

CANDIDO SAN LUIS, COMPLAINANT, VS. GREGORIO D. MONTEJO, ETC., RESPONDENT.

Adm. Case No. 74-J. March 30, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On February 27, 1961, Atty. Candido San Luis filed a complaint against Judge Gregorio D. Montejo of the Court of First Instance of Zamboanga City charging the latter with serious inefficiency, partiality, abuse of authority, ignorance of the law, and falsification of public documents allegedly committed in connection with the performance of his official duties. Respondent submitted an answer explaining the action he has taken in the different cases mentioned in the complaint which explanation tends to show that he has acted in good faith and in accordance with law.

In a resolution entered on August 10, 1961, this Court designated Justice Juan P. Enriquez of the Court of Appeals to investigate the charges and on March 21, 1962, he submitted his report.

Justice Enriquez set the case for hearing on October 25, 1961 notifying thereof both complainant and respondent. On petition of complainant on the ground that his witnesses could not be contacted on time, the hearing was postponed to November 27, 1961. On October 3, 1961, respondent asked for postponement on the ground that if the investigation should be held on November 27, his calendar for that day will be disrupted and so he suggested that the hearing be postponed towards the end of December. Acceding to the suggestion, Justice Enriquez reset the hearing for December 18-19, 1961.

Complainant filed a third motion for postponement stating that his witnesses were not willing to come to Manila to testify and asked that subpoenas be issued for their appearance to which Justice Enriquez again obliged by postponing the hearing to January 22 and 23, 1962 with the warning that he would not entertain any further postponement of the hearing and suggesting that if necessary the deposition of the witnesses be taken. But before the scheduled date came complainant filed a written manifestation stating that despite several letters he sent to his witnesses the latter failed to see him or his lawyer whereupon he was constrained to submit the case without evidence.

On January 22, 1962, when the case was called for hearing, respondent and his counsel appeared. Justice Enriquez waited until 10:00 a.m. for complainant to appear, but he failed, which prompted the investigator to again postpone the hearing for the next day to give an opportunity to complainant to be present, but when this day came complainant as well as counsel again did not show up whereupon the investigator proceeded to receive the evidence of respondent.

One of the charges refers to Civil Case No. 256 wherein defendant filed a motion for bill of particulars but which respondent failed to resolve until after the lapse of seven months and that this inaction notwithstanding respondent filed his certificate of service every 15th day and end of each month during said period thereby committing a falsification of public document. With regard to this charge, the investigator made the following comment: "With

respect to Civil Case No. 256, CFI, respondent labored under the belief that a motion for bill of particulars is not submitted for resolution even after the filing of plaintiff's objections and defendant's reply thereto until the motion is reset for hearing, although no evidence need be taken. Considering that respondent holds court sessions for one month in Zamboanga City and the next month in Basilan City and alternately thereafter, the respondent was advised that upon resumption of court sessions in either place, he should decide without delay all motions submitted during his absence thereat."

We agree to this observation. Moreover, respondent should be advised that a motion for bill of particulars as well as the reply thereto need not be set for hearing if the court finds it unnecessary to hear the parties, and so the same should be acted upon without delay or within a reasonable period of time. Herd respondent allowed seven months to elapse before acting on the motion which we find unreasonable especially if we consider the requirement that every 15th day a judge is required to submit a certificate of service before he can collect his salary.

With regard to Criminal Case No. 989, *People vs. Hadain Sariol*, the investigator found: "Respondent should have convicted the accused of attempted rape, and not for acts of lasciviousness under the facts of the case. However, the penalty being the same for both offenses the error did not work any substantial prejudice against any of the parties." It really appears that the court in said case found that the accused "really attempted to commit the act of sexual intercourse on the person of Morita Ambon" and yet it found him guilty only of the crime of acts of lasciviousness. Evidently, respondent committed an error not only in determining the nature of the crime committed but in the application of the law as well.

Another charge refers to Criminal Case No. 810, *People vs. Yakan Boah Teguto*, for rape. The comment of the investigator follows: "The actuations of respondent in this case as can be gleaned from the decision dated June 25, 1959 appear to have been unjustified. The accused should not have been acquitted, but should have been sentenced for attempted rape, if respondent did not believe that the offense was consummated." In his decision respondent made this finding: "The Court x x x believes that there was an attempt made by the accused to disrupt the virginity of the offended party, Morita Djurian, but an attempt is not a crime of rape as stated in the information." Indeed, respondent committed a mistake in acquitting the accused for the charge being one of rape the accused could have been convicted of attempted rape there being a finding to that effect. This is a clear case of miscarriage of justice.

With regard to Criminal Case No. 420, *People vs. Moros Buisan, et al.*, for murder with triple frustrated murder, the investigator makes this comment: "Although the penalty imposed is erroneous, your investigator offers no comment thereon, since the case is presently on appeal." It appears that the accused were found guilty as charged and yet the penalty imposed on them was not the one prescribed by law. Here again respondent committed an error in the application, of the penalty.

The foregoing findings show that respondent did not observe the care and diligence required of a judge of first instance in the performance of his duties which account for the errors he has committed in the disposal of the cases subject of the present administrative complaint. For this reason, this Court resolved to admonish him to be more careful in the future with the warning that a repetition of similar errors will not be countenanced and will be the subject of a stern disciplinary action.

Bengzon, C.J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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