

PANFILO S. AMATAN, COMPLAINANT, VS. JUDGE VICENTE AUJERO, RESPONDENT.

A.M. No. RTJ-93-956. September 27, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

A criminal complaint accusing Rodrigo Umpad, alias "Meon" of the crime of murder under Article 248 of the Revised Penal Code was filed by the Philippine National Police Station Commander in Bato, Leyte for the fatal shooting of Genaro Tagsip in the afternoon of September 14, 1987.[1] After preliminary investigation by the office of the provincial fiscal, an information charged Umpad with the crime of Homicide as follows:

The undersigned Assistant Provincial Fiscal of Leyte, accused Rodrigo Umpad alias "Meon" of the crime of Homicide committed as follows:

That on or about the 14th day of September 1987, in the Island of Dawahon, Municipality of Bato, Province of Leyte, Philippines and within the preliminary jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, with intent to kill did then and there willfully, unlawfully and feloniously shot one GENARO TAGSIP, with a revolver .38 Cal. Snub Nose Smith and Wesson (Paltik) which the accused had provided himself for the purpose, thereby causing and inflicting upon the victim fatal gunshot wound on his head which was the direct and immediate cause of the death of Genaro Tagsip.

CONTRARY TO LAW.

Hilongos, Leyte, October 20, 1987.

Upon arraignment, however, the parties, with the acquiescence of the Public Prosecutor and the consent of the offended party, entered into plea bargaining where it was agreed that the accused would plead guilty to the lesser offense of Attempted Homicide instead of homicide as originally charged in the information, and would incur the penalty of "four (4) years, two (2) months and one (1) day of prision correccional as minimum to six (6) year of prision correccional maximum as maximum." [2] Consequently, in his decision promulgated on the 27th of June 1990, respondent judge found the accused, Rodrigo Umpad, guilty beyond reasonable doubt of the lesser crime of Attempted Homicide and sentenced him to suffer imprisonment of four years, two months and one day of prision correccional maximum, as minimum to six years of prision correctional maximum, as the maximum period, exactly in accordance with the plea bargaining agreement.[3]

On October 16, 1992, a letter-complaint addressed to the Chief Justice and signed by Pedro S. Amatan, a brother-in-law of the deceased, accused Judge Vicente Aujero of gross incompetence, gross ignorance of the law and gross misconduct, relative to his disposition of Crim. Case No. H-223 entitled People v. Rodrigo Umpad alias "Meon." In said letter-complaint, complainant contends that the sentence of respondent judge finding the accused guilty beyond reasonable doubt of the lesser offense of Attempted Homicide and not Homicide as charged is proof indicative, "on its face, of gross incompetence, gross ignorance of the law or gross misconduct."

Responding to the complaint, respondent Judge asserts that he relied on Sec. 2, Rule 116 of the 1985 Revised Rules of Criminal Procedure, as amended, which allows an accused individual - with the consent of the offended party - to plead guilty to a lesser offense, regardless of whether or not such offense is necessarily included in the crime charged, or is cognizable by a court of lesser jurisdiction. He explains that during the May 3, 1990 hearing, accused and his counsel, with the acquiescence and in the presence of the prosecutor, informed the Court of the defendant's desire to plea bargain pursuant to the aforestated rule. Moreover, he avers that in a conference on June 27, 1990, the wife of the victim herself agreed to the accused's plea of guilty to attempted homicide, instead of homicide as she needed the monetary indemnity to raise her two orphaned children. In a Memorandum dated February 5, 1993, the Deputy Court Administrator recommended that the complaint be dismissed, explaining that:

Section 2 of 116 is more liberalized as it allows the accused to plead guilty to a lesser offense whether or not it is included in the offense charged in the complaint or information, with the consent of the offended party and the fiscal. In this regard, it is inferred that the fiscal consented to abbreviate the proceedings and in order not to run the risk of the accused being acquitted, because there was no conclusive evidence to obtain the conviction of the accused to the offense charged in the complaint or information.

It may be stated in this connection that unlike in the crime of murder where the accused may plead to the lesser offense of homicide, in homicide a misinterpretation may arise, as in this case, when the accused pleads guilty to attempted homicide, because here the fact of the death of the victim, which is the principal element of the crime is obliterated. This is specially so because the decision/sentence does not contain findings of fact and conclusions of law but merely an account that the accused pleaded guilty to a lesser offense and the penalty imposed.[4]

Section 2, Rule 116 of the 1985 Revised Rules of Criminal Procedure, as amended, allows the accused in a criminal case to plead guilty "to a lesser offense regardless of whether or not it is necessarily included in the crime charged." The fact of death of the victim for which the accused Rodrigo Umpad was criminally liable, cannot by simple logic and plain common sense be reconciled with the plea of guilty to the lower offense of attempted homicide. The crime of homicide as defined in Article 249 of the Revised Penal Code necessarily produces death; attempted homicide does not. Concededly, hiatus in the law exists in the case before us, which could either lead to a misapprehension of Section 2 of Rule 116 or to outright confusion. Such a result was itself recognized by the Deputy Court Administrator when he recommended an amendment to the provision in his Memorandum.

However, the law is not entirely bereft of solutions in such cases. In instances where a literal application of a provision of law would lead to injustice or to a result so directly in opposition with the dictates of logic and everyday common sense as to be unconscionable, the Civil Code[5] admonishes judges to take principles of right and justice at heart. In case of doubt the intent is to promote right and justice. *Fiat justitia ruat coelum*. Stated differently, when a provision of law is silent or ambiguous, judges ought to invoke a solution responsive to the vehement urge of conscience.

These are fundamental tenets of law. In the case at bench, the fact of the victim's death, a clear negation of frustrated or attempted homicide, ought to have alerted the judge not only to a possibly inconsistent result but to an injustice. The failure to recognize such principles so cardinal to our body of laws amounts to ignorance of the law and reflects respondent judge's lack of prudence, if not competence, in the performance of his duties. While it is true, as respondent judge contends, that he merely applied the rule to the letter, the palpably incongruous result ought to have been a "red flag" alerting him of the possibility of injustice. The death of an identified individual, the gravamen of the charge against the defendant in the criminal case, cannot and should not be ignored in favor of a more expedient plea of either attempted or frustrated homicide. We have held before that if 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.[6]

Finally, every judge must be the embodiment of competence, integrity and independence.[7] A judge should not only be aware of the bare outlines of the law but also its nuances and ramifications, otherwise, he would not be able to come up with decisions which are intrinsically fair. In failing to exercise even ordinary common sense, a judge could be held administratively liable for a verdict that could in no way be legally or factually sustained or justified.

We note, however, that under the circumstances of the case, respondent judge's erroneous exercise of his judicial prerogative was neither tainted with malice nor bad faith. The phraseology of Sec. 2, Rule 116 is not crafted with such precision as to entirely eliminate possible misinterpretation. This observation is bolstered by the fact that the same provision prompted the Department of Justice, on July 31, 1990, or three months after respondent judge took cognizance of the case on April 17, 1990, to issue Circular No. 35,[8] later amended by Circular No. 55 dated December 11, 1990, clarifying and setting limitations on the application of Sec. 2, Rule 116. The fact also that respondent reached compulsory retirement age on April 5, 1995 after a long period of service in the judiciary entitles him to a certain measure of leniency. Nonetheless, the case at bench stands unique because of the potentially absurd result of respondent's application of the law.

ACCORDINGLY, we are constrained to find respondent judge GUILTY of gross ignorance of the law for which he is hereby REPRIMANDED and FINED ONE THOUSAND (P1,000.00) PESOS. Let this decision appear in respondent's record of service.

SO ORDERED.

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

Hermosisima, Jr., J., on leave.

[1] Rollo, p. 7, Annex "A."

[2] Id., at 9, Annex "C."

[3] Ibid.

[4] Id., at 3.

[5] Civil Code, art. 10.

In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.

[6] Uy v. Dizon-Capulong, 221 SCRA 95.

[7] Code of Judicial Conduct, Rule 1.01.

[8] DEPARTMENT CIRCULAR NO. 35

SEC. 2, RULE 116 of the 1985 Rules on Criminal Procedure, as amended, provides for a process wherein the accused may be allowed to plead guilty to a lesser offense. To attain the laudable objectives of the rules on plea bargaining and in order that the disposition of criminal cases may be expedited as uniformly as possible by eliminating unnecessary and costly litigation and in the interest of justice, you are hereby directed to observe the following guidelines, to wit:

1. The trial prosecutor shall immediately move for suspension of the proceedings whenever the accused manifests his intention in court to plead guilty to a lesser offense, to allow the trial prosecutor to evaluate the implications of the offer.

2. The trial prosecutor, with consent of the offended party, may *motu proprio* agreed to the offer of the accused to plead guilty to a lesser offense if the penalty imposable for the offense charged is prision correccional (Maximum of six years) or lesser or a fine not exceeding P12,000.00.

3. When the penalty imposable for the offense charged is prision mayor (at least six years and one day) or higher or a fine exceeding P12,000.00, the trial prosecutor shall first submit his comment/recommendation to the City/Provincial Prosecutor or to the Chief State Prosecutor as the case may be, for approval. If the favorable recommendation is approved in writing, the trial prosecutor with consent of the offended party, may agree to a plea of guilty to a lesser offense. For this purpose, the Chief State Prosecutor or the Provincial/City Prosecutor concerned shall act on the recommendation of the trial prosecutor within forty-eight (48) hours from receipt thereof. In no case shall the subject plea to a lesser offense be allowed without the written approval of the above respective heads of office.

4. In all cases, the penalty for the lesser offense to which the accused may be allowed to plead guilty shall not be more than two (2) degrees lower than the imposable penalty for the crime originally charged, notwithstanding the presence of mitigating circumstances. The lesser offense shall also be one that is necessarily related to the offense charged or that the nature of the offense must belong to the same classification or title under the Revised Penal Code or special laws.

For your guidance and strict compliance.

December 11, 1990

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