorari*.²⁰ We reiterate that a petition for *certiorari* is an extraordinary remedy and the party who seeks to avail of this remedy must strictly observe the procedural rules laid down by law and the rules.

The grave abuse of discretion issue

Even if we decide the case on the merits, we still dismiss the present petition for its failure to establish that the assailed orders of Judge Balindong were tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

a. The grant of the motion to fix bail

The right to bail flows from the right to be presumed innocent. It is accorded to a person in the custody of the law who may be allowed provisional liberty upon filing of a security to guarantee his appearance before any court, as required under specified conditions. Before conviction, bail is either a matter of right or of discretion. It is a matter of right when the offense charged is punishable by any penalty lower than *reclusion perpetua*. If the offense charged is punishable by *reclusion perpetua*, bail becomes a

¹⁸ See *Mangaliag v. Catubig-Pastoral*, G.R. No. 143951, October 25, 2005, 474 SCRA 153, 161.

¹⁹ See *Heirs of Bertuldo Hinog v. Hon. Melicor*, 495 Phil. 422, 433 (2005), citations omitted.

²⁰ We also note that the petitioner's counsel adopted a position contrary to that of the Office of the Solicitor General who prayed for the dismissal of the present petition for *certiorari*. It is settled that while a private prosecutor may be allowed to intervene in criminal proceedings on appeal in the Court of Appeals or the Supreme Court, his participation is subordinate to the interest of the People, hence, he cannot be permitted to adopt a position to that of the Solicitor General. To do so would be tantamount to giving the private prosecutor the direction and control of the criminal proceeding, contrary to the provisions of law.

matter of discretion. Bail is denied if the evidence of guilt is strong. The court's discretion is limited to determining whether or not evidence of guilt is strong.²¹

Corollarily, Article 114, Section 7 of the Revised Rules of Criminal Procedure, as amended, states that 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 prosecution.

We point out that the accused were charged of murder, a crime punishable by *reclusion perpetua* to death. If the information charges a capital offense, the right to bail becomes a matter of discretion and the grant thereof may be justified as a matter of right if the evidence of guilt is not strong. The determination of whether or not the evidence of guilt is strong, being a matter of judicial discretion, remains with the judge.

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 that, while allowing the judge rational latitude for the operation of his own individual views, prevent rulings that are out of control.²²

In the present case, we find that Judge Balindong did not act in a whimsical, arbitrary, and capricious manner when he granted Sidic's motion to fix bail. The records showed that *a hearing on the application for bail was conducted and that the prosecution presented four witnesses*, namely Noma Tanog, Cabib Tanog, Sr., Saripada Tanog, and Saripoden Tanog Lucman. Judge Balindong evaluated the testimonies of these witnesses, and found out that none of them witnessed the actual shooting of the victim: Noma merely saw Sidic running towards the direction of the vehicles after he (Noma) went to Dansalan College Foundation, Inc. to verify the gunshots he heard; Saripada admitted that he did not see Sidic shoot the victim; Cabib admitted that it was Noma who pointed Sidic to him as one of the victim's assailants; and Saripoden merely described the attire of one of the men he saw at the canteen, and did not mention the name of Sidic. On the basis of these testimonies, Judge Balindong concluded that the prosecution failed to show that the evidence against Sidic was strong.

We additionally examined the affidavits of Cabib and Noma,²³ and found that these documents supported the findings of Judge Balindong.

In his affidavit, Cabib stated that he was informed of the death of his son by Adil Dima,²⁴ and that it was Noma who told him the identities of five

²¹ See Court's (First Division) Resolution in *Heirs of Delgado v. Gonzales*, G.R. No. 184337, and *Devanadera v. Gonzales*, G.R. No. 184507, both dated December 17, 2008.

²² See *Santos v. Judge How*, 542 Phil. 22, 33-34 (2007).

²³ Saripoden and Saripada did not execute affidavits.

of the assailants. For his part, Noma stated in his affidavit that he saw Sidic as one of the persons who ran towards a maroon Tamaraw FX (bearing plate number ATF 754) and a blue Toyota Corona (without any plate number) after the shooting. He (Noma) mentioned, however, that the Tamaraw FX the police flagged down was colored red.²⁵

In the light of the testimonies and affidavits of the witnesses, we cannot fault Judge Balindong if he had ruled that the evidence of guilt against the accused was not strong.

That the RTC eventually convicted Sidic is of no moment, since the trial judge, in determining the weight of evidence for the purposes of bail, did not sit to try the merits of the case.

b. Amount of bail

Contrary to the petitioner's claim, we also hold that Judge Balindong did not act with grave abuse of discretion when he set the amount of Sidic's bail at ₱30,000.00.

Section 9 of Rule 114 of the Rules of Court provides that in fixing the amount of bail in criminal cases, judges shall primarily consider the following factors: (a) financial ability of the accused to give bail; (b) nature and circumstances of the offense; (c) penalty for the offense charged; (d) character and reputation of the accused; (e) age and health of the accused; (f) weight of the evidence against the accused; (g) probability of the accused appearing at the trial; (h) forfeiture of other bail; (i) the fact that the accused was a fugitive from justice when arrested; and (j) pendency of other cases where the accused is on bail.

It is settled that the amount of bail should be reasonable at all times. In implementing this mandate, regard should be taken of the prisoner's pecuniary circumstances. We point out that what is reasonable bail to a man of wealth may be unreasonable to a poor man charged with a like offense. Thus, the right to bail should not be rendered nugatory by requiring a sum that is relatively excessive. The amount should be high enough to assure the presence of the defendant when required, but no higher than is reasonably calculated to fulfill this purpose.²⁶

Judge Balindong explained how he arrived at the amount in this manner:

Considering the guidelines under Section 9, Rule 114, Rules of Court, among them: the health of the accused who has languished in jail

²⁴ While Adil Dima executed an affidavit stating that she recognized Sidic as one of the persons who fired at the victim, she was never presented in court.

²⁵ Per the counter-affidavit of Gapo Sidic and the affidavits of Councilor Camel Pamaloy, Mupun Sidic and Soraida Regaro, the Tamarax FX they were riding in when the PNP stopped them at Marawi City bore the plate number UNJ 885.

²⁶ See *Magsucang v. Judge Balgos*, 446 Phil. 217, 225 (2003).

since his apprehension on July 5, 2004 and up to the present or for more than four (4) years; his character and reputation as he is a former Councillor of Pualas, Lanao del Sur, in fact, he was incumbent councillor at the time of his detention; the weight of evidence against him, a weak one; and his financial ability and considering further the constitutional and statutory provision that “excessive bail shall not be required,” the bail is fixed at P30,000.00.²⁷

Assuming that the bail set by Judge Balindong is low considering that the 2000 Bail Bond Guide of the Department of Justice (DOJ) recommends “no bail” for murder, we cannot use this fact alone to hold that his order – with respect to the amount of bail set – had been issued with grave abuse of discretion. We point out that the DOJ Bail Bond Guide – while persuasive and merits attention – is not binding on the courts. In fixing the amount of bail, the judge is given the discretion to set an amount which he or she perceives as appropriate under given circumstances in relation to the factors enumerated under Section 9 of Rule 114. As quoted above, Judge Balindong enumerated the reasons (*i.e.*, accused’s incarceration for more than 4 years; his reputation as a former councillor; his financial ability; and the weak evidence against him) why he set the amount of bail at ₱30,000.00.

c. Non-inhibition of Judge Balindong

The rule on disqualification of judges is laid down in Rule 137, Section 1 of the Rules of Court, which provides:

SECTION 1. *Disqualification of judges.* - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, **or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree**, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

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A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. (emphasis ours)

The reason behind the rule on compulsory disqualification of judges was explained in *Villaluz v. Judge Mijares*²⁸ as follows:

The rule on compulsory disqualification of a judge to hear a case where, as in the instant case, the respondent judge is related to either party within the sixth degree of consanguinity or affinity rests on the salutary principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. A judge has both the duty of

²⁷ Rollo, p. 41.

²⁸ 351 Phil. 836, 851 (1998), citing *Garcia v. De la Peña*, A.M. No. MTJ-92-687, February 9, 1994, 729 SCRA 766-767.

rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity. The law conclusively presumes that a judge cannot objectively or impartially sit in such a case and, for that reason, prohibits him and strikes at his authority to hear and decide it, in the absence of written consent of all parties concerned. The purpose is to preserve the people's faith and confidence in the courts of justice.

In the present case, we hold that the petitioner failed to substantiate his allegation that Judge Balindong is related to Sidic within the sixth degree of consanguinity or affinity to warrant his (Judge Balindong's) mandatory inhibition from the case.

In his *omnibus motion for reconsideration to cancel bond posted for the provisional liberty of the accused and for inhibition*, the petitioner prayed, among others, that Judge Balindong inhibit himself from trying and deciding the case on the merit[s]. He alleged that:

x x x the accused is **allegedly** a relative of the Honorable Acting Presiding Judge of this Court especially the other accused, namely: Papas Balindong, Nago Balindong alias Hilal and Arsad Balindong. Besides, accused Gapo Sidic is a resident and native of *Barangay Yaran* which is an adjacent or adjoining barangay of *Barangay Dapao* which is **allegedly** the native place of the Honorable Acting Presiding Judge. Moreover, *Barangays Yaran* and *Dapao* are parts of the Sultanate territory of Picong wherein the Honorable Acting Presiding Judge of this Honorable Court was crowned as Sultan [of] Picong.²⁹ (emphasis ours)

The petitioner described the relationship between Judge Balindong and the accused with more specificity in the present petition for *certiorari* by alleging that: Judge Balindong is the "uncle-in-law" of Sidic; Judge Balindong is the first cousin of accused Papas; and accused Nago and Arsad are Judge Balindong's "nephews by first degree cousins."

To support these claims, the petitioner attached to the present petition an affidavit executed by Manorbi Sidic essentially stating that: (1) Sidic's mother-in-law is the sister of Judge Balindong; (2) Judge Balindong and Papas are first-degree cousins; and (3) Nago and Arsad are the "nephews by first-degree cousins" of Judge Balindong.

To our mind, these bare claims, supported by a mere affidavit of Manorbi that had not been presented before the RTC, Branch 8, are grossly insufficient to determine whether Judge Balindong falls within the compulsory inhibition under Rule 137. We point out that the petitioner's use of the term 'allegedly' in his *omnibus motion for reconsideration to cancel bond posted for the provisional liberty of the accused and for inhibition* revealed that he himself was unsure and uncertain if Judge Balindong was indeed related to Sidic and the other accused. Corollarily, the presentation of Manorbi's affidavit - attached *for the first time* in this petition for *certiorari* - without any other evidence to substantiate the matters stated

²⁹ *Rollo*, pp. 50-51.

therein, is inadequate and lacking to determine the degree of Judge Balindong's relationship to the accused. We note in this regard that a mere relation by affinity or consanguinity is not enough cause for the compulsory inhibition of a judge; it should be shown that the he or she is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree.

We are not unaware that after Judge Balindong had granted Sidic's motion to fix bail, he opted to inhibit himself "from further taking action on the other incidents"³⁰ of Criminal Case No. 4471-04 out of "delicadeza." The records do not indicate what Judge Balindong meant to convey when he used the term "delicadeza" to justify his inhibition; we cannot imply something that is not supported by the records of the case.

It would have been ideal if the petitioner had filed an administrative case against Judge Balindong if he truly believed that the latter committed a violation of the Code of Judicial Ethics or the Rules. This would have enabled Judge Balindong to properly answer the charges against him, particularly his decision not to initially inhibit from Criminal Case No. 4471-04. It would have also given us ample and sufficient basis to rule on the validity of the petitioner's claim that Judge Balindong was related to the accused within the prohibitive degree under Rule 137.

We reiterate that grave abuse of discretion implies a capricious and whimsical exercise of judgment amounting to lack of jurisdiction or an arbitrary and despotic exercise of power because of passion or personal hostility. The grave abuse of discretion **must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.** In this case, the petitioner failed to establish that Judge Balindong gravely abused his discretion in issuing the challenged orders.

WHEREFORE, in light of all the foregoing, we **DISMISS** the petition for *certiorari* filed by petitioner Cabib Alonto Tanog.

SO ORDERED.



ARTURO D. BRION
Associate Justice

WE CONCUR:




PRESBITERO J. VELASCO, JR.
Associate Justice

³⁰ Id. at 43.



MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P.A. SERENO
Chief Justice