

**JUDGE EMERITO M. AGCAOILI, RTC?BRANCH 10, APPARRI, CAGAYAN,
COMPLAINANT, VS. JUDGE ADOLFO B. MOLINA, MCTC,
GONZAGA-STA. TERESITA, CAGAYAN, RESPONDENT.**

A.M. No. MTJ-94-979. October 25, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The members of the bench are, undoubtedly, expected to be knowledgeable in the law, its basic tenets and principles.

Unfortunately, respondent judge fell short of the norm.

The instant case was brought to this Court in connection with the order[1] of complainant Judge Emerito M. Agcaoili dated 9 August 1993 charging Judge Adolfo B. Molina with grave ignorance of the law in relation to Criminal Case No. 10-435, entitled "People of the Philippines v. Rolando Anama," for homicide. A directive was contained in said order to furnish this Court with a copy thereof "for its information and appropriate action."

In the aforecited order, complainant judge alleged that respondent, in conducting the preliminary investigation of the above-mentioned criminal case, failed to exercise utmost care in the issuance of a warrant of arrest against the accused, Rolando Anama, based as it was, merely on the statements of two (2) witnesses who had no personal knowledge of the commission of the offense charged.

Such action, complainant judge averred, was a clear violation of section 2, Article III of the 1987 Constitution which requires that before a warrant of arrest is issued, "the judge must personally determine the existence of probable cause from an examination under oath of the complainant and his witnesses." [2]

Mere hearsay evidence cannot be the basis that probable cause exists, stated complainant judge. There must be something more concrete.

Consequently, in the same order, complainant judge recalled the warrant of arrest and the order directing its issuance and directed the National Bureau of Investigation, through Regional Office No. 2, Ilagan, Isabela, to conduct an investigation in order to avoid a possible miscarriage of justice.

In his Comment, respondent admitted that he was the inquest judge in the preliminary investigation of the above entitled case and finding the existence of probable cause, he ordered the issuance of the warrant of arrest against the accused and as the case was cognizable by the Regional Trial Court, it was forwarded to the Provincial Prosecutor's Office in Aparri, Cagayan. [3]

Respondent explained that since the case was cognizable by the Regional Trial Court, the Provincial Prosecutor's Office, which has the final say and disposition on the existence of probable cause on cases cognizable by the Regional Trial Court, should carry the brunt of the responsibility for "erroneous" finding of probable cause. [4]

Respondent judge argued that the findings of complainant judge in his 9 August 1993 order is his

opinion-argument and contended that "the proper remedy for a seemingly weak probable cause finding is a reinvestigation." [5]

On 17 November 1993, Judge Antonino A. Aquilizan, Acting Presiding Judge of the Regional Trial Court of Cagayan, Branch 10 denied with finality the motion filed by Assistant Provincial Prosecutor Melencio Unciano for reconsideration of the 9 August 1993 order of then Presiding Judge Emerito M. Agcaoili and dismissed the aforestated criminal case provisionally on grounds of absence of probable cause against the accused. [6]

In its report and evaluation dated 26 April 1995, the Office of the Court Administrator recommended that respondent be admonished to be more careful in the determination of the existence of probable cause before issuing a warrant of arrest. Thus, opined the Office of the Court Administrator:

Close perusal of the records disclosed that the complaining witnesses do not have personal knowledge of the facts which became the basis of the filing of the crime charged and of the issuance of the warrant of arrest. From the affidavits of the affiants alone (Rollo, pp. 6-7), it is very clear that they learned the killing of victim Virgilio Capa from a certain Wilma Anama. Respondent Judge, however, on the basis of the said affidavits, issued an Order dated October 8, 1992 directing the issuance of a warrant of arrest for the temporary confinement of the accused. Thereafter, the warrant of arrest was issued on the same day.

Respondent Judge in issuing the warrant of arrest failed to observe the elementary requirement that the complainant and his witnesses should have personal knowledge of the commission of the offense charged. Just like in the issuance of search warrants, mere hearsay evidence, cannot, standing alone, justify the issuance of a warrant of arrest (See *Quintero vs. National Bureau of Investigation*, G.R. 35149, June 23, 1988, Padilla J). Respondent Judge should be reminded that under Section 36, Rule 130, Revised Rules on Evidence, 'A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, x x x (309)'.

We concur with the findings of the Office of the Court Administrator.

Section 6(b), Rule 112 of the New Rules of Criminal Procedure requires that a warrant of arrest shall be issued only when the "municipal trial judge conducting the preliminary investigation is satisfied after an examination in writing in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice." This is in conformity with the constitutional mandate that no "warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce. [7]

In turn, probable cause for the issuance of a warrant of arrest has been defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. [8]

Although the foregoing provisions seemingly grant judges wide latitude and unbridled discretion in determining probable cause, an elementary legal principle must not be compromised - hearsay evidence cannot be the basis of probable cause. The rules on evidence are explicit. A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception. [9] Hearsay evidence, therefore, has no probative value whatsoever. [10] Yet, in the case at bench, respondent judge found probable cause and even issued an arrest warrant on the basis of the testimonies of Mencilacion Padamada and Rosita Castillo which were obviously hearsay. Consider the preliminary investigation conducted by respondent judge:

xxx xxxx xxx

Q:

You said that you are Mencilacion Padamada, is this Mencilacion Padamada the same as Mencilacion Castillo Capa?

A:

Yes, sir.

Q:

Do you know Virgilio Capa?

A:

Yes, sir.

Q:

Why do you know him?

A:

He is my son.

Q:

You said you are Mrs. Padamada, how come that the family name of your son is Capa?

A:

He is my child in my first nuptial.

Q:

Was your first husband still alive?

A:

He died already.

Q:

Are you legally married with your husband?

A:

No, sir, he is only common law husband.

Q:

You said that Virgilio Capa is your son, do you know where is your son now?

A:

He was already dead and buried at the cemetery of Sta. Ana, Cagayan.

Q:

Do you know the cause of his death?

A:

Yes, sir, they killed him.

Q:

You said that they killed him do you know the person who killed him?

A:

I do not know his name but his sister came to me and reported the incident.

Q:

Will you please tell the name of the person who killed your son Virgilio Capa?

A:

Rolando Anama.

Q:

How did Rolando Anama, killed your son, if you know?

A:

They stabbed him to death.

Q:

What kind of weapon did he use in killing your son?

A:

I do not know sir, all I know he was killed by Rolando Anama.

Q:

So is the court made to understand that you were not present during the killing of your son, isn't it?

A:

Yes, sir, I was not present because I was at home.

Q:

So it is understood that you were only informed about the death of your son?

A:

Yes, sir, because his sister Wilma Anama, came to me and reported the incident regarding the death of my son Virgilio Capa.

Q:

What is the name of his sister?

A:

Wilma Anama.

Q:

What did you do when Wilma Anama came to your house and reported the killing incident of your son Virgilio

Capa?

A:

We went to see.

Q:

What did you do at that time when you were informed about the killing of your son?

A:

I went to see and verify it.

Q:

Where?

A:

At San Vicente, Sta. Ana, Cagayan, to the house of Rolando Anama.

Q:

What did you find out when you reach the house of Rolando Anama?

A:

I found out that my son, is already buried.

Q:

How did you come to know that your son was buried?

A:

Wilma Anama reported to me sir.

COURT: That is all. (Italics ours)

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Q:

Please state your name and other personal circumstances?

A:

Rosita Castillo, 52 years old, married, housekeeper and resident of Parada-Batu, Sta. Ana, Cagayan.

COURT:

Q:

On June 15, 1992 in the morning, can you still recall where were you?

A:

I was in your house sir.

Q:

While you were inside your house can you recall some (newbits) that reached you?

A:

Yes, sir.

Q:

What was that news items that reached you?

A:

Wilma Anama told me that Virgilio Capa was killed by Rogelio Anama.

Q:

Who is this Wilma Anama how is she related to the accused?

A:

They are brother and sister.

Q:

When Wilma Anama related to you that Virgilio Capa was killed by Rolando Anama, what did you do?

A:

I informed the mother of Virgilio Capa.

Q:

Who is the mother of Virgilio Capa?

A:

Mencelacion Capa.

Q:

When you informed the mother of Virgilio Capa was killed by Rolando Anama, what did you do?

A:

I informed the mother of Virgilio Capa.

Q:

Who is the mother of Virgilio Capa?

A:

Mencelacion Capa.

Q:

When you informed the mother of Virgilio Capa about the killing incident of her son what did you do if there be any?

A:

I informed Mencelacion Padamada, about the killing of her son and further instructed her to go and see her

son.

Q:

Is the court made to understand that you were not present during the killing incident happened?

A:

No, sir.

Q:

And you do not know the day when Rogelio Anama killed Virgilio Capa isn't it?

A:

Yes, sir.

Q:

You were only informed by Wilma Anama the sister of the herein accused about the killing of Virgilio Capa isn't it?

A:

Yes, sir.

Q:

Aside from that report made by Wilma Anama what else did Wilma Anama tell you if there be any?

A:

No more sir, those were only the things told to me by Wilma Anama, but she even revealed that Virgilio Capa, was buried by her brother Rogelio Anama after killing him.

Q:

Did he tell the place where he was buried?

A:

Yes, sir.

Q:

To whom did Wilma Anama reveal that Virgilio Capa was buried after he was killed by Rolando Anama?

A:

I, sir.

Q:

How about the mother of Virgilio Capa was she present at that time when Wilma Anama reported the incident to you?

A:

The mother was not present.

Q:

So it was you to whom Wilma Anama related the killing of Virgilio Capa by Rolando Anama?

A:

Yes, sir.[11] (Italics ours).

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We are as perplexed as complainant judge Agcaoili why Wilma Anama, who apparently witnessed the alleged crime or has personal knowledge thereof, was not summoned by respondent for investigation. She could have been the key to determining whether or not Rolando Anama was the probable perpetrator of the grisly killing.

Respondent cannot pass the blame and burden to the provincial prosecutor. The determination of probable cause is a function of the judge and is not for the provincial fiscal or prosecutor to ascertain. Only the judge and the judge alone makes this determination.[12]

Liberty, in any part of the civilized world is a basic human right, the curtailment of which must be in strict conformity with the procedure laid down by law. It is, therefore, this constant reminder which compels us to remain ever vigilant.

WHEREFORE, respondent judge is hereby REPRIMANDED for his failure to comply with the pertinent rules on the issuance of a warrant of arrest, with a warning that repetition of the same or similar acts will be dealt with more severely. Let a copy of this resolution be entered in his record.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Hermosisima, Jr., JJ., concur.

[1] Rollo, pp. 2-3.

[2] Ibid.

[3] Memorandum of the Office of the Court Administrator, 26 April 1995.

[4] Ibid.; Rollo, p. 17.

[5] Ibid.

[6] Status Report on Criminal Case No. 10-435 entitled "People v. Rolando Anama", p. 3.

[7] Section 2, Article III, The 1987 Constitution of the Republic of the Philippines.

[8] Allado v. Diokno, 232 SCRA 192 (1994); See also Webb v. De Leon, et al., G.R. No. 121234; Gatchalian v. De Leon, et al., G.R. No. 121245; Lejano v. De Leon, et al., G.R. No. 121297, 23 August 1995.

[9] See Sec. 36, Rule 130, Revised Rules on Evidence.

[10] Eugenio v. CA, 239 SCRA 207 (1994); Ancog v. Tan, 227 SCRA 137 (1993).

[11] TSN, 8 October 1992, pp. 2-5.

[12] Allado v. Diokno (supra); Lim, Sr. v. Felix, 194 SCRA 292 (1991); Circular No. 12 Guidelines on Issuance of Warrants of Arrests under Section 2, Art. III, 1987 Constitution, 30 June 1987.

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