

ZENAIDA J. CASTRO, COMPLAINANT, VS. JUDGE NICASIO V. BARTOLOME, MUNICIPAL TRIAL COURT, STA. MARIA, BULACAN, RESPONDENT.

A.M. NO. MTJ-05-1589 (FORMERLY A.M. OCA IPI NO. 03-1454-MTJ). April 26, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The instant administrative case refers to the charges of grave misconduct, knowingly rendering an unjust order and conduct prejudicial to the best interest of the service against Judge Nicasio V. Bartolome, Municipal Trial Court (MTC), Sta. Maria, Bulacan, relative to Criminal Case Nos. 3-135 to 140-03 entitled “People of the Philippines v. Edwin J. Castro,” for rape and violation of Republic Act No. 7610.

The complainant is Zenaida Castro, the mother of the accused in the aforesaid criminal cases. The charges against the respondent Judge as contained in the complainant’s Complaint-Affidavit[1] dated August 4, 2003 were summarized by the Office of the Court Administrator as follows:

According to the complainant, the respondent judge without considering any evidence issued a warrant of arrest against [her son] the accused. She alleges that the respondent judge did not conduct any searching questions and answers during the preliminary examination and hastily issued the warrant of arrest. No transcript was submitted when the record of preliminary investigation was forwarded to the provincial prosecutor. While it is true that there was a transcript of record submitted to the Office of the Provincial Prosecutor two months after, complainant avers that the respondent judge clearly falsified and doctored the transcript submitted since there was in fact no searching questions and answers conducted by him. Respondent judge gravely abused his discretion when he issued the warrant of arrest without the searching questions and [answers] required by the rules. Added to this was the fact that the alleged aggrieved party was from an influential clan in Bulacan. Because of the hastily issued warrant of arrest by the respondent judge, complainant’s faultless son is now suffering in jail.[2]

In his Comment[3] dated September 2, 2003, the respondent Judge denied the charges against him. He averred that contrary to the allegations against him, he personally examined the private complainant and conducted searching questions. While he admitted that the transmittal of the records of the case was delayed, he averred that this is the “business of the Clerk of Court.” He further pointed out that unless required by the investigating fiscal, the transcript of stenographic notes on the searching questions and answers remain in the possession of the municipal courts, which is accessible to any interested party for verification. Moreover, such transcript of records should remain in the possession of the municipal judge who conducted the preliminary investigation unless required by the investigating prosecutor. Also, the fact that he immediately found probable cause to issue the warrant of arrest does not make him administratively liable.

The Court resolved to refer the case to Executive Judge Guillermo P. Agloro, Regional Trial Court, Malolos, Bulacan, for investigation, report and recommendation.[4] After conducting the requisite hearings, the Executive Judge submitted his Report dated January 6, 2005, where he opined that the respondent Judge was

administratively liable. According to Judge Agloro, the respondent Judge should have transmitted the accompanying records of the case along with the transcript of stenographic notes to the provincial or city prosecutor. He also refuted the respondent Judge's claim that a delay in the transmittal of such records is a mere "standard operating procedure." Moreover, the respondent's averment that "the searching questions and answers as contained in the transcript of stenographic notes do not form part of the records under the rules unless required by the Office of the Provincial Prosecutor" was in itself an admission that he is unaware of the said rule. Executive Judge Agloro went on to explain:

Further, it does not appear from the records that the respondent judge transmitted his resolution which became the basis for the finding of a probable cause and the consequent act of issuing a warrant of arrest by the respondent judge against the accused in the above-mentioned criminal cases.

On the matter of the contention of the private complainant that the belated filing of the transcript of stenographic notes have been doctored or falsified, there appears no positive evidence that the same were in fact doctored or falsified. However, based on the testimonial evidence of witness Atty. Efren Jorda, he kept coming back to the sala of the respondent judge but did not see any transcript of stenographic notes; and, that it was only on May 14, 2003 that the transcript of stenographic notes was transmitted to the provincial prosecutor (TSN, August 31, 2004, p. 15).

The undersigned investigating judge believes that under the circumstances prevailing, respondent judge failed to abide by Section 5, Rule 112 of the New Rules of Criminal Procedure; and therefore, there is administrative liability on the part of the respondent judge when he failed to transmit, within ten (10) days after the conduct of the preliminary investigation, his resolution together with the accompanying records of the case, including the transcript of stenographic notes as specified therein to the provincial or city prosecutor in accordance with the said section of the rule. On the matter of the contention of the private complainant that the belated filing of the transcript of stenographic notes have been doctored or falsified, there appears to be no positive evidence that the same were in fact doctored or falsified.

The Court agrees with the findings of the Investigating Judge that the respondent is administratively liable.

It is the duty of the investigating judge after the conclusion of the preliminary investigation to transmit the entire records of the case within 10 days. This has been the mandate of the law even under the 1989 Rules of Criminal Procedure.[5] In fact, unlike the old rules, the present rule specifically mentions the transcript of stenographic notes of the proceedings as part of the record of the case to be transmitted, thus:

SEC. 5. Resolution of investigating judge and its review.— Within ten (10) days after the preliminary investigation, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction, for appropriate action. The resolution shall state the findings of facts and the law supporting his action, together with the record of the case which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order for his release; (d) the transcripts of the proceedings during the preliminary investigation; and (e) the order of cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Within thirty (30) days from receipt of the records, the provincial or city prosecutor, or the Ombudsman or his deputy, as the case may be, shall review the resolution of the investigating judge on the existence of probable cause. Their ruling shall expressly and clearly state the facts and the law on which it is based and the parties shall be furnished with copies thereof. They shall order the release of an accused who is detained if no probable cause is found against him.

The importance of transmitting the said records to the prosecutor was explained by the Court in the recent case of

Manalastas v. Flores:[6]

A preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial. It is an executive, not a judicial function. It falls under the authority of the prosecutor who is given by law the power to direct and control all criminal actions. However, since there are not enough fiscals and prosecutors to investigate the crimes committed in all the municipalities all over the country, the government was constrained to assign this function to judges of Municipal Trial Courts and Municipal Circuit Trial Courts. Thus, when a municipal judge conducts preliminary investigation, he performs a non-judicial function as an exception to his usual duties. His findings, therefore, are subject to review by the provincial or city prosecutor whose findings, in turn, may be reviewed by the Secretary of Justice in appropriate cases. Hence, the investigating judge, after conducting a preliminary investigation, must perform his ministerial duty to transmit within ten (10) days the resolution of the case together with the entire records to the provincial or city prosecutor. The performance of this non-judicial or executive function, however, does not place judges beyond the disciplinary power of this Court for any act or omission in relation or as an incident to their task, which is only in addition to their judicial functions. Thus, the Court has imposed disciplinary sanctions on judges for their ignorance or deliberate disregard of the laws on preliminary investigation.[7]

In the present case, the respondent Judge, by his own admission, failed to comply with his ministerial duty of transmitting the records of the case subject of the preliminary investigation within 10 days from the conclusion thereof. Worse, he vehemently insisted, albeit erroneously, that there was no need to elevate the transcript of the said proceedings. Contrary to the respondent Judge's claim, he cannot escape administrative liability by pointing to the lapses or negligence of the court personnel under him, considering that the proper and smooth functioning of his sala is primarily his responsibility as presiding judge.

The Code of Judicial Conduct provides that a judge should be the embodiment of competence, integrity and independence,[8] and is mandated to administer justice impartially and without delay.[9] A judge should likewise be faithful to the law and maintain professional competence.[10] When a judge displays an utter unfamiliarity with the law and the rules, he erodes the confidence of the public in the courts. Thus, he or she must be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence, considering that ignorance thereof can easily be the mainspring of injustice.[11]

Indeed, courts exist to promote justice; and thus to aid in securing the contentment and happiness of the people. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of his court so far as he can, to make it useful to litigants and to the community. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.[12]

Undue delay in transmitting the records of a case is classified as a less serious charge under Section 9(1), Rule 140 of the Rules of Court and is punishable by suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or a fine of more than P10,000.00 but not exceeding P20,000.00.[13] As pointed out by Executive Judge Agloro, the respondent Judge was previously sanctioned for gross ignorance of the law in A.M. No. MTJ-97-1114,[14] where the Court imposed upon him an P8,000.00 fine for conducting a preliminary investigation in a case for acts of lasciviousness (an offense cognizable by the municipal trial court and as such does not require a preliminary investigation); upon the amendment of the complaint to attempted rape, he then passed on the duty of conducting the said investigation to the Provincial Prosecutor, when he should have done it himself. In A.M. No. MTJ-03-1482,[15] the Court reprimanded the respondent Judge for making untruthful statements in the course of defending himself against an administrative charge, and was sternly warned that a repetition of the same act shall be dealt with more severely. Considering all

these, the Court resolves to impose a fine of P20,000.00 on the respondent Judge.

WHEREFORE, respondent Judge Nicasio V. Bartolome is found GUILTY of undue delay in transmitting the records of a case, and is hereby imposed a FINE of Twenty Thousand Pesos (P20,000.00). He is STERNLY WARNED that a repetition of the same or similar act shall be dealt with more accordingly.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 1-3.

[2] Id. at 60.

[3] Id. at 51-53.

[4] Rollo, p. 64.

[5] Section 5, Rule 112 of the 1989 Rules of Criminal Procedure reads:

Sec. 5. Duty of Investigating Judge. – Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, stating briefly the findings of fact and the law supporting his action, together with the entire records of the case, which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused; (d) the order of release of the accused and cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Should the provincial or city fiscal disagree with the findings of the investigating judge on the existence of probable cause, the fiscal's ruling shall prevail, but he must explain his action in writing furnishing the parties with copies of his resolution, not later than thirty (30) days from receipt of the records from the judge. If the accused is detained, the fiscal shall order his release.

[6] A.M. No. MTJ-04-1523, 6 February 2004, 422 SCRA 298.

[7] Id. at 306-307.

[8] Rule 1.01

[9] Rule 1.02

[10] Rule 3.01

[11] Grageda v. Tresvalles, A.M. No. MTJ-04-1526, 2 February 2004, 421 SCRA 500, citing Poso v. Mijares 387 SCRA 485 (2002).

[12] Canon 2 of the Canons of Judicial Ethics, cited in Agcaoili v. Aquino, A.M. No. MTJ-95-1051, 21 October 1996, 263 SCRA 403.

[13] Section 11(B), Rule 140 of the Rules of Court.

[14] Del Rosario, Jr. v. Bartolome, 4 April 1997, 270 SCRA 645.

[15] In a Resolution dated April 4, 2003, the Court dismissed the charges of violation of the Anti-Graft and Corrupt Practices Act relative to a criminal case then pending in the sala of the respondent Judge for insufficiency

of evidence, but required the latter to show cause why he should not be administratively dealt with for making deliberate untruthful statements during the proceedings. (*Vda. de Nepomuceno v. Judge Bartolome*, 448 Phil. 663 [2003]). Finding the comment of the respondent Judge not fully satisfactory, the Court thereafter reprimanded him in a Resolution dated July 25, 2003 (407 SCRA 262 [2003]).

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