

**SPO4 NORBERTO LOZADA & SPO1 CHARLIE CO SAM,
COMPLAINANTS, VS. LUIS J. ARRANZ, PRESIDING JUDGE, REGIONAL
TRIAL COURT, MANILA, BRANCH 11, RESPONDENT.**

A.M. No. RTJ-02-1741 (Formerly OCA IPI No. 02-1414-RTJ). November 27, 2003

Ponente: PUNO, J.

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PUNO, J.:

When a judge puts on his robes, he puts off his relations to any, and, like Melchisedech, becomes without pedigree. -- Thomas Fuller

Before this Court is an administrative complaint[1] dated February 11, 2002 against the Honorable Luis J. Arranz, Presiding Judge of the Regional Trial Court of Manila, Branch 11, for gross partiality, gross misconduct, and gross ignorance of the law.

Complainants SPO4 Norberto Lozada and SPO1 Charlie Co Sam of the Philippine National Police were among the arresting officers of accused Ruben Dy in Criminal Case No. 01-189495, entitled *People vs. Ruben Dy a.k.a. Lu Wentie* for violation of Section 15, Republic Act No. 6425, as amended, in the sala of respondent judge. Accused Ruben Dy was charged with illegally selling and delivering 3,169.597 grams of shabu to SPO1 Charlie Co Sam in a buy-bust operation.

Complainants allege that during the presentation of evidence for the prosecution in the above-entitled case on December 5, 2001, SPO4 Norberto Lozada testified on direct examination. When asked to identify the original unmarked envelope containing the marked money handed by the poseur buyer to the accused, Atty. Joseph Miranda, the defense counsel objected to the question. Respondent judge did not rule on the objection, but he himself proceeded to interrogate the witness. Respondent judge allegedly confused the witness by ordering his clerk to get another unmarked legal-size envelope in substitution of the original unmarked legal-size envelope containing the buy-bust money. The respondent judge then showed it to the witness and asked him if it was the same envelope as the original. Since the substitute envelope was empty, the witness said he could not identify as it had no content.

Next, respondent judge ordered his clerk to remove the contents (marked money) of the original envelope, and asked complainant Lozada what he could say about it. Confused, the witness again failed to identify the unmarked original envelope as it was empty.

Respondent judge continued questioning the witness to find out if he could identify the original unmarked envelope. In the process, respondent judge repeatedly transferred the marked money from the original to the substitute envelope and vice versa. At the end, he confused the witness who could no longer identify which of the two envelopes was the original.

The questioning went as follows:[2]

x x x

Court:

You remove the contents because I am going to ask him. I am showing to you that brown envelope. What can you say about this brown envelope? (To the witness -

A: None your honor.

Q: What do you mean by none? Is that not the envelope without any marking that was given to Co Sam?

A: It is not, your honor.

Q: Are you very sure that it is not the envelope without any marking that was given to Co Sam?

A: Because there is no content already.

Q: If I put something here, would you be able to identify that this is the envelope that was given to Co Sam, is that correct?

A: If I will see the contents of the envelope.

Q: I am showing to you the contents of the envelope. Is that not the envelope that you have seen at the time that it was given to Co Sam?

A: No, your honor.

The prosecutor momentarily took over the examination but the respondent judge again questioned the witness:[3]

x x x

Pros. Apolo:

Where is this envelope now which was handed by Co Sam to Ruben Dy?

Atty. Miranda:

Same objection, your honor.

Court:

No, the question can be answered. Where is this now? (To the witness --

A:

The brown envelope was recovered by SPO4 Danilo Gomez from the suspect.

Q:

Was that the only thing that was recovered, the brown envelope alone?

A:

The brown envelope contains the buy-bust money.

Q:

That envelope which was shown to you by the Court is not the envelope that was recovered because it has no contents?

A:

Yes, your honor.

Q:

So, this is not the envelope which was given to Co Sam by the investigator because it has no contents?

A:

Yes, your honor.

Q:

If the court tells you that this is the same envelope that contains the buy-bust money, will you still insist that this is not the same envelope that was given to Co Sam?

A:

Yes, this is the brown envelope.

Q:

Because that is what the court told you - that it was the brown envelope that contains the boodle money and the genuine money.

A:

I saw that the buy-bust money was retrieved from the brown envelope.

Q:

Palitan mo iyong brown envelope. I am showing to you this brown envelope. Can you say now that it was the same brown envelope that was given to Co Sam?

A:

Not unless I can see the buy-bust money inside it.

Q:

You open it.

Interpreter:

Witness is opening the brown envelope and examining the contents thereof.

Q:

What did you see inside?

A:

The buy-bust money.

Q:

Is that now the brown envelope that contains the buy-bust money?

A:

I cannot recall, your honor.

Q:

You put that boodle money now inside this envelope. Can you now say that it was the same envelope given to Co Sam?

A:

Yes, your honor.

Q:

Why did you say that?

A:

Because of the texture of the envelope.

Q:

What is the texture of the envelope?

A:

The color is already faded.

Q:

How did you know that it was the same brown envelope that was given to Co Sam?

A:

I was present during the preparation of the brown envelope. I can still remember this brown envelope although it has no marking.

x x x

Complainants likewise charge that during the same hearing, the counsel for the accused moved to have the substitute envelope marked in evidence. Respondent judge remarked, "I know what you mean." After this cryptic statement, the said counsel withdrew his motion to have the substitute envelope marked. Allegedly, the remark of the respondent judge gave the impression that he has an understanding with the counsel for the accused on how to go about with the trial of the case. This exchange by respondent judge and counsel for the accused is not reflected in the TSN.

Complainants further allege that in the hearing of December 12, 2001, the respondent judge compelled the prosecution to present witness SPO1 Charlie Co Sam. Prosecutor Raymunda Apolo pleaded for a resetting of his testimony as she needed to file a motion in relation to the December 5, 2001 hearing, the transcripts of stenographic notes of which have yet to be completed by the court stenographer. In response to her plea,

respondent judge allegedly ruled, "Present your witness now or else." Again, the remarks do not appear in the TSN.

Complainant SPO1 Charlie Co Sam took the witness stand reluctantly. While the witness was on direct examination, respondent judge again interrupted and showed the witness an envelope different from the original envelope which contained the marked money. Prosecutor Apolo manifested in open court that "another envelope is being shown to the witness again." [4] The witness was then asked to describe the original envelope. He said that the envelope had its left portion torn. When Prosecutor Apolo was about to continue with the direct-examination, she noticed that counsel for the accused, Atty. Miranda, was hiding the original envelope under the table on his lap. She rebuked the counsel for his actuation. When the said counsel brought out the envelope, it already had cut portions on the left and right corners and a hole at its bottom. The prosecutor denounced the tampering of the envelope in open court but the complaint was merely noted by respondent judge. We quote the pertinent portion of the transcript of the proceedings, viz: [5]

PROS. APOLO:

If that will be shown to you, will you be able to identify that legal size envelope with a cut on the left upper portion and which contains the marked money?

A (SPO1 C. Co Sam):

Yes, ma'am.

PROS. APOLO: May we know why the defense counsel is hiding the marked money. . .

ATTY. MIRANDA: I'm not hiding the marked money.

PROS. APOLO: On his lap? He is hiding the marked money on his lap. There's a trick being played on the prosecution in this case.

ATTY. MIRANDA: She is insinuating something, your Honor.

PROS. APOLO: So why should he do it? So why should you cover the money on your lap?

ATTY. MIRANDA: You should have objected (to) that in the first place.

PROS. APOLO: So I am objecting to that. You are hiding the money on your lap.

ATTY. MIRANDA: I'm not hiding the money. Why would I hide the money, it will not do any good.

PROS. APOLO: You placed it on your lap.

ATTY. MIRANDA: Is the placing of the money on my lap already hiding it?

PROS. APOLO: Yes, of course.

COURT: Alright. The Court has observed that when that the envelope was retrieved from the defense counsel when it was shown and placed on the table (sic). Show it to the witness.

PROS. APOLO: I am showing to you Exhibit ... It's already 12:00 o'clock, your Honor. We move for a continuance.

ATTY. MIRANDA: We would like to proceed, your Honor, because this is vital to the case of the defense.

PROS. APOLO:

(To the witness - I am showing to you the legal size brown envelope with a cut on the left upper portion at the

opening of the envelope containing the marked money on the cellophane with ten bundles of marked money, with the marking DPIU on the right upper portion of the ten genuine P1,000.00 bills. Will you please go over that object and tell the Honorable Court if that is the very same marked money you brought in Court on December 5, 2001?

A: This is the one I left in Court.

ATTY. MIRANDA:

May we just make of record, your Honor, that the cut is not only on the left side of the envelope but also on the right side. I am pointing it out to the Court, your Honor, there's also a cut on the right side and furthermore, there's also a hole at the bottom portion of this envelope.

PROS. APOLO:

Anyway, your Honor, this is not a case of selling envelope. This is a case of selling three (3) kilos of shabu, a regulated drug.

ATTY. MIRANDA: May I just remind the prosecutor that this is . . .

PROS. APOLO: Yes, this is not a case of selling envelope.

ATTY. MIRANDA: This is nothing but proof beyond reasonable doubt.

PROS. APOLO: (To the witness - Who gave you that envelope with the marked money inside it, marked as Exhibits E to E-11?

A: It was my commanding officer who gave this brown envelope containing the boodle money.

Q: What did you do after you received that marked money in an envelope marked as Exhibits E to E-11?

A: We brought the envelope to the operation at Condeza.

Q: What time did you arrive at Condesa corner Nueva on February 3, 2001?

A: We arrived at the place more or less 1:30 p.m.

PROS. APOLO: May we move for a continuance, your Honor.

COURT: Order. (pls. see record)

During that same hearing, complainants allege that the counsel for the accused shouted derogatory remarks against Prosecutor Apolo, degrading her stature as officer of the court. The remarks were ignored by respondent judge. We quote a part of the harsh exchange of words between the prosecutor and defense counsel, viz:[6]

x x x

ATTY. MIRANDA:

We prepared for an information for which an offense was committed allegedly on February 2, 2001. Here comes the prosecution claiming that the offense was committed on February 3, 2001. This involves, for us, your Honor, please, a substantial amendment of information.

PROS. APOLO:

What is the defense of the accused, your Honor? The counsel did not state what is the defense of the accused - that he was not arrested on February 3?

ATTY. MIRANDA:

You prove your case.

PROS. APOLO:

We are proving our case.

ATTY. MIRANDA:

You prove your case. That is a matter of our defense.

PROS. APOLO:

We are proving our case.

ATTY. MIRANDA:

You prove your case.

PROS. APOLO:

We are proving our case. In fact, we have already presented evidence to that effect.

ATTY. MIRANDA:

Until now you have not yet proven your evidence.

PROS. APOLO:

Because you are suppressing the evidence.

ATTY. MIRANDA:

That is your problem.

PROS. APOLO:

That's also your problem.

ATTY. MIRANDA:

That is your problem. You do your job.

PROS. APOLO:

You do your job, too, because I am doing my job.

x x x

Furthermore, complainants charge that the decisions of respondent judge show a pattern of acquitting those accused of selling large quantities of shabu. They enumerated the following cases:[7]

- On November 28, 2001, respondent judge acquitted the accused in People vs. Imelda Gatchalian, docketed as Criminal Case No. 00-181157 for violation of Sec. 15, Rep. Act No. 6425, as amended, involving 898 grams of shabu;
- On December 18, 2001, respondent judge acquitted the accused in People vs. Tin Yeung Pai a.k.a. "Sonny Leung y Tin Paz," docketed as Criminal Case No. 00-179525 for violation of Sec. 15, Rep. Act No. 6425, as amended, involving 232.4779 grams of shabu;
- In Criminal Case No. 01-183839, entitled People vs. Juve Ong and Lan Chua for violation of Sec. 15, Rep. Act

No. 6425, as amended, involving 430.4723 grams of shabu, respondent judge granted the petition for bail of both accused. The latter jumped bail and could not be located;

- In Criminal Cases Nos. 01-195069 and 00-186643, entitled *People vs. Kevin Chang* and *People vs. Loe Lim*, respectively, for violation of Sec. 15, Rep. Act No. 6425, as amended, involving more than 200 grams of shabu, respondent judge granted the motion for quantitative examination of shabu. Consequently, accused Loe Lim was granted bail after such re-examination of shabu because it resulted to its lessened quantity.

On December 12, 2001, complainants moved to inhibit respondent judge from further conducting the trial of Criminal Case No. 01-189495.[8] This motion was granted per Order[9] dated March 14, 2002.

On January 17, 2002, Assistant City Prosecutor Raymunda A. Cruz-Apolo filed a Manifestation and Motion to Correct Transcript of Stenographic Notes taken on December 12, 2001[10] alleging some deletions and omissions in said transcript, as enumerated in the Complaint filed by SPO4 Norberto Lozada & SPO1 Charlie Co Sam. In the Manifestation/Comment[11] dated March 11, 2002, by Court Stenographer Cynthia C. Cambil, she admitted that there were deletions in the TSN, as compared with the recorded/taped proceedings. She said that they were not deliberately nor maliciously done. They were, allegedly, intended to hasten her work.

This Court, in its Resolution[12] dated December 11, 2002 referred the administrative complaint to the Court of Appeals for investigation, report and recommendation. The Honorable Jose L. Sabio, Jr., Associate Justice of the Court of Appeals, was designated Administrative Investigator of the case at bar. In his Report dated May 22, 2003, he found respondent judge liable for serious misconduct and manifest partiality, and recommended that he be ordered to pay a fine of TWENTY-FIVE THOUSAND PESOS (P25,000.00), with a stern warning that a repetition of the same or similar offense in the future will be dealt with more severely.

We agree.

The over-intrusive questioning of the prosecution witnesses by the respondent judge was improper. Judges should avoid abruptly interrupting the direct examination of witnesses. It should be borne in mind that parties to a case carefully plan the direct examination of their witnesses. More often than not, cases are won or lost on the basis of the clarity and consistency of the testimonies of witnesses adduced in the direct examination. Seldom are cases won or lost due to the brilliance of cross examination of witnesses. Lawyers should therefore be given ample latitude in the direct examination of their witnesses for these testimonies can make or break their cases. In the case at bar, the prosecution witnesses have not even completed their direct testimony when the respondent judge abruptly butted in, bombarded them with tricky questions and in the process threw their testimonies in haywire. Rule 3.06 of the Code of Judicial Conduct provides:

While a judge may, to promote justice, prevent waste of time or clear up some obscurity, properly intervene in the presentation of evidence during the trial, it should always be borne in mind that undue interference may prevent the proper presentation of the cause or the ascertainment of the truth.

The timing of the questions was bad enough but worse still was the nature of the questions propounded by respondent judge. The questions tending to erode the credibility of the star witnesses for the prosecution were more proper to be propounded by the counsel for the accused in cross examination. It ought to be self evident that the questions that may be propounded by a judge to witnesses are limited, in scope and in shape for they should have no other purpose but to clarify, to promote justice, or prevent waste of time.[13] It must be done sparingly and with great circumspect. The questions should tend to tilt the scales of justice in favor of one party over another.

The reason for the rule is obvious. A judge must not only be impartial, but must also appear impartial. If he

propounds questions to witnesses for some purpose other than to clarify some obscure point, to achieve justice or to prevent waste of time, he will appear as biased against or partial in favor of a party.[14] In the case at bar, the questioning by the respondent judge cannot but give the impression that he was favoring the accused by creating a doubt in the prosecution's evidence. To say the least, the respondent judge was neither cautious nor circumspect.

To be sure, the conduct of the trial by the respondent judge renders his impartiality highly suspect. In the course of the direct examination of SPO1 Co Sam, Prosecutor Apolo noticed that the original envelope containing the marked money was missing from the prosecution's table. She later saw it hidden under the table of the defense, and on the lap of the counsel for the accused, Atty. Miranda, who turned out to have surreptitiously taken it and appeared to have tampered with it. He was rebuked by Prosecutor Apolo and was forced to bring out the envelope which then exhibited cut portions on the left and right corners and a hole at its bottom. This was immediately denounced in open court by Prosecutor Apolo, but the same was merely nonchalantly noted by the respondent judge.[15] The reprehensible act was clearly designed to discredit the testimony of and confuse the prosecution witness SPO1 Charlie Co Sam then on the witness stand trying to describe the original envelope. But the defense counsel was not even asked to explain his act yet tampering of evidence inside the court room and in the presence of the judge constitutes direct contempt.[16]

Respondent judge's appearance of impropriety was further tainted when he compelled the Prosecutor to present SPO1 Co Sam. The Prosecutor had a good reason to plead that the presentation of the witness be reset to another date. She explained that she had a motion to file in connection with the December 5, 2001 hearing the transcript of which has not been completed. For no justifiable reason, respondent judge denied the prosecutor's motion.

Likewise, respondent judge's control of the proceedings leaves much to be desired. He should have immediately admonished both counsels and brought order in the court during their heated argument over the issue of tampering of evidence.[17] Allowing the counsels to exchange invectives and to shout at each other in open room and in respondent's presence is an affront on the integrity of the court.

On the other hand, we agree with the investigating justice that the reference by the complainants to the cases of *People vs. Gatchalian*, docketed as Criminal Case No. 00-181157, *People vs. Tin Yeung Pai a.k.a. "Sonny Leung y Tin Paz"*, docketed as Criminal Case No. 00-179525, *People vs. Juve Ong and Lan Chua*, Criminal Case No. 01-183839, *People vs. Kevin Chang* and *People vs. Loe Lim* or Criminal Cases Nos. 01-195069 and 00-186643, respectively, is irrelevant and has no material bearing on the case at bar. The five (5) drug cases involving shabu cited by complainants where respondent acquitted or issued an order favorable to the accused are not enough sample from which one could conclude a pattern of acquitting violators of Rep. Act No. 6425, as amended, on the part of the respondent judge. Moreover, the correctness of the resolutions of the respondent judge in said cases are at worst, arguable.

Lastly, we agree with the investigating justice that the Order subsequently issued by respondent judge inhibiting himself from hearing the subject criminal case does not render the instant complaint moot and academic, nor will it erase any penalty that may be imposed upon him for violation of his duty as a member of the judiciary.

IN VIEW THEREOF, respondent Luis J. Arranz, Presiding Judge of the Regional Trial Court of Manila, Branch 11 is found GUILTY of gross misconduct, and is hereby ordered to pay a fine of TWENTY-FIVE THOUSAND PESOS (P25,000.00), with a stern warning that a repetition of the same or similar offense in the future will be dealt with more severely.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr. and Tinga, JJ., concur.

- [1] Rollo, pp. 1-69.
- [2] Exhibit "6," Rollo, pp. 19-20; TSN, 05 December 2001, pp. 32-33.
- [3] Id. at 20- 24; TSN, 05 December 2001, pp. 33-37.
- [4] Exhibit "7," Rollo, p. 46; TSN, 12 December 2001, p. 21.
- [5] Exhibit "7," Rollo, pp. 47-49; TSN, 12 December 2001, pp. 22-24.
- [6] Exhibit "7," Rollo, pp. 33-34; TSN, 12 December 2001, pp. 5-6.
- [7] Complaint; Rollo, pp. 5-6.
- [8] Rollo, pp. 50-53.
- [9] Id., pp. 335-336.
- [10] Id., pp. 113-116.
- [11] Id., pp. 131-132.
- [12] Id., p. 103.
- [13] Canon 14, Canons of Judicial Ethics. Interference in conduct of trial

x x x.

He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to an unnecessary display of learning or a premature judgment.

- [14] Ernesto Pineda, Legal and Judicial Ethics, pp. 363-364.
- [15] Rollo, pp. 201-205; TSN, 06 February 2003, pp. 28-32.
- [16] Rollo, pp. 262-272; TSN, 07 February 2003, pp. 27-37; Section 1, Rule 71, 1997 Rules of Court.
- [17] Rule 3.03, Code of Judicial Conduct. A judge shall maintain order and proper decorum in the court.

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