

**PERLITO D. FLORES, ARLYN H. ARABILLA, DOMINGO RAMIREZ,
JORGE BANDALAN, VICENTE ASILOM, MARY JANE VILLEGAS, JOEL
DIAZ AND ELVIRA VALENZONA, COMPLAINANTS, VS. JUDGE
ANTONIO C. SUM...**

A.M. No. MTJ-97-1115. June 05, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an administrative case against Judge Antonio C. Sumaljay, Acting Presiding Judge of Branch 5, Municipal Trial Court of Baybay, Leyte, for gross ignorance of the law in connection with the preliminary investigation of three criminal cases and the arrest of complainants.

Respondent, whose regular station was at Branch 2 of the Municipal Trial Court of Albuera, Leyte, retired on December 13, 1996.

Complainants Perlito D. Flores, Arlyn H. Arabilla, Domingo Ramirez, Jorge Bandalan, Vicente Asilom, Mary Jane Villegas, Joel Diaz and Elvira Valenzona are members of the Sangguniang Pambarangay of Domingo C. Veloso in Baybay, Leyte, who were charged with three counts of falsification of public document as defined in Art. 171, pars. 2, 4 and 8 of the Revised Penal Code. In Criminal Case No. R-3231-A, it was charged -

That on or about the 19th day of November, 1996, at Barangay Domingo C. Veloso (Zone 8) of Baybay, Leyte, [all the herein complainants] in their capacities as members of Sangguniang Pambarangay of the said barangay (Zone 8) of Baybay, Leyte, conspiring together and confederating (sic) themselves did then and there wilfully and feloniously (sic) prepare a spurious and falsified excerpt from the alleged minutes of the purported regular session allegedly on August 24, 1996, which never was to falsely substantiate the purported Resolution No. 14, Series of 1996, unduly protesting the application of complainant Gualberto Parmis to own Lot No. 521-A with the DENR, located in Sitio Hayahay, Barangay Domingo C. Veloso (Zone 8), Baybay, Leyte, with DENR of Ormoc City, intercalating thereby that Gualberto Parmis is not a resident of said Barangay when he is a bona fide resident thereat and in fact he has his house of abode erected thereat, by letting it appear also in that spurious minutes alluded to as the result of a regular session on August 24, 1996, when in fact and in truth, no regular session was held on August 24, 1996, on the aspect of the said undue protest to the application of Gualberto Parmis to own Lot No. 521-A with the DENR, that none of the accused deliberated nor discussed re the concocted Resolution 14, alluded to, none of them signed the minutes or excerpt thereof because no minutes whatsoever on that aspect was obtaining then on August 24, 1996, and the spurious minutes or excerpt thereof was only crafted unduly and contrively prepared only on November 19, 1996, to the damage and prejudice of the undersigned complainant Gualberto Parmis in violation of item 8, Article 171 of the Revised Penal Code.

CONTRARY TO LAW.

In Criminal Case No. R-3227-A, the complaint, filed by the chief of police of Baybay, Rolando C. Piamonte, charged -

That on or about the 24th day of August, 1996, at Barangay Domingo C. Veloso (Zone 8) of Baybay, Leyte, [the herein complainants Perlito D. Flores and Arlyn H. Arabilla], in their capacities as Barangay Captain and Barangay Secretary, respectively, conspiring together and confederating (sic) themselves did then and there wilfully, and feloniously (sic), prepare a purported Barangay Resolution No. 14, Series of 1996, unduly protesting the application of one Gualberto Parmis to own Lot No. 521-A, CSD 14542-D, located in Sitio Hayahay, Barangay Domingo C. Veloso (Zone 8), Baybay, Leyte, with the DENR of Ormoc City, by narrating falsely having it appeared (sic) thereat that he is not residing in said Barangay and it was enacted on motion of Kagawad Rodulfo M. Roca at a regular session and attended by the Barangay Officials, Mr. Perlito D. Flores, Mr. Domingo C. Ramirez, Mr. Jose M. Bandalan, Mr. Vicente J. Asilom, Mr. Diego C. Cala, Jr., Mr. Rodulfo M. Roca, Mrs. Mary Jane L. Villegas, Mr. Joel A. Diaz, Miss Ma. Elvira F. Valenzona and Mrs. Evelyn A. Calipayan, when in truth and in fact, there was no such regular session obtaining on such a date mentioned in the questioned resolution nor such resolution was enacted on motion of Mr. Rodulfo M. Roca, nor such barangay officials mentioned thereon participated in the alleged proceeding as it never was as they did not in fact participate and when verily Gualberto G. Parmis is a bona fide resident at said Barangay with his family and has a house thereat where he and his family have their abode to the damage and prejudice of Gualberto G. Parmis.

CONTRARY TO LAW.

In Criminal Case No. R-3228-A, the complaint, which was also filed by the chief of police, charged -

That on or about the 24th day of August, 1996, at Barangay Domingo C. Veloso (Zone 8) of Baybay, Leyte, [the herein complainants Perlito D. Flores and Arlyn H. Arabilla] in their capacities as Barangay Captain and Barangay Secretary, respectively, conspiring together and confederating (sic) themselves did then and there wilfully, and feloniously (sic), prepare a purported Barangay Resolution No. 14, Series of 1996, unduly protesting the application of one Gualberto Parmis to own Lot No. 521-A, CSD 14542-D, located in Sitio Hayahay, Barangay Domingo C. Veloso (Zone 8), Baybay, Leyte, with the DENR of Ormoc City, by falsely having it appeared thereat that Gualberto Parmis is not residing in said Barangay and it was enacted on motion of Kagawad Rodulfo M. Roca at a regular session and attended by the Barangay Officials, Mr. Perlito D. Flores, Mr. Domingo C. Ramirez, Mr. Jorge M. Bandalan, Mr. Vicente J. Asilom, Mr. Diego C. Cala, Jr., Mr. Rodulfo M. Roca, Mrs. Mary Jane L. Villegas, Mr. Joel A. Diaz, Miss Ma. Elvira F. Valenzona and Mrs. Evelyn A. Calipayan, when in truth and in fact, there was no such regular session obtaining on such a date mentioned in the questioned resolution nor such resolution was enacted on motion of Kagawad Rodulfo M. Roca, nor such barangay officials mentioned therein participated in the alleged proceeding as it never was as they did not in fact participate.

CONTRARY TO LAW.

On November 25, 1996, respondent judge conducted a preliminary examination, during which the complainant, Gualberto Parmis, and his witness, Diego Cala, Jr., testified in each of the criminal cases. Thereafter, respondent judge ordered the arrest of herein complainants. By virtue of warrants of arrest, the herein complainants were arrested and detained. They were later released on bail.

The complainants instituted this administrative case against respondent judge. As Deputy Court Administrator Bernardo Abesamis summarizes in his memorandum, complainants' allegations relate to four main points:[1]

- the testimonies during the preliminary examinations failed to establish probable cause;
- in Criminal Case Nos. R-3227-A and R-3228-A, the complainant was not personally examined by respondent, the ones who testified being only complainant's witnesses;
- in Criminal Case No. R 3231-A, there was absence of "searching questions and answers" during the preliminary examination, the questions propounded being answerable by "Yes, Judge";

- there was no cause under the law to arrest them as the possibility of fleeing to escape the hands of justice is remote as they are barangay officials.

Deputy Court Administrator Abesamis thought that the first and last charges involve the exercise of judicial discretion in determining the existence of probable cause and the probability of flight and therefore believed that these were not proper subjects of administrative disciplinary action. However, he opined that the second and third charges involve the “proper observance of procedural rules and due process” and should be looked into. For this reason, he recommended that respondent judge be required to comment.

Respondent was required to comment. In his comment dated May 14, 1997, respondent maintained that he observed the pertinent legal procedures before issuing the warrants of arrest against complainants. He said that the quantum of evidence required in preliminary investigation had likewise been observed. He contended that, by posting bail, complainants waived objection to any irregularities which might have been committed in the course of the preliminary investigation. Respondent claimed that the present case is just a rehash of another administrative case filed against him (Administrative Case No. OCA-IPI 97-253-MTJ) which was dismissed by this Court for lack of merit.

First. Complainants claim that, contrary to Rule 112, §6(b) of the Rules on Criminal Procedure, respondent did not ask the complainant and the witnesses searching questions but mainly questions designed to make them merely affirm what they had previously stated in their affidavits. Deputy Court Administrator Abesamis notes that the questions asked by the respondent were leading and “revealed the latter’s apparent knowledge of the case which the witness testifying had only to confirm with a ‘Yes, Judge.’”[2]

The transcript of the preliminary investigation shows that some of the questions asked by the respondent were indeed leading. It is evident, however, that he was dealing with witnesses who were reticent and had to be prodded if their examination was to be searching. Most of the time, complainant Gualberto Parmis and his witness Diego Cala, Jr. merely said “Yes, Judge” in answer to questions put to them. The only way to make them explain was to ask them leading questions.

Deputy Court Administrator Abesamis contends that the respondent revealed his apparent knowledge of the facts of the case which the witness testifying before him only needed to confirm with a “Yes, Judge.” Obviously, this is because the judge based his questions on the allegations of the complaint and the affidavits of the complainant and the witnesses. In fact, the first questions he asked concerned the execution of affidavits. If the only way to make the witnesses give details was to ask questions based on their complaints and affidavits, we see no reason why this should be considered improper. After all, the witnesses could deny what the judge asked them if it was not true.

The following excerpt from the transcript of the preliminary examination of complainant and his witness belies the allegations of complainants that respondent did not ask searching or probing questions but, through leading questions, simply fished for evidence in determining probable cause.

COURT:

Q- Your dialogue was made on the 15th day of November, 1996?

A- Yes, sir.

Q- But the resolution was passed in the regular session on August 24, 1996?

A- Yes, sir.

Q- And when she answered you she has not yet prepared the minutes and she has not yet prepared the logbook?

A- Yes, sir.

Q- So, in other words, said Secretary of the Barangay, Arlyn Arabilla, has no knowledge whether there was Regular Session on August 24, 1996, because she was only made to sign that prepared resolution by the Barangay Captain?

A- Yes, sir.

Q- At that time on November 15, 1996 when you had a dialogue with Arlyn Arabilla, was she able to present to you anything that would support their claim that there was a Regular Session held on August 24, 1996?

A- None.

Q- Now, since you had a copy of that resolution, did you show this Resolution No. 14 to Arlyn Arabilla?

A- Yes, sir.

Q- And then, what did she say?

A- She told me that this resolution was made from the excerpt of the minutes.

Q- And said Secretary was not able to produce the minutes of that session supposedly held on August 24, 1996?

A- Yes, Judge.

Q- Were you alone when you went to the house of Arlyn Arabilla?

A- Yes, sir.

Q- So, in other words, there was no Regular Session ever held on August 24, 1996 as claim (sic) by the Barangay Captain which was the basis for Resolution No. 14?

A- Yes, sir.

Q- It was only the Barangay Captain who prepared this resolution and there has been no minutes at all up to the present time?

A- Yes, sir.

Q- In other words, the Barangay Captain clearly falsified this Resolution No. 14?

A- Yes, sir.

Q- Although it appears to be attested by the Barangay Secretary who claim (sic) that she was just requested and pressed by the Barangay Captain to sign the said resolution?

A- Yes, Judge.

Q- Said resolution is not supported by any minutes?

A- Yes, sir.

Q- And when you find out this resolution, this was only a resolution handed to you by DENR without any supporting minutes?

A- Yes, sir.[3]

While some of the questions of the judge clearly suggested the answers, nonetheless it is clear that the answers were still those of the witnesses and not those of the judge. We are satisfied that as far as the duty to ask “searching questions” is concerned, respondent complied with his duty under the Rules of Court.

Second. The complainants aver that the testimonies of Gualberto Parmis and Diego Cala, Jr. during the preliminary examination failed to establish probable cause. They cited instances to prove this point.

(1) Gualberto Parmis testified that the other barangay officials charged in the complaint were only misled into signing Resolution No. 14 by being asked by Perlito D. Flores, the punong barangay, to sign several papers, which they did not suspect included the resolution in question. Hence, it would appear that only Perlito D. Flores was guilty of “intercalating any instrument” in a registry or official book within the meaning of Art. 171(8) of the

Revised Penal Code. The other barangay officials are innocent.

It should be noted, however, that the charge against complainants herein is that, as barangay officials, they prepared a spurious excerpt from the minutes of an alleged session of the barangay council in order to show that Resolution No. 14, Series of 1996 had been adopted at the session allegedly held on August 24, 1996 of the Sangguniang Pambarangay. Even if the barangay officials signed Resolution No. 14 by mistake, this fact would not show that they did not take part in the preparation of spurious minutes or excerpts thereof.

(2) According to complainants, Diego Cala, Jr. testified that, on August 24, 1996, he could not have taken part in the deliberation of the Sangguniang Pambarangay of Domingo C. Veloso in Baybay, Leyte because he was then in Cebu. Therefore, he could not have known whether or not the council had a session on that day and whether the other members were not present at its session.

Complainants miss the point. Precisely, what Diego Cala, Jr. is saying is that he could not have attended the session of the barangay council on August 24, 1996 because he was then in Cebu.

Anyway, the determination of the individual liability of the accused would have to await trial. For purposes of the preliminary investigation, which was summary in nature, it was enough that there was evidence showing that the crime had been committed and that the accused were probably guilty thereof. Any error which might have been committed at this stage could be corrected after the case was filed in the Regional Trial Court. As held in *Angcog v. Tan*,

the determination that there was probable cause which is judgmental and which, in the absence of grave abuse of discretion or malice, may not necessarily give rise to disciplinary action . . .[4]

To hold a judge accountable for every erroneous ruling or decision which he might render would be nothing short of harassment and would make his job unbearable.[5]

Third. Complainants point out that in Criminal Cases Nos. R-3227-A and R-3228-A, only the witnesses were examined by the judge. The chief of police was the complainant but he was not examined. Complainants cite Rule 112, §6(b) which provides:

(b) By the Municipal Trial Court. --- If the municipal trial court judge conducting the preliminary investigation is satisfied after an examination in writing and under oath of the complainant and his witnesses 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, he shall issue a warrant of arrest. (Emphasis added)

The contention has no merit. The complainant in these cases is not the chief of police. The chief of police signed the complaints in these cases simply as prosecutor, pursuant to Rule 110, §5 which in part provides:

Who must prosecute criminal actions. --- . . . [I]n the Municipal Trial Courts or Municipal Circuit Trial Courts when there is no fiscal available, the offended party, any peace officer or public officer charged with the enforcement of the law violated may prosecute the case. (Emphasis added)

The complainant in the two cases was Gualberto Parnis, who testified, together with Diego Cala, Jr.

Fourth. Finally, it is contended that respondent ordered the arrest of complainants without the justification of doing so “in order not to frustrate the ends of justice,” as provided in Rule 112, §6(b).

We find this contention to be meritorious. What differentiates the present rule from the previous one before the 1985 revision of the Rules on Criminal Procedure is that while before, it was mandatory for the investigating judge to issue a warrant for the arrest of the accused if he found probable cause, the rule now is that the

investigating judge's power to order the arrest of the accused is limited to instances in which there is a necessity for placing him in custody "in order not to frustrate the ends of justice." The arrest of the accused can be ordered only in the event the prosecutor files the case and the judge of the Regional Trial Court finds probable cause for the issuance of a warrant of arrest. As this Court said in *Samulde v. Salvani, Jr.*:^[6]

It is entirely new rule, and it is plain to see that it is not obligatory, but merely discretionary, upon the investigating judge to issue a warrant for the arrest of the accused, even after having personally examined the complainant and his witnesses in the form of searching questions and answers, for the determination of whether a probable cause exists and whether it is necessary to arrest the accused in order not to frustrate the ends of justice, is left to his sound judgment or discretion.

Accordingly, in *Mantaring v. Roman*,^[7] we reprimanded a judge in a preliminary investigation for issuing a warrant without any finding that it was necessary to place the accused in immediate custody in order to prevent a frustration of justice. In this case, it appears that respondent ordered the issuance of a warrant of arrest solely on his finding of probable cause, totally omitting to consider whether it was necessary to do so in order not to frustrate the ends of justice.

As already stated, respondent has since retired. This fact, however, does not render this case moot and academic. As held in *Gallo v. Cordero*:^[8]

[T]he jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications If innocent, respondent officials merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

On the other hand, considering that respondent judge has retired, the only appropriate penalty that could be imposed on him, in light of what he failed to do in this case, is a fine of P5,000.00.^[9]

Accordingly, a FINE of P5,000.00 is hereby imposed on respondent Judge Antonio Sumaljag, the amount to be deducted from whatever retirement benefits he may be entitled to receive.

SO ORDERED.

Regalado, (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Rollo, p. 1.

[2] *Id.*, p. 2.

[3] TSN of the Preliminary Examination of Criminal Case No. R-3227-A held on November 25, 1996, pp. 5-7.

[4] 227 SCRA 137, 143 (1993).

[5] *Arcenio v. Pagorogon*, 224 SCRA 246 (1993).

[6] 165 SCRA 764, 741 (1988).

[7] 254 SCRA 158 (1996).

[8] 245 SCRA 219, 226 (1995).

[9] Spouses Bacar v. Judge de Guzman, A.M. No. RTJ-96-1349, April 18, 1997; Bayog v. Hon. Natino, G.R. No. 118691, April 17, 1997.

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