AUGUSTO C. CAESAR, COMPLAINANT, VS. JUDGE ROMEO M. GOMEZ, REGIONAL TRIAL COURT, BRANCH 25, MAASIN CITY, SOUTHERN LEYTE, RESPONDENT.

A.M. NO. RTJ-07-2059 (FORMERLY A.M. OCA I.P.I. NO. 06-2419-RTJ). August 10, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Augusto C. Caesar (Caesar) filed the instant administrative complaint against Judge Romeo M. Gomez of the Regional Trial Court (RTC) of Maasin, Southern Leyte, Branch 25, seeking his dismissal from the service for alleged grave misconduct and gross ignorance of the law.

Caesar was the private complainant in a criminal case for estafa filed against Norman Victor M. Ordiz (Ordiz) with the RTC of Maasin, Southern Leyte, docketed as Criminal Case No. 04-02-2578 and raffled to Branch 25 presided by the respondent judge.

The criminal information against Ordiz was filed in March 2004, but several months passed before he was arraigned. The delay in the arraignment was due to several motions for postponement filed by the accused, which were all granted by the respondent judge. The pre-trial conference was finally conducted on January 31, 2005, and the case was then set for the prosecution's presentation of evidence. [1]

Before the scheduled date of trial, Ordiz allegedly negotiated to settle the civil aspect of the case and promised to return Caesar's Two Hundred Thousand Pesos (P200,000.00) and pay Fifty Thousand Pesos (P50,000.00) for attorney's fees and other expenses. Ordiz, however, did not fulfill his promise. A rumor circulated that instead of paying Caesar P250,000.00, Ordiz gave respondent judge P200,000.00 on the promise that the latter will dismiss the case.[2]

On April 11, 2005, Ordiz filed a Motion to Dismiss,[3] asserting that he did not commit estafa. He claimed that there was novation in the original relations between him and Caesar.

Caesar opposed Ordiz's motion, arguing that the motion was in reality a motion to quash which, under Section 1, Rule 117 of the Rules of Criminal Procedure, should be filed before arraignment. The filing of the motion after the pre-trial conference is, thus, irregular. Likewise, the grounds relied upon in the motion to dismiss are not among the grounds set forth in Section 3, Rule 117, and are but defenses which Ordiz must prove during the trial. Therefore, they cannot be made a basis for the quashal of the information. Lastly, he argued that novation does not extinguish criminal liability.[4]

On July 18, 2005, Judge Gomez granted the Motion to Dismiss.[5] In dismissing the case, he ratiocinated that when Caesar backed out of the agreement and demanded the return of the advance payment in the amount of P790,000.00, the original agreement to sell was novated and converted into an ordinary creditor-debtor relationship. The acceptance of the partial return is sufficient proof of novation and has effectively rescinded their original transaction, thus, preventing the incipience of criminal liability for estafa. Respondent judge also added

that Ordiz could not be held criminally liable under Article 316(1) of the Revised Penal Code (1) because the agreement he signed was not a contract of sale, but only an agreement to sell. Furthermore, the agreement provides that title to the property shall be delivered to the vendee only upon full payment of the purchase price which Caesar failed to do. Clearly, the non-delivery of the property sold was due to Caesar's fault. As such, there is no basis for Caesar to claim that he suffered damage under the contract or by reason of the non-delivery.

Caesar filed a Motion for Reconsideration and For Inhibition,[6] but Judge Gomez denied the same.[7] Respondent judge ruled that the arguments raised by Caesar had been sufficiently explained in the Order sought to be reconsidered. He also denied the motion for inhibition holding that divergence of opinion between counsel and the judge is not a proper ground for inhibition. According to him, opinions framed in the course of judicial proceedings, as long as they are based on the evidence presented, do not prove bias or prejudice.

Caesar claims that Judge Gomez employed slanted logic to justify his premeditated corrupt objective to favor Ordiz, disregarding, in the process, the prohibition in Rule 117 of the Rules of Criminal Procedure. The dismissal of the criminal case by respondent judge prior to the presentation of the evidence by the prosecution is a travesty of justice.[8]

In his Comment,[9] respondent judge denied the charges against him. On the charge of grave misconduct, he explained that the motions for postponements filed by the accused were all meritorious and so he granted the same. Respondent judge also denied the charge of bribery against him, asserting that:

> [I]t has no basis except the thin air circulating around, as if private complainant only sniffed the air and say, "huh pay off". But how could private complainant sniff the thin air in the Halls of Justice in Maasin City when he went there only when his case was scheduled for hearing? And when the Order of dismissal was issued he was maybe already in the United States? Granting without admitting that such rumors existed, who originated the same? How reliable is his knowledge about it? How true is it? To the simple mind of the undersigned this charge is only a product of the fertile imagination of private complainant over his despair in a losing case. And for the information of private complainant[,] no such rumors circulated in the Bulwagan, for who is stupid enough to pay P200,000 to a judge for an alleged payable amount of only P250,000 and for a criminal case that is easily dismissible? This only bolsters the claim of accused that of the P790,000 returnable amount to private complainant, per previous agreement, P640,000 has already been paid or returned.[10]

On the charge of gross ignorance of the law, respondent judge maintained that he did not disregard the basic procedural rules. He reasoned that:

> (1) The motion to dismiss was still given due course when at the time it was filed the accused was already arraigned, pre-trial had already been held, the case was already set for the reception of the prosecution's evidence and the accused already committed to private complainant and counsel to return the amount of P200,000 and to reimburse the amount of P50,000 as attorney's fees.
>
> This reasoning of private complainant is quite inaccurate because a motion to dismiss is not like a motion to quash which must be filed normally before arraignment. A motion to dismiss in criminal cases is usually filed on the ground of insufficiency of evidence. Sometimes this is termed as demurrer to evidence. The motion to dismiss as understood in this connection may be filed after the pre-trial or after the presentation of the prosecution's evidence if it can be clearly seen that from the evidence presented the crime was not actually committed or that they are not sufficient to prove the guilt of the accused beyond reasonable doubt.
>
> In criminal cases, after the pre-trial, the evidence admitted and the facts stipulated became immutably established, so that they need not be proved in the trial. So that in [the] pre-trial there is already presentation of evidence. And after the pre-trial based on the evidence admitted and the facts stipulated, a motion to dismiss may be filed if it becomes clear that the offense charge was not really committed.

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> Now in [the] instant case, during the pre-trial, the following evidence and facts were admitted and stipulated.
>
> 1) Contract/Agreement Exh. "A", (Annex "G") between accused and private complainant that a certain portion of agricultural land including the improvements existing thereon located at Flordeliz Machoron, Southern Leyte, denominated as Lot No. 70 containing an area of 3,000 sq. meters will be sold to the vendee in the amount of P1,200,000 and will be paid in three (3) installment payments.
>
> That the first installment payment will be paid to the vendee upon execution of the Deed of Absolute Sale of a portion of land in the amount of P400,000;
>
> That the second installment payment will be paid four months after the payment of the first installment plan;
>
> That the third or last installment payment will only be paid to the vendor upon execution and turn-over of the Original Certificate of Title to the vendee.
>
> That the title of the said property shall remain in the name of the vendor.
>
> A perusal of the foregoing instrument Exhibit "A" (Annex "G") would indeed reveal that it is not a Deed of Sale, rather it is only an agreement to sell. And private complainant was not yet obligated to make any partial payment to the accused because, per said agreement, the first payment of P400,000 shall be paid only upon the execution of the Deed of Absolute Sale. On the other hand[,] the accused is not yet under obligation to deliver the land because no sale has yet been perfected, or that the last installment has not yet been paid. That being so, the accused is not yet under obligation to own the property because the obligation to deliver the same has not yet accrued.
>
> 2) That of the P790,000 received by the accused from the private complainant as partial payment of the subject lot, P640,000 has been returned per their agreement, the first amount returned was P140,000 and the second amount was P500,000 paid by defense counsel Atty. Nicasio Nueve to private Prosecutor Atty. Francisco Escaño.
>
> Because of the documentary evidence admitted and [the] facts stipulated during the pre-trial hereto attached as Annex "H", the accused filed a motion to dismiss x x x .[11]

Caesar filed his Reply to Comment,[12] reiterating the allegations in his complaint-affidavit.

In its Report and Recommendation, the Office of Court Administrator (OCA) found that:

> [T]he charge of bribery against the respondent judge should be dismissed as complainant failed to present any evidence to prove that respondent judge received from the accused the amount of Two Hundred Thousand Pesos (P200,000.00) in exchange of the dismissal of the criminal case.
>
> However, the complaint for gross ignorance of the law is meritorious. Respondent judge tried to evade administrative liability by claiming that he dismissed the criminal case pursuant to Section 23, Rule 119 of the Revised Rules of Court x x x.
>
> However, the rule on demurrer to evidence is inapplicable in the case as the prosecution has not yet rested its case at the time the motion to dismiss was filed. The rule is very clear that a criminal complaint may be dismissed due to insufficiency of evidence only after the prosecution has rested its case. In the subject case, trial had not even commenced when respondent judge dismissed the criminal complaint.
>
> Moreover, respondent judge dismissed the criminal complaint on its merit and not due to insufficiency of evidence of the prosecution. He categorically stated in his order dismissing the complaint that "the original agreement/contract to sell was novated and/or rescinded by agreement of the parties, so estafa did not attach". Nowhere in the decision was it stated that the case was being dismissed for insufficiency of evidence of the prosecution.

> That demurrer to evidence may be given due course only after the prosecution has already rested its case is a basic rule of procedure that every member of the judiciary ought to know. Judges are called upon to exhibit more than just cursory acquaintance with statutes and procedural rules. Basic rules must be at the palms of their hands as they are expected to maintain professional competence at all times. Their failure to observe the basic laws and rules are not only inexcusable but renders them susceptible to administrative sanction. Where the law involved, as in this case, is simple and elementary, lack of conversance therewith constitutes gross ignorance of the law.[13]

The Court agrees with the OCA.

Caesar charges the respondent judge with grave misconduct, claiming that the latter received P200,000.00 as consideration for the dismissal of Criminal Case No. 04-02-2578. But as explained by the OCA, the charge lacks substantiation. Undeniably, the alleged "pay-off" was only "a rumor that circulated in the halls of justice of Maasin City."[14]

For a judge to be rendered culpable in any administrative proceeding, there should be a clear and sufficient evidence of his misconduct.[15] In this case, Caesar failed to substantiate his allegation of bribery. Accordingly, we find no cause to controvert the findings of the OCA absolving the respondent judge from the charge of grave misconduct.

In addition, Caesar condemns the respondent judge for rashly dismissing Criminal Case No. 04-02-2578. He claims that the dismissal of the estafa case against Ordiz was erroneous and constitutes gross ignorance of the law. The respondent judge, on the other hand, maintains that he did not disregard any procedural rule in granting the motion to dismiss. As justification, he declares that Ordiz's Motion to Dismiss is akin to a demurrer to evidence, which may be filed after the pre-trial or after the prosecution has rested its case, if the evidence presented shows that the crime was not actually committed or is insufficient to prove his guilt beyond reasonable doubt. Thus, if on the basis of the stipulations made at the pre-trial conference it was established that the accused did not commit the crime charged, a motion to dismiss may be filed and granted, as in this case.

This explanation deserves scant consideration.

Admittedly, there is no material difference between the Motion to Dismiss filed by Ordiz before the RTC and a demurrer to evidence.

Section 23, Rule 119 of the Revised Rules of Criminal Procedure sets out the procedure for demurrer to evidence:

> Section 23. Demurrer to evidence. - After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
>
> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be

> reviewable by appeal or by certiorari before judgment.

In this case, the prosecution had yet to present its evidence at the time the Motion to Dismiss was filed. A demurrer to evidence is, therefore, inappropriate in Criminal Case No. 04-02-2578.

The rule is that when the law is so elementary, not to know it or to act as if one does not know it constitutes gross ignorance of the law.[16] By giving due course to and granting Ordiz's Motion to Dismiss, respondent judge exhibited gross ignorance of the law. It may very well be that respondent judge knew the procedural rule in question. What renders him liable is that he acted as if he did not.

Respondent judge chose to exonerate Ordiz based on his defense that he did not commit estafa. He ruled that Ordiz is not liable under Article 316(1) of the Revised Penal Code because the agreement he signed is merely an agreement to sell, not a contract of sale, and thus, he is not under obligation to own the property at the time of the execution of the agreement. Such reasoning is specious.

The information against Ordiz reads:

> That on or about the 24[th] day of February 2003, in the City of Maasin, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud, by means of deceit and false pretenses, did, then and there, willfully, unlawfully and feloniously defraud Augusto C. Cesar (sic), as follows, to wit: the accused under false pretenses which he made to said Augusto C. Cesar (sic) to the effect that he was the owner of a parcel of land, situated in Flordeliz, Macrohon, Southern Leyte, consisting of 3,000 square meters, and was willing to sell said land for 1.2 million pesos, which pretenses and representations he well knew were false and fraudulent, and were only made to induce the said Augusto C. Cesar (sic) to accept and conclude the sale, as in fact, the said Augusto Cesar (sic) paid, gave and delivered a total amount of P790,000.00 as partial payment; and after the true owner thereof was revealed, the said accused only returned the amount of P140,000.00, and withheld the balance of P650,000.00, and while in possession of said amount, willfully, unlawfully and feloniously misappropriated, misapplied and converted said P650,000.00, to his own personal use and benefit; and that despite repeated demands made by the herein complainant Augusto C. Cesar (sic), to account the said amount, accused failed and refused to do so, to the damage and prejudice of said Augusto Cesar (sic) in the said amount of Php650,000.00.[17]

From the information, it is clear that Ordiz was not charged under Article 316, but for violating Article 315(2)(a) of the Revised Penal Code which provides as one of the modes of committing estafa:

> - By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The gravamen of the felony is an intent to deceive, or fraudulent intent. Intent, being a state of the mind, may be proved by words or by the conduct of the accused before, during, and after the transaction, subject of the case, independent of and distinct from the non-compliance with the promise or representation of the accused.[18]

Ordiz never denied that he did not own the property at the time of the execution of the agreement. Deceit is demonstrated in the false pretense by which Ordiz deluded Caesar into believing that he owned a property in Flordeliz Machoron, Southern Leyte, and that he (Ordiz) had the capacity to sell it. Through this hoax, he was able to convince Caesar to surrender his money to him. Surprisingly, respondent judge closed his eyes to this obvious ruse.

What is more nettlesome is respondent judge's holding that there was novation or rescission of contract that

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prevented the onset of criminal liability for estafa. Jurisprudence is replete with cases[19] that the criminal liability for estafa already committed is not affected by the subsequent novation of the contract, for it is a public offense which must be prosecuted and punished by the State on its own motion even if complete reparation had been made for the damage suffered by the offended party.[20] Although totally inapplicable to the matter of criminal liability, the claim of novation by reason of the partial return of the money defrauded was swallowed by the respondent judge hook, line, and sinker to absolve Ordiz from liability.

The Court recognizes that not every judicial error bespeaks ignorance of the law and, if committed in good faith, does not warrant administrative sanction. But this is true only in cases within the parameters of tolerable misjudgment. Where, however, the procedure is so simple and the facts so evident as to be beyond permissible margins of error, to still err thereon amounts to ignorance of the law.[21]

In this case, respondent judge displayed a deplorable deficiency in his grasp of the basic principles governing demurrer to evidence or dismissal of criminal action for insufficiency of evidence. Also, he showed his utter lack of knowledge and understanding of the effect of novation and partial restitution of the amount defrauded in estafa cases. As mentioned, when the law is so elementary, not to know it or to act as if one does not know it constitutes gross ignorance of the law.[22]

A judge is called upon to exhibit more than a cursory acquaintance with statutes and procedural rules. It is imperative that he be conversant with basic legal principles. Canon 4 of the Canon of Judicial Ethics requires that a judge must be conversant with the principles of law; and Canon 18 mandates that he should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of law. The Code of Judicial Conduct also enjoins judges to "be faithful to the law and maintain professional competence."

Indeed, respondent judge owes it to the public and the legal profession to know the law he is supposed to apply to a given controversy. In order to render substantial justice and to maintain public confidence in the legal system, judges are expected to keep abreast of all laws and prevailing jurisprudence, consistent with the standard that magistrates must be the embodiments of competence, integrity and independence. Thus, it has been held that when the judge's inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and 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.[23] When the law is sufficiently basic, as what is involved in the present case, a judge owes it to his office to simply apply it; anything less than that would be gross ignorance of the law.[24]

Under Section 1, Rule 140 of the Revised Rules of Court on the Discipline of Justices and Judges, gross ignorance of the law is classified as a serious charge punishable by either dismissal from the service, suspension from office or a fine of more than P20,000.00 but not exceeding P40,000.00.[25]

We believe that an imposition of P40,000.00 fine upon respondent judge is in order.

WHEREFORE, respondent Judge Romeo M. Gomez is hereby found GUILTY of gross ignorance of the law, and is ordered to pay a FINE of FORTY THOUSAND PESOS (P40,000.00) upon notice.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Velasco, Jr., J., no part due to prior action in oca

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[1] Affidavit-Complaint, rollo, pp. 3-5.

[2] Id.

[3] Annex "C," id. at 13-16.

[4] Annex "D," id. at 20-25.

[5]Annex "E," id. at 26-34.

[6] Annex "F," id. at 35-39.

[7] Annex "M," id. at 93-95.

[8]Rollo, pp. 4-5.

[9] Id. at 43-46.

[10] Id. at 44.

[11]Id. at 44-46.

[12]Id. at 96-98.

[13] Id. at 100-101.

[14] Id. at 5.

[15] Baldado v. Judge Bugtas, 460 Phil. 516, 526 (2003).

[16] Gamas v. Oco, A.M. No. MTJ-99-1231, March 17, 2004, 425 SCRA 588, 605.

[17] Annex "A," rollo, p. 6.

[18]Preferred Home Specialties, Inc. v. Court of Appeals, G.R. No. 163593, December 16, 2005, 478 SCRA 387, 412.

[19] People v. Ladera, 398 Phil. 588, 602 (2000); People v. Moreno, 373 Phil. 336, 349 (1999); Quinto v. People, 365 Phil. 259, 271 (1999); Tan v. Court of Appeals, 347 Phil. 320, 332 (1997); People vs. Benitez, 108 Phil. 920, 922 (1960).

[20] People v. Moreno, supra.

[21] De Jesus v. Dilag, A.M. No. RTJ-05-1921, September 30, 2005, 471 SCRA 176, 183.

[22] Baldado v. Judge Bugtas, supra note 15, at 525.

[23] Judge Naui v. Judge Mauricio, 460 Phil. 107, 116-117 (2003), citing Judge Atty. Daniel O. Osumo v. Judge Rodolfo M. Serrano, 380 SCRA 110 (2002).

[24]De Jesus v. Dilag, supra note 21, at 184.

[25]Id.

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