

REGIONAL DIRECTOR CIRILO R. BALAGAPO, JR., DEPARTMENT OF AGRICULTURE, REGION VIII, TACLOBAN CITY, COMPLAINANT, VS. JUDGE DEMOSTHENES C. DUQUILLA, MUNICIPAL TRIAL COURT, BASEY, S...*A.M. No. MTJ-94-971. December 05, 1994*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/45793d96e993/>**PER CURIAM:**

On the basis of the report and recommendation of the Legal Officer and the Chief of the Regulatory Division of the Department of Agriculture, Region VIII, Tacloban City,[1] Regional Director Cirilo R. Balagapo, Jr., lodged a complaint against respondent Judge Demosthenes C. Duquilla for deciding Crim. Case No. 8735[2] of his court on the merits instead of merely conducting a preliminary investigation and transmitting his resolution and the records of the case to the Provincial Prosecutor for the filing of the appropriate Information before the proper court as mandated by Sec. 5, Rule 112, of the Amended Rules on Criminal Procedure. Specifically, respondent Judge is charged with (a) assuming jurisdiction over a case for illegal fishing with use of explosive where the penalty imposable is twenty (20) years to life imprisonment under Sec. 38 of P.D. 704, as amended, which was filed with him only for the purpose of preliminary investigation; (b) amending motu proprio the designation of the offense to illegal fishing only to make it fall within his jurisdiction; (c) taking cognizance of the case; (d) arraigning the four (4) accused; (e) allowing them to plead guilty; (f) sentencing each of them only to a fine of P1,000.00; and, (g) upon payment, ordering their immediate release. Incidentally, respondent Judge is also charged with having disregarded the rules on preliminary investigation by refusing to turn over the record of the case after his investigation to the Office of the Provincial Prosecutor.

The facts: On 8 July 1993, the Chief of Police of Basey, Samar, filed before respondent Judge a criminal complaint against Fred Roa, Philip Bandy, Aladin Roa and Aldric Roa for violation of Sec. 33, P.D. 704, otherwise known as the Fisheries Decree of 1975, for preliminary investigation on the following antecedents:

On 7 July 1993, at about 4:25 o'clock in the afternoon, the "Bantay Dagat Task Force" headed by Noel O. Dapon, an agricultural technologist of the Department of Agriculture, together with PO3 Rolando O. Banasta, PO3 Dario A. Amante, the pumpboat operator and one helper as members were on board a pumpboat on seaborne patrol between the islands of Bgy. Salvacion, Panunubolon and Dio, Basey, Samar when they chanced upon Fred Roa, Philip Bandy, Aladin Roa and Aldric Roa catching fish with the use of dynamite. The members of the task force caught up with the accused and arrested them. They were then brought to the Basey Police Station and their pumpboat, fishing paraphernalia and equipment were confiscated by the police and impounded at the station. The arresting officers also confiscated two (2) boxes of dead fish (bolinao) found floating around the pumpboat of the accused which were submitted for examination.[3]

The complaint against the four (4) accused particularly alleges that -

x x x on or about the 7 of July 1993 x x x x between Bgy. Salvacion Island, Panunubolon Island and Dio Island of San Pedro Bay, Basey, Samar x x x x the above named accused x x x x did then and there willfully, unlawfully and feloniously conspire x x x mutually helping one another, gather, take and catch fish with the

use of explosive x x x x without permit or license from competent authorities x x x x[4]

To support the complaint, the following documents were submitted: Scientific Examination Report, Apprehension Report, receipts of confiscated fish, fish samples and the sworn statements of Noel O. Dapon, PO3 Rolando O. Banasta and PO3 Dario A. Amante.

Despite the categorical statement of Dapon that the accused "were conducting dynamite fishing in said place" and the allegation of the police officers that "(they) saw sprouting water upward,"[5] respondent Judge *motu proprio* caused the amendment of the complaint by deleting the allegation that the accused used explosive in the commission of the crime,[6] thereby reducing the gravity of the offense and the corresponding penalty so that the case would fall under his jurisdiction, and then arraigned the four (4) accused who all pleaded "Guilty" in the presence of their counsel.

Thirteen (13) days from the filing of the criminal complaint, or on 22 July 1993, respondent Judge rendered a two-page decision finding all the accused guilty of illegal fishing only, not illegal fishing with use of dynamite, and imposing upon each of them only a fine of P1,000.00 supposedly in accordance with Sec. 38, par. (2), subpar. (d), of P.D. 704.[7] After the accused paid their fines, respondent Judge immediately ordered their release and, despite the annulment of his decision by the Regional Trial Court, all the accused now remain at large.

Complainant submits that respondent Judge had no jurisdiction to try and decide Crim. Case No. 8735 as it involved a violation of Sec. 38, par. (a), subpar. (1), of P.D. 704, now Sec. 38, subsec. a (1), of P.D. 1058, a crime punishable with imprisonment ranging from twenty (20) years to life imprisonment,[8] because under Sec. 32 of B.P. 129, Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise exclusive original jurisdiction over all offenses punishable with imprisonment of not exceeding four years and two months, or a fine of not more than four thousand pesos or both such fine and imprisonment. According to complainant, respondent Judge should have observed the duties of an investigating judge, i.e., conduct the preliminary investigation, and if he should find a *prima facie* case, transmit his resolution to the Provincial Prosecutor together with the entire records for the filing of the appropriate Information. This he failed to do. To aggravate matters, respondent Judge allowed the amendment of the original complaint without the knowledge or consent of the complainant and then arraigned the accused on the basis thereof, again without the knowledge or consent of the offended party or the fiscal, and finally decided the case.

In his comment, respondent Judge explained that he assumed jurisdiction over the subject case because the joint statement executed by the police officers who arrested the accused failed to allege the use of explosive in the commission of the crime but only "sprouting water upward." Hence, according to him, he treated the case as one falling under Sec. 38, subpar. (d), of P.D. 704 which imposes the penalty of imprisonment ranging from six (6) months to four (4) years or fine of five hundred pesos to five thousand pesos, therefore falling within the jurisdiction of his court. Besides, respondent Judge observed, an Information had already been filed by the Provincial Fiscal before the Regional Trial Court of Basey, docketed as Crim. Case No. 39-2005, on the basis of his order dated 18 August 1993 finding a *prima facie* case against the four (4) accused for violating P.D. 704.[9] In the same order, respondent Judge also canceled his earlier decision dated 22 July 1993 and directed the Municipal Treasurer of Basey to return the fines paid by the accused. Judge Duquilla further noted an earlier case which involved the same offense of illegal fishing with the use of explosive committed by one Casimiro Galangue.[10] Judge Felix J. Dacut, predecessor of respondent Judge, decided the case on 26 November 1965 and imposed a fine of P75.00 only, yet no administrative complaint was filed against Judge Dacut.[11]

In his memorandum dated 6 July 1994, Deputy Court Administrator Bernardo P. Abesamis found the charges against respondent Judge sufficiently established by the records and recommended that he be severely

reprimanded for amending *motu proprio* the designation of the crime and taking cognizance of the case, with a stern warning against a repetition of the same.[12]

We cannot sustain the reasoning of respondent Judge that he assumed jurisdiction over Crim. Case No. 8735 simply because the joint sworn statement of the two police officers failed to allege the use of explosive in catching or gathering fish. It is a postulate in criminal procedure that the allegations in the complaint on the ultimate facts and the elements of the offense determine which court has jurisdiction over the case. In the case before us, considering the offense charged and the concomitant penalty imposable, it is obvious that the criminal complaint was filed with respondent Judge only for the purpose of preliminary investigation.[13] The case therefore was beyond his jurisdiction to try on the merits.

A cursory reading of the complaint filed by the Chief of Police would readily show that it was sufficient in form and substance to enable respondent Judge to know the nature of the offense charged. Couched in ordinary and concise language, the complaint recounted the acts complained of as those constituting the offense of illegal fishing with the use of explosive.[14] Even assuming that the two police officers failed to state the use of explosive in their joint sworn statement, the supporting documents submitted together with the complaint, particularly the sworn statement of Noel O. Dapon who was the leader of the arresting team, were clear on the nature of the crime, i.e., illegal fishing with the use of explosive.[15]

Indeed, it is gross ignorance of the law for respondent Judge to amend *motu proprio* the complaint by canceling the phrase "with the use of explosive, which they possessed and carried without permit or license from competent authorities," and considering the accused as having committed a light offense, proceeded with their arraignment and decided the case.

The power to amend a complaint at any time before the accused pleads, both in form and in substance, without leave of court, is lodged in the prosecuting officer and not in the trial judge. In *Bais v. Tugaoen*,[16] we held -

x x x x The contention of respondent judge that he had the right to amend the designation of the crime in a preliminary investigation which is not the trial proper is untenable. The purpose of preliminary investigation is primarily to determine whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial. It is not within the purview of the preliminary investigation to give the judge the right to amend *motu proprio* the designation of the crime. When the crime comes within his jurisdiction, he shall try the case, and only after trial may he convict for a lesser offense. In a case coming within the original jurisdiction of the Court of First Instance, he should elevate the case as it is, even if in his opinion the crime is less than that charged.

When a Municipal Judge conducts preliminary investigation he performs a non-judicial function, as an exception to his usual duties. The assignment of such executive function to the Municipal Judge under Rule 112 of the Rules of Court is dictated by necessity and practical considerations. Consequently, the findings of an investigating Judge are subject to review by the Provincial Fiscal whose findings in turn may also be reviewed by the Secretary of Justice in appropriate cases.[17] Hence, an investigating judge, after conducting a preliminary investigation, shall perform his ministerial duty which is to transmit within ten (10) days after the conclusion thereof the resolution of the case together with the entire records to the Provincial Prosecutor,[18] regardless of his belief or opinion that the crime committed, after conducting the preliminary investigation, falls within the original jurisdiction of his court.[19] As held in *Daplas v. Arquiza*,[20] while an investigating Judge may be excused for occasional mistakes or errors of judgment, particularly when incurred in fine and complex points of law, or mitigated by the difficulty of keeping abreast with this Court's ever-increasing decisions, judges are expected to show more than cursory acquaintance with the elementary rules governing procedure as well as settled authoritative doctrines.

More than just a dereliction of his sworn duty to follow and comply with the procedural rules in conducting

preliminary investigations, respondent Judge has committed a falsehood in his vain attempt to defend himself and cover up for his offense. When asked to explain the charges against him, respondent Judge stated that in the joint sworn statement of PO3 Banasta and PO3 Amante of 8 July 1993, particularly pars. 2, 3, 4 and 5, the use of dynamite was not alleged but only "illegal fishing and with sprouting water upward." [21] Quite obviously, this is far from the truth, for in par. 7 of the same joint sworn statement, the investigating officer, PO2 Mario Bajen, propounded on the two (2) affiants the following question: "What about the fish, (were) you able to confiscate from them dynamited fish then?" and the answer was, "Yes sir, kept in the styrofoam, while the other fishes were on the fishnet known as sibot." The actuations of respondent Judge in misrepresenting to this Court that the complaining witnesses failed to allege in their sworn statement that the accused had used explosive in their illegal fishing constitute gross dishonesty and serious misconduct. This Court condemns such conduct, especially coming from a judge who should be an example of integrity, honesty and competence.

Respondent Judge would seem to insinuate in his Comment that the complainant was ill-motivated in bringing this matter to this Court because he did not file an administrative complaint against Judge Felix J. Dacut who likewise allegedly imposed only a fine of P75.00 on an accused after finding him guilty of illegal fishing with the use of dynamite. Judge Duquilla's revelation, if indeed true, only confirms the seriousness of the situation prevailing in that area - blatant violations of the Fisheries Decree of 1975 by fishermen who when arrested and charged are only fined and immediately released after paying the fine. This results in the culprits avoiding prosecution for their criminal acts as what happened in the instant case where all the accused are now at large, [22] thus making a mockery of our laws and the criminal justice system in our country.

WHEREFORE, for failure to perform a ministerial duty, gross ignorance of the law, serious misconduct and dishonesty, JUDGE DEMOSTHENES C. DUQUILLA, Municipal Trial Court, Basey, Samar, is **DISMISSED** from the service with prejudice to reinstatement or appointment to any public office including government-owned or controlled corporation, and with forfeiture of all retirement benefits and privileges, if any.

Consequently, respondent Judge is directed to cease and desist immediately from discharging the functions of Municipal Judge of the Municipal Trial Court of Basey, Samar.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.
Feliciano, J., on leave.

[1] Rollo, p. 3.

[2] *People v. Fred Roa y Lago, Philip Mates, Alden Roa y Oriente and Aldric Roa y Oriente*, Crim. Case No. 8735, Rollo, p. 1.

[3] See sworn statements of Noel O. Dapon of the Department of Agriculture and PO3 Rolando O. Banasta and PO3 Dario A. Amante executed before PO2 Mario Bajen at the Basey Police Station on 8 July 1993, Rollo, pp. 13 and 15.

[4] *Id.*, p. 21.

[5] *Id.*, p. 13.

[6] *Id.*, p. 25.

[7] Other violations - Violation of any other provision of this Decree, or any rule or regulation already existing, or which may be promulgated pursuant to this Decree, shall subject the offender to fine of from five hundred pesos (P500.00) to five thousand pesos (P5,000.00) or imprisonment from six (6) months to four (4) years, or both such fine and imprisonment, in the discretion of the Court x x x x

[8] P.D. 1058, amending Sec. 38, subsec. a (1) of P.D. 704, provides for the penalty for any person who catch, take or gather or cause to be caught, taken or gathered fish or fishery/aquatic products in Philippine waters with the use of explosives, which is imprisonment ranging from twenty (20) years to life imprisonment, if the explosive is actually used.

[9] Rollo, p. 9

[10] Crim. Case No. 4294.

[11] Comment of Judge Duquilla, Rollo, p. 7.

[12] Memorandum of Deputy Court Administrator Abesamis, Rollo, front page.

[13] See *People v. Alvarez*, No. L-34644, 17 January 1974, 55 SCRA 81; *People v. Samillano*, No. L-31375, 22 April 1974, 56 SCRA 573.

[14] Sec. 9, Rule 110, Rules of Court.

[15] See third par. of Sec. 33 which provides: 'x x x x the discovery in any fishing boat of fish caught or killed by the use of explosives x x x x shall constitute a presumption that the owner, operator or fishermen were fishing with the use of explosives x x x x'

[16] Adm. Matter No. 1294-MJ, 23 March 1979, 89 SCRA 101.

[17] *Crespo v. Mogul*, G.R. No. 53373, 30 June 1987, 151 SCRA 462.

[18] Sec. 5, Rule 112, Amended Rules on Criminal Procedure.

[19] *People v. Gorospe*, 53 Phil. 960 (1928), *De Guzman v. Escalona*, G.R. No. 51773, 97 SCRA 619, *Toledo v. Sta. Romana*, A.M. No. 2030-MJ, 15 May 1981, 104 SCRA 444.

[20] Adm. Matter No. 1129-MJ, 21 August 1980, 99 SCRA 141, citing *Aducayen v. Flores*, No. L-30370, 25 May 1993, 51 SCRA 78, 83.

[21] Rollo, p. 7.

[22] In his Comment addressed to Deputy Court Administrator Bernardo P. Abesamis respondent judge admitted that all the accused in Crim. Case No. 39-2005 of the Regional Trial Court of Basey, Samar, are now at large, Rollo, p. 7.

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