

CONRADO SANTOS, COMPLAINANT, VS. HON. OSCAR I. LUMANG, RESPONDENT.

A.M. No. MTJ-89-251. September 08, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The complainant is the father of Jovita Santos, the 13-year old offended party in the crime of rape allegedly committed on July 25, 1988 by Marcelino Simon y Galang. The complaint was filed by her father on July 26, 1988 and docketed as Criminal Case No. 2253 in the Municipal Trial Court of Aliaga, Nueva Ecija. Respondent Judge Oscar I. Lumang is the MTC Judge in Aliaga, Nueva Ecija.

After a preliminary examination of the offended party and her witnesses, respondent Judge issued an order on July 29, 1988, finding probable cause and ordering the arrest of the accused without bail (Annex A, p. 2, Rollo).

The accused was arrested on the same date and detained in the municipal jail (Exh. H, p. 27, Rollo).

On August 8, 1988, respondent Judge issued an order transmitting the records of the case to the Regional Trial Court in Cabanatuan City and transferring the accused from the INP Municipal Jail in Aliaga to the Provincial Jail in Cabanatuan City. This order was received by the INP Station Commander in Aliaga on August 12, 1988 (p. 20, Rollo) together with a letter of the same date from the Clerk of Court, Elena B. Palma, advising him that:

"As per 'ORDER' of this Court dated August 8, 1988 you are hereby directed to transmit the body of MARCELINO SIMON Y GALANG, accused in Crim. Case No. 2253, For: RAPE, the record of the same was already forwarded to the Office of the Clerk of Court, RTC, Cabanatuan City, for further proceedings." (p. 21, Rollo.)

For unknown reasons, however, the accused was not transferred to the Provincial Jail.

On August 23, 1988, the accused, through counsel, filed in the sala of respondent Judge Lumang a "Waiver to Present Evidence on Preliminary Investigation and to Fix Bail Bond" (p. 38, Rollo). No copy of this pleading was furnished the complainant to enable him to oppose the bail application. Upon receipt of the said application, respondent Judge promptly issued an order on the same day, August 23, 1988, fixing bail of P20,000 for the provisional liberty of the accused (p. 39, Rollo). The next day, August 24, 1988, bail was posted for the accused by the Zenith Insurance Corporation (p. 40, Rollo), whereupon respondent Judge issued an order for his release "unless detained from (sic) any other lawful cause" (Exh. E, p. 23, Rollo).

In the meantime, the Regional Trial Court, upon receipt of the records of the preliminary investigation, referred them to the provincial fiscal for appropriate action.

On September 21, 1988, an information for rape was filed against the accused by Assistant Provincial Fiscal Virgilio G. Caballero. The information was docketed as Criminal Case No. 1291-AF in Branch 27 of the Regional Trial Court in Cabanatuan City (p. 41, Rollo). At the bottom of the information sheet was the following notation.

"NOTE: NO BAIL RECOMMENDED.

"Accused detained at the Provincial Jail."

The fiscal certified that the preliminary investigation was conducted by the Municipal Trial Court of Aliaga and that he "hereby concur(s) with the findings of said Court that there is a probable ground to engender a well-founded belief that a crime cognizable by the Regional Trial Court had been committed and that the accused is probably guilty thereof and should be held for trial" (p. 41-A, Rollo).

The arraignment of the accused was set by the Regional Trial Court on November 7, 1988, but the accused, despite notices to his bondsman, failed to appear. Up to this time his whereabouts are unknown.

On November 14, 1988, the petitioner filed in the Regional Trial Court, Branch 27, this administrative complaint against Judge Lumang for ignorance of the law, oppression, grave abuse of discretion and partiality. Judge Mamerto Pacris of RTC Branch 27 promptly indorsed it to the Court Administrator. We decided to refer it to the Executive Judge of the Regional Trial Court in Cabanatuan City for investigation. After making the proper investigation, Executive Judge Sendon O. Delizo submitted a report on June 30, 1989, finding respondent Judge Oscar Lumang guilty of "obvious ignorance of the new procedure as to the duty of investigating judge set forth in Section 5, Rule 112 of the 1985 Rules on Criminal Procedure" and recommended that he be penalized with "a ten (10) day forfeiture of his salary with the warning that a repetition of the same act will be dealt with severely" (p. 69, Rollo).

We have carefully reviewed the records and we find reason to be disturbed by Judge Lumang's actuations. Judge Lumang has been in office since 1983 or for the past six (6) years, so he is presumed to know that his jurisdiction to conduct preliminary investigation of the complaint for rape ceased after the investigation was finished and the records were transmitted by him on August 8, 1988 to the Regional Trial Court having jurisdiction of the offense, as provided in Section 12 of Rule 112 of the 1964 Rules of Court. Although he should have sent the records to the provincial or city fiscal, as provided in Section 5 of the 1985 Rules on Criminal Procedure, the misdirection of the records to the court, instead of to the fiscal, was a harmless error for, anyway, the court sent the records to the latter.

What was anomalous, however, was respondent Judge's presuming to act on the accused's application for bail, without notice to the complainant, twenty-six (26) days after the preliminary investigation had been terminated on July 29, 1988, and sixteen (16) days after he had elevated the records to the Regional Trial Court and lost jurisdiction over the case. His conduct exposes his ignorance of the law so gross that this Court is hard put to believe his allegation that he acted in good faith. Apart from his lack of jurisdiction, the record belies his claim of "good faith" in executing a sudden turn-around from "no bail" to "bail of P20,000" for the accused, for there was not a scintilla of evidence presented to support the application for bail. Instead of presenting evidence to shake the court's finding of probable cause, the accused waived his right to do so. Consequently, there was no basis or justification for Judge Lumang's grant of bail and for his leniency in fixing bail of only P20, 000 despite the gravity of the crime charged which carries the penalty of reclusion perpetua to death (Art. 335, Revised Penal Code).

The complainant is a poor farm worker seeking justice for the ignominy and violence perpetrated upon his child. He understandably feels "oppressed" by the respondent's action which has resulted in a failure of justice (p. 3, tsn, June 5, 1989, p. 55, Rollo). President Corazon C. Aquino, in a recent speech before lawyers, remarked: "Courts and judges draw the face of justice in our society which the people see." A judge who through gross ignorance of the law, serious misconduct, bias and oppressive behaviour, frustrates the people's search for justice, commits a rank disservice to the cause of justice which calls for rectification and the imposition of appropriate disciplinary

measures. The complaint against respondent Judge is a case in point.

WHEREFORE, the Court finds respondent Judge Oscar Lumang guilty of gross ignorance of the law and serious misconduct, and hereby orders his immediate suspension from office for a period of six (6) months effective upon notice of this resolution.

SO ORDERED.

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

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