

EMETERIO GALLO THROUGH COUNSEL ATTY. FRANCISCO C. AURILLO, COMPLAINANT, VS. JUDGE JOSE CORDERO, MTC, BABATŃGON, LEYTE, RESPONDENT.

A.M. No. MTJ-95-1035. June 21, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a sworn complaint dated September 8, 1994 of Emeterio Gallo, charging Judge Jose Cordero of the Municipal Trial Court of BabatŃgon, Leyte with non-feasance, manifest bias, gross ignorance of the law, and graft and rank favoritism.

The complaint is made in connection with Criminal Case No. 2194 entitled "People v. Cristuto Barreta, Alberto Macabata, Danilo Morillo, and Rodolfo Villanueva," which complainant filed in respondent judge's court on August 23, 1994 for violation of P.D. No. 772, otherwise known as the Anti-Squatting Law. The criminal complaint alleged:

That several years ago, at Barangay Bagong Silang, municipality of BabatŃgon, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all taking advantage of the absence or tolerance of the land owners, did then and there, succeeded in occupying and possessing certain portions of the property of the latter against their will for residential and small farming purposes, and have refused to vacate the property despite demands for them to do so.

CONTRARY TO LAW.

On August 26, 1994, respondent issued a subpoena[1] to complainant requiring him to appear and to testify regarding his affidavit and to bring with him documents attesting to his ownership of the land. Complainant appeared as directed on August 30, 1994 in respondent's office. According to complainant's affidavit dated September 7, 1994,[2] the following transpired:

That on August 30, 1994 I saw Honorable Judge Jose Cordero in his office, having been summoned to appear before him on that day;

That he then asked me if I have papers of ownership of land, such as tax declaration, and I said yes but did not bring them as this was no trial; and besides, he already had the records submitted by the chief of police;

That since he insisted on seeing our tax declaration, with his permission I went to the office of the municipal assessor, secured a certified copy of the tax declaration of land in Bagong Silang, and gave it to him; and noting the area to be 21 hectares the Judge commented that ours is quite a big tract of land;

That when I asked the Judge if the accused have already been arrested, he said No; so I said, what about this case of ours? And he asked what I really wanted. When I said I want them ejected from our land the Judge said: "No, you cannot eject tenants now under the law." I countered that the four accused are not tenants, but the Judge said,

"Even then, nobody can eject them."

That disappointed at his answers which clearly were biased for the accused, I asked permission to leave, which was granted. But he added that I should see him again on Sept. 14, the day before trial which he set for Sept. 15;...

The following day, according to complainant, his son Roger Gallo went to respondent's office to deliver his letter in which he inquired from the judge whether he had already issued a warrant of arrest against the accused; that upon entering the office, Roger saw respondent conversing with the accused in the criminal case;^[3] that an aide of respondent received the letter and opened it; that respondent did not however say anything nor reply to complainant's letter; that when Roger left the office, respondent judge and the four accused continued their conversation.^[4]

Complainant charges that (a) in violation of art. 207 (malicious delay in the administration of justice) and art. 208 (negligence and tolerance in the prosecution of crimes) of the Revised Penal Code respondent judge refused to order the arrest of the accused in Criminal Case No. 2194; (b) that respondent privately conferred with the accused in his office on August 31, 1994 which "logically and naturally arouses suspicion of graft and rank favoritism;" and (c) that he acted with bias and ignorance of the law in telling complainant, "You cannot eject tenants now under the law," and that even if the accused were not tenants, "nobody can eject them." Complainant Gallo prays that (1) respondent be preventively suspended or ordered to inhibit himself from hearing the case and that another judge be assigned to handle the case and (2) after due hearing, respondent be dismissed from the service.

In his comment, respondent alleges that he did not order the arrest of the accused for the following reasons: (1) the complaint charges no offense under P.D. No. 772 because of "the absence [of] recital in the body of [the] complaint that the property occupied or possessed is within the urban communities" per the ruling in *People v. Echavez*,^[5] that the crime of squatting applies only to urban communities,^[6] (2) the complaint is defective because of its failure to state the name of the offended party and the date and time of the commission of the offense; (3) respondent acted in compliance with Administrative Circular No. 8-92 which "reiterates to all trial court judges the need for a careful consideration of the proper application of the Comprehensive Agrarian Reform Law (RA 6657) to avoid conflict of jurisdiction with the Department of Agrarian Reform Adjudication Boards," and (4) he thought that complainant Gallo was merely pressuring the accused to vacate the property through the filing of a criminal case against them.

Respondent also contends that he cannot be liable under art. 208 of the Revised Penal Code, because this provision applies to the failure of public prosecutors to prosecute for law violations.

Respondent denied uttering the statements attributed to him allegedly showing that he had prejudged the case, the truth being that he merely asked complainant certain questions to ascertain compliance with Rule 110 §§ 6 and 11^[7] of the Revised Rules on Criminal Procedure.

As for his alleged "private conference" with the accused, respondent claims that he merely tried to advise them of their right to a counsel de oficio in case they could not afford to hire a lawyer.

With regard to complainant's demand for his inhibition, respondent alleges that there was no basis for complainant to say that he could not expect justice from him (respondent judge) because the case had just been set for the arraignment of the accused.

To be sure, Criminal Case No. 2194 was filed invoking the original and exclusive jurisdiction of respondent judge's court, considering that under P.D. No. 772 the offense charged is punishable by imprisonment ranging from 6 months to 1 year or a fine of not less than P1,000.00 nor more than P5,000.00.^[8] Hence, in accordance

with Rule 112, §9(b), in relation to §3(a) thereof, respondent's job was to determine at the outset if there was sufficient ground to hold the accused for trial, on the basis of the complaint and affidavits submitted. If there was no sufficient ground to hold the accused for trial, the judge should dismiss the complaint or information, otherwise, he should issue a warrant of arrest after personally examining the complainant and his witnesses in writing and under oath in the form of searching questions and answers.

Apparently, respondent judge found sufficient ground to hold the accused in the criminal case for trial. That is why subpoenas were issued to the complainant and the accused. In the case of the complainant, the subpoena required him to testify and bring with him the papers showing his title to the land. But respondent judge did not examine him with a view to the issuance of a warrant of arrest. Instead, as he now says in his comment, he subpoenaed complainant only to determine the sufficiency of the complaint. Yet, respondent likewise required the accused to present their evidence the next day, August 31, 1994.

It would thus appear that respondent was confused about what to do. He says in his comment that he found the criminal complaint to be insufficient because it does not state the time of commission of the offense and the name of the offended party. He also contends that it does not charge an offense because in accordance with the ruling in *People v. Echavez*,^[9] the offense punished under P.D. No. 772 is committed only in urban communities, although in *Jumawan v. Eviota*^[10] we overruled *People v. Echavez* and held that what is punished by the law is squatting on land which is used for residential, commercial or other purposes. Be that as it may, however, what respondent should have done was to dismiss the criminal case. The fact, however, is that he did not dismiss the complaint; neither did he, on the other hand, order the arrest of the accused in that case.

Respondent judge also opened himself to charges of partiality and bias by meeting privately with the four accused. He says that he merely wanted to apprise them of their constitutional right. Whatever his purpose was, it was improper for respondent judge to meet them without the presence of complainant. As already stated, the subpoena required the accused to appear in court on August 31, 1994 to give their testimony. But no hearing was set on that date. In fact complainant's son, Roger, merely chanced on the accused in the office of the judge on August 31, 1994 because he had been sent by his father to deliver the latter's letter inquiring whether the judge had yet issued a warrant for the arrest of the accused.

Thus, respondent judge not only has shown gross ignorance of law and procedure but has also failed to live up to the norm that "judges should not only be impartial but should also appear impartial."^[11] He thus violated Canon 2 of the Code of Judicial Conduct which provides that "a judge should avoid impropriety and the appearance of impropriety in all activities." In the words of Rule 2.01 of that Canon, "A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary."

Respondent judge was compulsorily retired on March 11, 1995, after reaching the age of 70. This fact, however, does not render this case moot and academic. As held in *Zarate v. Judge Romanillos*:^[12]

[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 official 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.

ACCORDINGLY, a FINE of P10,000.00 is imposed on respondent Judge Jose Cordero, the same to be deducted from whatever retirement benefits he may be entitled to receive from the government.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.

[1] Comment, Annex 6.

[2] Complaint, Annex C.

[3] It appears that respondent judge also subpoenaed the accused in the criminal case to appear before him on August 31, 1994.

[4] Per Roger's affidavit dated September 4, 1992, Complaint, Annex D.

[5] 95 SCRA 663 (1980).

[6] This doctrine announced in the Echavez case was later overturned in *Jumawan v. Eviota*, 234 SCRA 524 (1994) decided on July 28, 1994, which held that under P.D. No. 772, "the question is not whether the land is located in an urban or in a rural area but whether it is for residential, commercial, or any other purpose."

[7] These provisions state:

§6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

§11. Time of the commission of the offense. - It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.

[8] See B.P. Blg. 129, §32, as amended by R.A. No. 7691.

[9] *Supra* note 5.

[10] *Supra* note 6.

[11] *Fernandez v. Presbitero*, 79 SCRA 60, 64 (1977). In this case, in which respondent judge conducted the preliminary examination in the house of a relative of the political opponent of the accused's father, this Court through Justice Concepcion, Jr., said: "Impartiality is not a technical conception. It is a state of mind and consequently, the appearance of impartiality is an essential manifestation of its reality."

[12] A.M. Nos. RTJ-94-1140 and RTJ-94-1218, March 23, 1995 citing *People v. Valenzuela*, 135 SCRA 712 (1985) and *Perez v. Abiera*, 64 SCRA 302 (1975).

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