

VICENTE C. BUENAVISTA, JR., COMPLAINANT, VS. JUDGE MARCELO G. GARCIA, REGIONAL TRIAL COURT, BRANCH 51, PUERTO PRINCESA, PALAWAN, RESPONDENT.*A.M. No. RTJ-88-246. July 19, 1990*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3a8569414917/>**PER CURIAM:**

On September 13, 1988, Vicente C. Buenavista, Jr., father of an 11-year-old rape victim, Gail Buenavista, filed in this Court a verified administrative complaint against respondent Judge Marcelo G. Garcia, presiding judge of Branch 51, Regional Trial Court of Palawan, and First Assistant Provincial Fiscal Sesinio B. Belen, for gross ignorance of the law and for knowingly issuing an unjust order or judgment.

In January 1987, Buenavista filed two complaints for rape in the Municipal Trial Court of Aborlan, Palawan (Crim. Cases Nos. 2233 and 2234), accusing Samuel M. Ledesma of having raped Gail Buenavista, the 11-year-old daughter of the complainant. After the requisite preliminary investigation, a warrant for the arrest of the accused was issued by Municipal Trial Judge Perfecto L. Pe, Jr., recommending no bail for the accused. Upon being forwarded to the Office of the Provincial Fiscal, the complaints were docketed as Crim. Cases Nos. 6744 and 6745 in the sala of Judge Marcelo Garcia, Branch 51 of the Regional Trial Court of Palawan and Puerto Princesa City. Despite the investigating judge's recommendation, Judge Garcia on June 22, 1987, admitted the accused to bail and directed that he be released from custody (p. 4, Rollo).

Three days later, or on July 25, 1988, the rape victim, Gail Buenavista, was kidnapped by the same accused, Samuel Ledesma. A criminal charge of kidnapping was filed against him by the girl's father on July 26, 1988 (Crim. Case No. 9759) and a warrant for his arrest was issued by MTCC Judge Fernando R. Gomez, Jr. of Puerto Princesa City, again recommending "NO BAIL" (p. 5, Rollo). The record does not show that he has been apprehended.

On August 5, 1988, based on an affidavit of desistance executed by the offended party on July 26, 1988, the day after she was kidnapped, a Motion to Dismiss the rape cases dated July 4, 1988 was filed by Atty. Edgardo S. Arias, counsel of the accused. The affidavit was notarized by First Assistant Provincial Fiscal Sesinio B. Belen who certified that he had "personally examined the above-named affiant" and that he was "convinced that she voluntarily executed the foregoing affidavit and understood the contents thereof" (p. 6, Rollo). The affidavit alleged:

"AFFIDAVIT OF DESISTANCE

"I, GAIL BUENAVISTA, Filipino citizen, with residence at 7 Tagumpay St., Purok Kalipay, Barangay Cuito, Puerto Princesa City, under oath allege:

"That I am the complainant in Criminal Cases No. 6744 and 6745 all for alleged 'RAPE' against accused SAMUEL M. LEDESMA, said case being pending at Branch 51 of the REGIONAL TRIAL COURT OF PALAWAN AND PUERTO PRINCESA CITY;

“That I signed the aforesaid complaint against accused SAMUEL M. LEDESMA against my will, my signature in the complaint having been obtained thru force, violence and intimidation done to me by my parents;

“There is no truth to the allegations contained in my sworn statement executed by me against my will on January 27, 1987 at Aborlan, Palawan, taken by Patrolman Antonio Daquer. There was no force, violence or intimidation done against me by said accused SAMUEL M. LEDESMA. I was not forced by him to submit to his desires. It was all in accordance with my own will, volition and consent that I went personally to him because we love each other and I agree and consent to live with him as my husband.

“I therefore respectfully request that the cases filed against said SAMUEL M. LEDESMA now pending in Branch 51 of the REGIONAL TRIAL COURT OF PALAWAN AND PUERTO PRINCESA CITY be dismissed as in fact I now withdraw my complaints against him and I further manifest under oath that I am now desisting from testifying against him in Court or in any other government entity or agency in connection with the said criminal cases I filed against him against my will, the same having been made possible thru physical force, violence and intimidation done to me by my parents.

“IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of July, 1988 at Puerto Princesa City.”
(p. 6, Rollo.)

The complainant was given no notice of the motion to dismiss.

On the same day, August 5, 1988, Judge Garcia issued an order for the provisional dismissal of Criminal Cases Nos. 6744 and 6745, and canceling the bail (property) bond of the accused (p. 9, Rollo).

On the same date, a petition to revive the dismissed cases was filed by the complainant in the Office of the Provincial Fiscal Eustaquio Z. Gacott, Jr. who filed on August 9, 1988 an “Urgent Motion to Revive Dismissed Cases and to Issue Warrant of Arrest” on the grounds that:

“xxx xxx xxx

“4. Being a young minor, the raped victim does not know and cannot fully comprehend and understand for herself the impact and legal consequence of said affidavit of desistance;

“5. The aforesaid affidavit of desistance is not valid and legal because being only 13 years of age, as stated above, which is not even a marriageable, the raped victim cannot give a valid consent or approval to its execution;

“6. There is no showing that the complainant, Vicente Buenavista or his wife, has given his or her conformity to the execution of said affidavit of desistance. They were neither consulted nor their consent obtained in the execution of the questioned affidavit of desistance;

“7. The Honorable Court will please take note that the motion to dismiss was dated much earlier than the date of the affidavit of desistance;

“8. The raped victim’s affidavit of desistance was prepared a day after she was kidnapped and her whereabouts is unknown up to this time. Under this circumstance the conclusion is inevitable that she was made to execute and sign the same (affidavit of desistance) under duress, threats and intimidation; and

“9. A case of kidnapping against the above named-accused was filed and is now pending before the Municipal Trial Court of Puerto Princesa City, docketed as Criminal Case No. 9759.” (p. 20, Rollo.)

On August 19, 1988, Judge Garcia granted Fiscal Gacott’s motion (p. 22, rollo).

The complainant has charged both Fiscal Sesinio Belen and Judge Marcelo Garcia with gross ignorance of the

law, the fiscal for having certified that he was convinced that Gail Buenavista “voluntarily executed the affidavit of desistance and understood the contents thereof” (p. 17, rollo), and Judge Garcia, for dismissing the rape complaints on the basis of the minor’s affidavit of desistance knowing, as he should have known, that an eleven-year-old girl is incompetent to execute such affidavit.

In the resolution of this Court dated October 11, 1988, respondent Judge was ordered to comment on the complaint.

In his comment, respondent Judge explained that in view of the certification of the trial fiscal, Sesinio B. Belen, that he believed the minor, Gail Buenavista, fully and freely executed her affidavit of desistance, and as said fiscal did not oppose the motion to dismiss the rape cases, he (Judge Garcia) thought the provisional dismissal of the cases was proper since, anyway, he gave the fiscal six (6) months within which to revive or refile them. On August 10, 1988, or barely five (5) days later, the Provincial Fiscal, Eustaquio Z. Gacott, Jr., did file an “Urgent Motion to Revive Dismissed Cases and to Issue Warrant of Arrest,” which he (Judge Garcia) immediately calendared for hearing with notice to the defendant’s counsel, Atty. Edgardo Arias. He granted the motion on August 19, 1988, and issued a warrant for the arrest of the accused on August 22, 1988. It is not known, however, whether the accused was re-arrested or not.

Judge Garcia further alleged that Samuel Ledesma, through his uncle, former Provincial Board Member Ricardo Baldevieso of Narra, Palawan, “has already paid ample amount to complainant Vicente Buenavista, which was covered by receipts, which was shown to the court. This payment was made due to an agreement during a sort of a conference between the parties in the chamber of the Presiding Judge” (p. 13, Rollo).

Respondent Judge alleged “that the complainant, Gail Balmonte Buenavista, has never appeared before the court even for once since after the arraignment of the accused Samuel Ledesma” (p. 13, Rollo). Moreover, “the complaining witness GAIL BUENAVISTA has executed an affidavit of desistance, claiming therein under oath, that no force, violence or intimidation was done to her by the accused and that of her own free will she personally went to the accused and submitted herself to him voluntarily since they were sweethearts and she agreed and consented to live with him as her husband. A copy of complainant’s ‘Affidavit of Desistance’ is hereto attached as ANNEX ‘A’ hereof” (p. 7, Rollo) and “that in the month of September, 1988 this court received a letter from Mrs. Gail Buenavista Ledesma stating among other things, that she was not raped by the accused Samuel Ledesma, she loves him to be her husband. She ask (sic) the court to dismissed (sic) Criminal Cases Nos. 6744 and 6745 for Rape against Samuel Ledesma. She copy furnished the City Fiscal, the National Bureau of Investigation, the Provincial Fiscal and MTC Judge Fernando Gomez. (Letter of Mrs. Gail Buenavista Ledesma dated September 4, 1988 as Annex ‘G’ of this comment” (p. 13, Rollo).

Under the circumstances, respondent Judge believed that he “acted judiciously and exercise (sic) a sound discretion in the issuance of its [sic] orders” (p. 13, Rollo).

The complaint was referred to Justice Jose C. Campos, Jr. of the Court of Appeals for investigation, report and recommendation. In an order dated February 14, 1990, the administrative case was set by Justice Campos for hearing on March 14, 1990 at 9:30 A.M. at the Moran Hall, Court of Appeals, whereat the parties and their counsel were ordered to appear and testify (p. 38, Rollo). Judge Garcia received the notice in the ordinary course of mail on March 8, 1990. The notice to the complainant, Vicente Buenavista, Jr., was returned by the Post Office at Puerto Princesa, Palawan, with the notation that the addressee moved out without leaving a forwarding address and his whereabouts are unknown. The parties having waived their right to appear and be heard, the administrative case was resolved without their presence. On March 19, 1990, Justice Campos submitted his report and recommendation based on the complaint and the respondent’s comments together with the annexes of both.

After a careful consideration of the complaint and respondent Judge's comment thereon, we find merit in the complainant's charge that Judge Garcia acted either in gross ignorance of the law or with malice and deliberate intent to unjustly dismiss the criminal cases against Samuel Ledesma. As observed by Mr. Justice Campos:

"To be guilty of 'knowingly rendering an unjust judgment,' it is necessary that the judgment or order was rendered with conscious and deliberate intent to perpetrate an injustice. And the test to determine whether the judgment or order is unjust, may be inferred from the circumstance that it is contrary to law or is not supported by evidence. (In re: Rafael C. Climaco, Adm. Case No. 134-J, Jan. 21, 1974; 55 SCRA 107). A judgment maybe said to be unjust when it is manifestly against the law and contrary to the weight of evidence. (Sec. 1, par. [c], Rule 37, Rules of Court). An unjust judgment is one contrary to the standards of right and justice or standards of conduct prescribed by the law. (US vs. Oglesby Grocery Co., 264 F. 691; Komen vs. City of St. Louis, 316 Mo. 9; 289 S.W. 838)." (p. 4, Report and Recommendation.)

In view of Judge Garcia's legal background as a former Assistant Provincial Fiscal of Palawan in 1985, the Court cannot imagine that he would be ignorant of the law which penalizes statutory rape (Art. 335, Par. 3, Revised Penal Code) or that he did not know that as the victim's consent in statutory rape is invalid, it is not a defense (People vs. Gonzales, 58 SCRA 265; People vs. Celic, 137 SCRA 166). Being incompetent to give valid consent to the rape committed against her, her consent to the dismissal of the original charge against her rapist is likewise invalid.

Judge Garcia's allegation that "ample amount" had been paid by the accused to the complainant to settle the case "during a sort of a conference between the parties in the chambers of the presiding judge" (Underscoring ours; p. 13, Rollo) while evidently intended to impugn the motives of the complainant in prosecuting the rapist and kidnapper of his daughter has only succeeded in revealing Judge Garcia's improper and immoral intervention in brokering a compromise of the criminal cases against Ledesma. It is an admission that he is either ignorant of the rule that criminal cases are not allowed by law to be compromised, and that an offer of compromise by the accused is an implied admission of guilt (Sec. 24, Rule 130, Rules of Court), or that he does not know that his participation in such a transaction is unbecoming of a judge.

Respondent Judge also admitted that the offended party, Gail Buenavista, has never appeared before him "even for once" (p. 13, Rollo). That circumstance would have aroused suspicion in a more alert Judge that she was being sequestered by the accused to prevent her from disowning the letter she supposedly signed in defense of the accused (Annex B, p. 24, Rollo) and her affidavit of desistance (Annex B-2, p. 17, Rollo).

For all the foregoing, we find respondent Judge Marcelo G. Garcia guilty of serious misconduct, gross ignorance of the law, and knowingly rendering an unjust order or judgment. The last is punishable under Article 204 of the Revised Penal Code as follows:

"Art. 204. Any judge who shall knowingly render an unjust judgment in a case submitted to him for decision shall be punished by prison mayor and perpetual disqualification." (p. 3, Report and Recommendation.)

The penalty of absolute perpetual disqualification from office in a criminal case is the equivalent of dismissal from the service in an administrative proceeding, for a judge who is unfit, or perpetually disqualified to hold public office, may not be allowed to continue in the service.

He has violated the Code of Judicial Conduct which requires every judge to be the embodiment of competence, integrity and independence (Canon 1, Rule 1.01). By conniving to stifle and sabotage the prosecution of the accused for the serious crime of rape, he has placed his integrity, independence and impartiality under a cloud. A judge who displays arrant ignorance of, or indifference to, the law, erodes public confidence in the competence and fairness of the courts. He commits a disservice to the cause of justice.

WHEREFORE, the Court finds respondent Judge Marcelo Garcia guilty of serious misconduct and hereby orders his immediate dismissal from the service with forfeiture of retirement benefits, except the monetary value of his accrued leaves.

In view of Assistant Fiscal Sesinio B. Belen's questionable actuations in the dismissal of Criminal Cases Nos. 6744 and 6745 (for rape) and Criminal Case No. 9759 (for kidnapping), let a copy of this decision be furnished the Honorable Secretary of Justice for his information and proper disposition.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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