

SABENIANA M. PEREZ, COMPLAINANT, VS. JUDGE PANFILO W. ALPUERTO, MCTC, CATMON-CARMEN-SOGOD, RESPONDENT.

A.M. No. MTJ-88-173. August 16, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Complainant Sabeniana M. Perez, in two (2) sworn letters-complaints, charges Hon. Panfilo W. Alpuerto, MCTC, Catmon-Carmen-Sogod, Cebu, with abuse of discretion, oppression, bias, falsification, and ignorance of the law for having dismissed Criminal Case No. 1464-CR for serious physical injuries through reckless imprudence entitled, "People vs. Napoleon D. Capuno," in which she was the offended party.

In her first complaint dated April 14, 1988, complainant alleged: (1) that the criminal action was dismissed on May 21, 1987 for failure to prosecute because of the absence of the prosecuting fiscal; (2) that while respondent Judge was solicitous of the right of the accused to a speedy trial, he was totally oblivious of her (complainant's) sufferings as a victim of the accident, having been hospitalized for 82 days and submitting to loan sharks to be able to defray her medical expenses; and, (3) that respondent Judge should have inhibited himself from trying the case because the wife of the accused is his wife's niece.

In her second complaint dated April 22, 1988, complainant averred: (1) that respondent Judge falsely stated in his aforementioned order of May 21, 1987 that the case was dismissed upon motion of counsel for the accused, although, as a matter of fact, neither the accused nor his counsel, nor respondent Judge was present in court on that date; (2) that this falsehood was repeated in his Order of March 15, 1988; (3) that respondent Judge, in ignorance of the Rules on Summary Procedure, dismissed the case instead of allowing counsel for the accused (granting he was present) to cross-examine a prosecution witness; and (4) that for several months thereafter, respondent Judge hid the records of the case in his house to prevent the complainant from obtaining copies of the minutes of the proceedings.

In his Comment, respondent Judge alleged that there was no hasty dismissal of the case, for in fact, it had dragged on for some time for failure of the prosecution to proceed; that on May 21, 1987, the fiscal did not appear despite due notice, and without a proper motion for postponement being filed; and that the dismissal was not prejudicial to the complainant for she had filed a separate civil action for damages.

Respondent Judge denied the charge of falsification for he did hear two (2) cases on May 21, 1987, as shown by a copy of the transcripts thereof. He also denied the charge of ignorance of the law, for the dismissal of the case was based on failure to prosecute and on the right of the accused to a speedy trial.

He denied the alleged relationship of his wife to the accused Capuno and avers that, anyway, his wife's relatives are not immune from conviction if warranted by the evidence.

On June 14, 1988, respondent Judge applied for optional retirement.

The complaint was referred for investigation to Executive Judge Fortunato A. Vailoces, RTC, Branch 22, Cebu

City (now an Associate Justice of the Court of Appeals).

On August 22, 1990, Justice Vailoces submitted to this Court his report and the records of his investigation, including the documentary exhibits and transcripts of stenographic notes.

Justice Vailoces found that the criminal action against Capuno was commenced on April 29, 1986 by the Station Commander of Carmen. After seven (7) settings, Capuno was arraigned on September 16, 1986. It took eight (8) more settings of the trial before a prosecution witness showed up on December 9, 1986. All the continuances and resettings, except one, were at the instance of the prosecution. On October 28, 1986, accused Capuno moved for the dismissal of the case, invoking his constitutional right to a speedy trial. Respondent Judge denied the motion "to give the prosecution and the Station Commander all the opportunity, to request (for) a fiscal to . . . handle this case." (p. 6, Report.)

On the issue of falsification, Justice Vailoces noted that the complainant did not mention in her original complaint, but only in her second complaint, the alleged falsehood in the court's order of dismissal. He also found that this was not satisfactorily proven because the complainant's evidence was not based on personal knowledge but on the affidavits of her sisters, Fe Perez and Nena Perez, and of Narciso Fulgo and Gamaliel Euldan. However, of the four (4) affiants, only three (3) testified during the investigation. In any event, their allegations were effectively traversed by respondent Judge.

Justice Vailoces noted that the allegation of respondent Judge and his three (3) witnesses, that he held court in the afternoon of May 21, 1987, was supported by official and public records; that Attorneys Serafin Branzuela and Gabriel Roldan, members of the Bar in good standing and already in their 70's, are entitled to the presumption of trustworthiness; that Amelita T. Cabatania, stenographic reporter in the office of respondent Judge, testified that hearings were conducted by the latter in three (3) cases on May 21, 1987, which she recorded stenographically; that her stenographic notes (Exh. 8) in Criminal Case No. 1464-CR, "People vs. Napoleon Capuno" are in the records of said case (pp. 122-123), and the transcript, consisting of three (3) pages (Exh. 9) is on pages 124 to 126 thereof. The last page of said transcript is the respondent Judge's order of dismissal (Exh. 9-E) duly signed by him. Cabatania denied having told complainant's sisters that the case against Capuno was postponed due to the absence of the fiscal.

Complainant failed to refute the testimonies of Attorneys Branzuela and Roldan with proof that in the afternoon of May 21, 1987 respondent Judge or either of these lawyers were somewhere else other than in the courtroom in Catmon. Accordingly, the rule that positive testimony should be accorded more weight than negative testimony should apply. It is also clear from the record that respondent Judge, for the protection of the complainant, waited until complainant could file her separate civil action before granting the defendant's motion to dismiss based on his constitutional right to speedy trial. The allegation then that respondent Judge was absent from his station in the afternoon of May 21, 1987, leading to the supposed falsification of the dismissal order, has no basis.

According to Justice Vailoces, respondent Judge testified that in the morning of May 21, 1987, he was in Bogo where he is Acting Judge of the Bogo-San Remigio Municipal Circuit Trial Court. In the afternoon, he was in Catmon. The criminal case against Napoleon Capuno was one of the three (3) cases he heard. Upon motion by the defense counsel, because of the absence of the fiscal and of the complainant, he issued the order of dismissal complained of. In several incidents prior to May 21, 1987, he had exercised care and diligence to protect the rights of the complainant as the offended party in the case. He disclosed that the complainant had filed a charge against him before the Ombudsman concerning the same order of dismissal, and that the complaint was dismissed for lack of merit.

Associate Justice Vailoces recommended that:

"x x x the charges of OPPRESSION, FALSIFICATION, PARTIALITY (TO FAVOR A RELATIVE), and IGNORANCE OF THE LAW against respondent Judge Panfilo W. Alpuerto by complainant SABENIANA M. PEREZ (now Mrs. SABENIANA M. PEREZ-ESTILLORE) be DISMISSED as they have not been effectively substantiated and proved by complainant.

"For the anomalous withholding, however, of notice to the fiscal and to the complainant of his order of dismissal of Criminal Case No. 1464-CR, tantamount to improper and irregular performance of duty, it is recommended that the respondent judge be CENSURED and REPRIMANDED, with a warning that repetition thereof would be dealt with more severely." (p. 9, Report.)

The recommendations of Associate Justice Vailoces are hereby approved by this Court.

Complainant's imputation of partiality is premised on the contention that Ludivina Villamor Buot, the wife of the accused Capuno, is the niece of respondent Judge's wife, Yolanda Villamor. The alleged close relationship was not satisfactorily proven by the complainant. Her evidence is not based on personal knowledge but on "public knowledge." Indeed, if such relationship really existed, she should have earlier asked the prosecutor to move for the inhibition of respondent Judge. She did not.

With respect to the third ground of the complaint, the complainant was able to prove that she was given the run-around when she requested for a copy of the dismissal order and the minutes of the proceedings in the Capuno case on that date. Although the complainant had already filed a separate civil action, she was entitled to receive a copy of the dismissal order when she made a request for it. The right to information on matters of public concern is a constitutional right. Access to official records and to documents and papers pertaining to official acts, transactions, or decisions shall be afforded the citizen, subject to such limitations as may be provided by law (*Valmonte vs. Belmonte*, 170 SCRA 256). Respondent Judge's act was tantamount to ignorance of basic rules on the disposition and safekeeping of court records and their character as public records accessible to public scrutiny and examination.

The order of dismissal for failure to prosecute was a final order equivalent to an acquittal (*Esmena vs. Pogoy*, 102 SCRA 861; *People vs. Quizada*, 160 SCRA 516). Copies of it should have been furnished the parties. Strangely, while respondent Judge issued orders separate and distinct from the stenographer's transcripts on motions for postponement of arraignment and relief of the private prosecutor, he failed to issue a typewritten order of dismissal; instead, he merely signed the portion of the transcript of stenographic notes where the dismissal appears. It was a too casual and informal treatment of his final disposition of the criminal case.

The practice among court stenographers is to transcribe immediately and typewrite orders dictated by the judge in open court so that he can sign them. Why this was not followed in the criminal case in question is not clear. Stenographic reporter Amelita T. Cabatania and respondent Judge have not satisfactorily explained the omission. The order of dismissal, found only in the transcript, was reproduced in the order of dismissal which was issued much later on March 15, 1988, by respondent Judge. The long interval fuels suspicion that the order which surfaced was an 11th hour improvisation.

WHEREFORE, the Court finds respondent Judge guilty of dereliction of duty and improper conduct bordering on oppression. He is hereby CENSURED, REPRIMANDED and WARNED that a repetition of the same in the future will be dealt with more severely.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Sarmiento, J., on leave.

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