

ADELAIDA P. FELONGCO, COMPLAINANT, VS. JUDGE LUIS D. DICTADO, REGIONAL TRIAL COURT, BRANCH 39, DAET CAMARINES NORTE, RESPONDENT.

A.M. No. RTJ-86-50. June 28, 1993

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PER CURIAM:

All the above-entitled cases were consolidated and assigned to Associate Justice Serafin V.C. Guingona of the Court of Appeals for investigation. These cases were decided on the basis of the findings of the Investigating Justice as stated in his reports.

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A. M. No. RTJ-86-50

Complainant Adelaida P. Felongco charges respondent with:

I. Knowingly rendering an unjust judgment adverse to plaintiff;

II. Facilitating the issuance of a writ of execution, thus unduly favoring defendants;

III. Refusing to abide by a restraining order issued by the Court of Appeals against the enforcement of the unjust decision;

IV. Citing the plaintiffs for contempt on the ground of alleged disobedience of the unjust decision.

Complainant Felongco filed a complaint for forcible entry against Celso Tapangan, et al., in the Municipal Circuit Trial Court of Capalonga and Sta. Elena, Camarines Norte, docketed as Civil Case No. 479. The lower court rendered judgment ejecting therein defendants from the premises.

On appeal to the Regional Trial Court (Civil Case No. 5340), respondent, as the presiding judge, reversed the inferior court's decision. In the dispositive portion of his decision dated November 25, 1986, respondent ordered:

"Plaintiff-appellee and all her agents and caretakers xxx to immediately vacate the premises and restore defendants-appellants to the possession of the fishpond in question. For purposes of the last sentence of Section 18, Rule on Summary Procedure, *motu proprio* (sic) writs of execution and possession are hereby ordered issued to implement the restoration of the defendants-appellants on the premises." (Record, Civil Case No. 5340, p. 314)

Upon petition by complainant (CA-G.R. SP No. 10730), the Court of Appeals reversed the decision of respondent holding that the Municipal Circuit Trial Court's "findings are supported by the evidence adduced" and that "the Regional Trial Court was in error when, *motu proprio*, even in the dispositive part of the decision, it directed the immediate issuance of the writ of execution and possession" (Rollo, p. 110).

On appeal by certiorari (G.R. No. 80865), the Supreme Court in its Resolution dated May 16, 1988 resolved as follows:

"It appearing from the petition, the comment and the reply that the respondent court committed no error in reversing the regional trial court and affirming the factual finding of the municipal trial court as more conformable to the established evidence, particularly as to the forcible take-over of the property in question by the petitioner from the private respondent, who was declared entitled to the possession thereof after careful evaluation of such evidence; xxx and that appeal not being a matter of right, it will be justified only upon a clear showing of special and important reasons for the review sought, which reasons are not present in the case at bar to sustain reversal of the questioned decision, the Court Resolved to sustain the said decision and DENY the petition." (Rollo, p. 113)

I. Knowingly rendering an unjust judgment adverse to plaintiff; and II. Facilitating the issuance of a Writ of Execution, thus unduly favoring de-fendants.

The first and second charges, being interrelated, shall be discussed jointly.

Complainant charges respondent with knowingly rendering an unjust judgment (Complaint, par. 3) and with facilitating the issuance of a writ of execution of the judgment, thus unduly favoring and assisting the defendants in the execution of the writ and restoring them in possession of the premises (Complaint, par. 5).

The investigating Justice concluded that respondent had indeed facilitated the issuance of the writ of execution "thereby violating the cold neutrality re-quired of an impartial judge." This conclusion was based on the following circumstances:

1. Respondent ordered execution in the dispositive portion of the decision itself;
2. He ordered the issuance of the writ of execution on the very day that the motion for its issuance was filed [November 27, 1988];
3. He signed the writ of execution himself;
4. He issued the writ on the same day that the official copies of the decision were sent to the parties on the case (Report, A.M. No. RTJ-86-50, p. 4).

When respondent ordered the issuance of the writ of execution in the decision itself sought to be enforced and on the basis of the ex parte motion for execution, he displayed his inclination to favor defend-ants to the prejudice of the plaintiff. Respondent issued and signed the writ of execution himself, when this chore is left to the clerk of court. He caused the issuance of the writ even before copies of the decision were served on the plaintiff, the party adversely affected by the enforcement of the judgment.

Respondent contends that the order of execution was allowed under Section 18 of the Rules on Summary Procedure, which provides that the decision rendered be "immediately executory." This contention has no merit.

As held by this Court in *Dy v. Court of Appeals*, 195 SCRA 585 [1991], the judgment or order of a regional trial court must first be served on the losing party before the same may be considered immediately executory under the Rules on Summary Procedure. The reason is that, if such judgment or order may be immediately executed without prior notice to the losing party, then such a party shall be left without any remedy even against a judgment not supported by any evidence and/or the applicable law, as in this case.

The Rules on Summary Procedure contemplate the filing of a motion for execution on the part of the prevailing party, which, like an ordinary motion must be set for hearing; otherwise, it becomes a mere slip of paper which a judge should ignore.

A very queer circumstance that throws a cloud of suspicion on the bona fides of respondent is the fact that the defendants filed their motion for execution on the same day the decision of respondent was rendered, and

respondent, in effect, granted the motion in the said decision. This only means that defendants knew that the decision yet to be signed and promulgated by respondent would be favorable to them.

III. Refusing to abide by a restraining order issued by the Court of Appeals

In the third charge, complainant accuses respondent with refusing to abide by the restraining order issued by the Court of Appeals against the enforcement of his decision (Complaint, par. 6).

The resolution of the Court of Appeals dated December 3, 1986, restraining respondent from enforcing the writ of execution and taking further cognizance of Civil Case No. 5340, was received in respondent's sala on December 9, 1986 (Record, Civil Case No. 5340, p. 348). By that time, the resolution was already moot because the decision of respondent sought to be restrained was executed on November 28, 1986, as shown by the Sheriff's Return dated December 3, 1986 (Record, Civil Case No. 5340, p. 319). Hence, this charge must fail under the circumstances.

IV. Citing the plaintiffs for contempt on the ground of alleged disobedience of the unjust judgment

In the fourth charge, complainant alleges that respondent, in his order dated December 3, 1986, ordered complainant to show cause why she and her co-parties should not be cited for contempt (Record, Civil Case No. 5340, pp. 333-334). Subsequently, however, respondent issued an order dated December 10, 1986, suspending the contempt proceedings "to await the result of the decision in CA-G.R. SP No. 10730" in view of the Court of Appeals restraining order. Likewise, this charge cannot prosper.

A.M. No. RTJ-88-222

Complainant Atty. Lakap charges respondent with:

I. Graft and Corruption;

II. Questionable Trial Scheduling;

III. Rendering Unjust Judgment/Orders;

IV. "Vengeful" Acts;

V. "Injudicious" and Immoral Acts.

I. Graft and Corruption

Complainant charges respondent with the following specific acts of graft and corruption:

1. Respondent had asked money from practicing lawyers claiming that his salary as a judge was not sufficient (Complaint, p. 1).

2. Sometime in the middle of June, 1985, respondent asked the complainant to buy for him and Mrs. Dictado tickets to Manila from Sarkies Tours, which was complied with by complainant (Complaint, p. 1).

Every time respondent went home to Manila on week-ends, he required complainant to buy the bus tickets for him. This went on until September, 1985 when the complainant failed to get the respondent his ticket because it was "Peñafrancia time" and all the Sarkies Tours buses were fully booked. When complainant failed to purchase a ticket for respondent, he sent the price of the ticket to respondent through the latter's emissary (Complaint, p. 2).

3. Respondent would drop at the complainant's residence and would ask to be fed in a restaurant with his two alalays (Complaint, p. 2).

4. Respondent got a permanent pass from Sarkies Tours despite the fact that the said company has pending cases

before his sala (Complaint, p. 1).

The only witness who testified on the alleged acts of graft and corruption was the complainant. The investigating Justice, however, doubted complainant's credibility, considering that (i) complainant could not recall when respondent allegedly asked money from lawyers, and could only state that these alleged impositions occurred in respondent's chambers (TSN, May 17, 1991, p. 15); (ii) no other evidence was presented to corroborate complainant's testimony that he had bought Sarkies Tours tickets for respondent or that he had dined with respondent at restaurants; (iii) complain-ant filed the administrative complaint only after he had been ordered jailed for contempt by respondent in con-nection with Civil Case No. 2981, and only after the lapse of three years, which delay he could not explain (TSN, June 10, 1991, pp. 4-7); (iv) although complain-ant had attached to his reply in this complaint a photocopy of an affidavit of a certain Atty. Fidencio H. Gerro, and had alluded to a pleading filed by a certain Atty. Subra, both attesting to respondent's alleged corrupt practices, complainant did not endeavor to procure and present the originals or certified true copies of the documents, nor to present the lawyers; and, (v) Atty. Lapak made contradictory statements on important details, which contradictions were unex-plained (Report, A.M. No. RTJ-88-222, pp. 3-7).

Respondent admits that he rides Sankies Tours buses free of charge, but asserts that this privilege was granted to him by Delia Carapiet, Vice-President and General Manager of Sarkies Tours, his cousin, who issued a certification to this effect (Rollo, p. 53). Respondent further asserts that at the time he assumed office, there was already a pending case involving Sarkies Tours (Civil Case No. 5271), against whom respondent issued an adverse ruling (Answer, pp. 1-2; Rollo, pp. 35-36).

That the privilege was extended by and through respondent's relative is not exculpating and does not negate the fact that respondent, a judge, received benefits from a litigant. Such act constitutes grave misconduct.

II. Questionable Trial Scheduling

Complainant alleges that from 1985 to 1987, re-spondent would come to his station (in Camarines Norte) to hold trials on a Tuesday and then leave his station on a Thursday (Complaint, p. 1).

Respondent, on the other hand, contends that complainant may be referring to the days when he (respond-ent) availed of his leave privileges granted under law, and that he has more than four hundred leave credits (Answer, p. 1; Rollo, p. 35).

In view of complainant's failure to substantiate his charges beyond the general avernment, We find respondent's explanation satisfactory.

III. Knowingly Rendering Unjust Judgments/Orders

In his complaint, complainant alleges that respondent knowingly rendered an unjust judgment or order in the following cases: a) Adelaida Felongco v. Celso Tapangan, et al. (Civil Case No. 5340); b) Robert Tabaniag v. Yu Kim Pue, Delfin Ang and Imperial Insurance, Inc. (Civil Case No. 2981) and c) People v. Boy de Asis, et al. (Criminal Case No. 4688).

During the course of the investigation conducted in this case, complainant further charges that respond-ent rendered an unjust judgment or order in a) Digna C. Morales v. Elmer R. Morales (Civil Case No. 5748); b) People v. Homer Bulalacao (Criminal Case No. 6134); c) People v. Alberto Yarte (Criminal Case No. 3399); and d) Lerma Adan v. Philip George Woodward and Esperanza Pereyra (Civil Case No. 5304). Respondent did not object to the additional charges and even commented thereon.

Adelaida Felongco v. Celso Tapangan, et al. and Robert Tabaniag v. Yu Kim Pue, Delfin Ang and Imperial

Insur-ance, Inc.

These cases are discussed in A.M. Nos. RTJ-86-50 and RTJ-88-224, respectively.

People v. Boy de Asis, et al.

The accused in People v. Boy de Asis, et al. (Criminal Case No. 4688) was charged with homicide committed on the occasion of implementing the writ of execution issued by respondent in Civil Case No. 5340. Plaintiff in said civil case, Adelaida Felongco, through herein complainant Atty. Lapak, filed a motion for voluntary inhibition alleging that the administrative complaint they had filed against respondent (A.M. No. RTJ-86-50) "may cause an adverse effect in the present case where the accused may be unjustly absolved and acquitted of the crime committed" (Rollo, p. 123).

Respondent issued an order dated May 3, 1988 denying the motion and requiring Atty. Lapak to show cause why he should not be cited for contempt.

The above order was assailed in a petition for certiorari filed in the Court of Appeals (CA-G.R. SP No. 14577). This petition was dismissed, the appellate court stating that there was "no grave abuse of discretion committed by respondent judge in denying the motion for his voluntary inhibition nor in his order for the petitioner to show cause why they should not be punished for contempt" (Rollo, RTJ-88-224, p. 234).

Digna C. Morales v. Elmer R. Morales

In Digna C. Morales v. Elmer R. Morales (Civil Case No. 5748), an action for support, plaintiff therein filed an urgent motion for the issuance of an order directing the Commission on Immigration and Deportation to hold the departure of therein defendant. Respondent, on the same day the motion was filed, issued an order granting the same. Defendant filed a motion to set aside the order, manifesting that there was no need for a hold order because he had already received the service of summons, and such, jurisdiction over his person was already acquired. When this motion was denied, defendant assailed the order of denial in the Court of Appeals (CA- G.R. SP No. 18672). The appellate court held that respondent had "exceeded the limits of its judicial discretion in issuing the hold departure order," and that the order "constitute[s] a violation of [therein] petitioner's right guaranteed by the constitution of travel and abode unless he is charge of a serious offense" (Rollo, p. 295).

People v. Homer Bulalacao

Trial in People v. Homer Bulalacao (Criminal Case No. 6134), a criminal case for reckless imprudence, began in June, 1989. After several postponements, hearings were set for October 10 and 11, 1989. However, on these dates, a typhoon in Bicol rendered roads impassable. The accused and his counsel, who lived in Buho, Camarines Norte were unable to attend the hearings. On October 11, they sent a telegram to the trial court informing respondent of their predicament. This notwithstanding, respondent on October 11 ordered the arrest of the accused, and on October 12 granted the prosecution's motion for the accused to be tried in absentia if, in the next scheduled session, he [the accused] still would not appear. Upon learning of the above orders, the accused and his counsel filed an "explanation and motion to lift the order of arrest". Though the court accepted the explanation, the order of arrest was not lifted, and a subsequent motion for reconsideration was denied.

The accused filed a petition for certiorari in the Court of Appeals (CA-G.R. SP No. 19430). The appellate court held that respondent "committed grave abuse of discretion in not lifting his order of arrest, trying [the accused] in absentia represented by a counsel de officio when [the accused] has a counsel de parte" and further stated that "the stubbornness of the respondent judge bore lamentable consequences". Consequently, the proceedings from October 11, 1989 and onward were declared null and void (Rollo, p. 303).

People v. Alberto Yarte

The information against Alberto Yarte charged him with qualified theft for having removed, acquired, collected and concealed without proper authority, forest products consisting of 539 flitches. The complaint was dismissed and the Bureau of Forest Development was ordered to return all the flitches to the accused upon payment of the dues thereon.

In 1989, a second alias writ of execution was issued by the trial court, and the sheriff, with Yarte, seized several flitches and lumber from the Department of Natural Resources compound in Daet, Camarines Norte. The DENR and the provincial prosecutor, objected to the seizure on the ground that these flitches and lumber were not the ones involved in Criminal Case No. 3399, and asked for their return. Respondent issued an order dated April 28, 1989, denying the request of the provincial prosecutor on the ground that only the party to whom the flitches and lumber belonged had the right to complain by filing a third party claim. This order and a subsequent order denying the opposition of the provincial prosecutor to Yarte's motion for the issuance of a third alias writ of execution were assailed by the public prosecutor in the Court of Appeals (CA-G.R. No. SP No. 19634).

The Court of Appeals granted the petition and annulled the two orders.

Lerma Adan v. Philip George Woodward and Esperanza Pereyra

Assailed in a petition for certiorari in the Court of Appeals (CA-G.R. SP No. 11912) was respondent's order in Lerma Adan v. Philip George Woodward and Esperanza Pereyra, an action for damages and injunction, granting the writ of preliminary mandatory injunction prayed for by therein plaintiff, thus giving her possession of a restaurant which, prior thereto, was actually occupied by Bruno Freundlich, therein intervenor. The appellate court granted Freundlich's petition, directing respondent to desist from hearing Civil Case No. 5304, except to dismiss it, when private respondent therein failed to file his comment, which silence was deemed by the appellate court as "eloquent proof of lack of cause of action on her part" (Rollo, p. 292).

In all the above cases, with the exception of People v. Boy de Asis, et al., respondent's decisions or orders were declared null and void by the Court of Appeals. It is true that in none of these cases did the appellate court make a finding that respondent, in rendering or issuing the assailed judgment or order, acted with malice or bad faith. Only after the appellate court, in a final judgment, finds that a trial judge's errors were committed with malice and in bad faith may a charge of knowingly rendering an unjust judgment prosper (Villamor v. Salas, 203 SCRA 540 [1991]; Garcia v. Alconcel, 111 SCRA 178 [1982]).

However, the errors of judgment committed by respondent in these cases cannot be ignored. While a judge should not be disciplined for inefficiency on account merely of occasional mistakes or errors of judgment, repeated acts of grave abuse of discretion and errors of judgment cause concern as to the competency of respondent to sit in judgment of his fellow men (Abad v. Bleza, 145 SCRA 1 [1986]).

IV. "Vengeful" Act

This is discussed in A.M. No. RTJ-88-224.

V. "Injudicious" and Immoral Acts

The alleged "injudicious" and immoral acts committed by respondent are: (1) his using of the stenographers' room on Branch 41, his former station, as his living quarters; (2) his taking cognizance of cases over which he had no jurisdiction under the Election Code; and (3) his holding a party in the court room with litigants (Complaint, p.4).

Respondent does not deny that he occupied one of the six rooms in Branch 41. He, however, contends that this

had been the practice of judges assigned to that branch.

It does not appear that respondent acted high--handedly in the transfer of the stenographers to another room of the court house.

However, We cannot sanction the use of the court premises as living quarters for the judges. Firstly, government property should not be used for the personal convenience of the judge. Secondly, the premises should be used exclusively for the administration of justice. We deem respondent's act of converting a room of the court as his living quarters as misconduct, which under-mines the dignity of the court.

As to respondent's taking cognizance of election cases over which he had no jurisdiction, complainant presented copies of restraining orders issued by the Supreme Court in G.R. No. 81784 entitled "Rolando O. Esturias v. Judge Dictado" and in G.R. No. 81550 "Cesar A. Cerenio v. Judge Dictado". Inasmuch as the restraining orders do not in themselves give an adjudication on the merits of these cases, there is no basis to rule that respondent had acted with grave abuse of discretion or without jurisdiction, and We decline to so rule.

Complainant alleges that respondent held a party in his chambers with politicians, after which he granted a petition for injunction filed by Mayor Froilan Pimentel, and that respondent issued a restraining order in favor of the brother-in-law of Congressman Unico, the latter allegedly being instrumental in the appointment of respondent to the judiciary (TSN, May 17, 1991, pp. 51--56).

The investigating Justice found that these charges were based on "rumors", and the matters on which the complainant Atty. Lapak testified were not of his personal knowledge, but were from "reliable sources" whom he did not identify (TSN, May 17, 1991, Ibid). Consequently, We cannot give credence to these charges.

A.M. No. 88-224

Complainant Delfin Ang charges respondent with:

- I. Failure to give due notice of hearings and the decision;
- II. Undue denial of appeal;
- III. Oppressive use of contempt powers.

As a result of a vehicular accident, an action for damages was filed in the Court of First Instance of Camarines Norte (Civil Case No. 2981) against herein complainant Delfin Ang, the driver of the vehicle involved in the accident, his employer, Yu Kim Pue, and Imperial Insurance, Inc. A certain Atty. Victorino V. Jaiver, representing complainant and Yu, filed a Memo-randum dated August 22, 1983.

On November 28, 1983, the then presiding judge issued an order for the retaking of the testimonies of two witnesses for the plaintiff in connection with the claim for damages, in view of missing stenographic notes. However, a copy of the transcript of the steno-graphic notes was produced by Yu, with only a single page missing. By this time, Yu was being represented by another counsel.

On September 21, 1987, Ang received the respondent's decision dated June 22, 1987 ordering him and Imperial Insurance, Inc. to pay damages to plaintiff. Complainant, by himself, filed a notice of appeal on October 6, 1987. Respondent "disapproved and denied" the notice of appeal "considering that defendant Delfin Ang was represented by counsel Atty. Victorino V. Javier and to whom a copy of the decision was sent and received by him on July 15, 1987, the Notice of Appeal filed by Delfin Ang apparently is filed out of time" (Record, Civil Case No. 2981, p. 364).

Ang filed a petition for certiorari in the Court of Appeals (CA-G.R. SP No. 13185), which was granted. The

appellate court set aside respondent's decision, and all proceedings which took place after Atty. Javier ceased to have active participation therein were annulled on the ground that Ang was denied due process. The appellate court further ordered the reopening of the case for trial.

I. Failure to give due notice of hearings and the decision; and II. Undue denial of appeal

In the record of Civil Case No. 2981 there is no notice of withdrawal by Atty. Javier, nor any indication of when the new counsel entered his appearance. Atty. Javier was sent notices of hearings, copies of all orders and a copy of the decision.

In view of the above findings, the investigating Justice concluded that respondent did not wittingly fail to give due notice of hearings and of the decision, and did not unduly deny complainant's appeal. We agree.

We note that respondent took cognizance of the case only beginning in 1986, and only from the retaking of the testimony in the missing pages. By then, the case had been through at least four judges.

III. Oppressive use of contempt powers

After Civil Case No. 2981 was remanded to the trial court for re-hearing, complainant for himself, with Atty. Lapak, filed a motion for voluntary inhibition alleging that "[he] feels that he has no chance of winning the case against the plaintiff in whose favor [respondent] rendered a favorable judgment"; that respondent "may no longer possess the cold neutrality of a judge to be able to render an impartial judgment;" that "the annulment of the judgment [by the Court of Appeals] may have antagonized [respondent]" (Record, Civil Case No. 2981, p. 393).

This motion was denied during the hearing of July 19, 1988 and in respondent's order dated July 19, 1988. In this order, complainant and Atty. Lapak were held in direct contempt and sentenced to three days imprisonment. The basis of the direct contempt charge was the "clearly vicious antics of Atty. Jose L. Lapak in placing this court open to doubt by the public [which] will eventually erode the confidence of the people who consider the court the last bastion of fairness, equity and justice" (Record, Civil Case No. 2981, p. 399). After their motion for reconsideration was denied, complainant and Atty. Lapak were committed to prison.

Atty. Lapak filed a petition for certiorari in the Court of Appeals (CA-G.R. SP No. 15149) asking for the nullification of respondent's July 19, 1988 order. The appellate court denied the petition stating that "[a] mere general averment that a previous decision of the respondent judge in Civil Case No. 2981 has been reversed by the Court of Appeals, and the case has been ordered reopened, is not a sufficient proof of bias or prejudice as would justify our issuance of an order disqualifying the judge from further proceeding in the instant case" (Record, Civil Case No. 2981, p. 421). The appellate court further stated that the issue on the validity of complainant and Atty. Lapak's had become moot and academic, as at the time the decision was promulgated, they had already served their three-day sentence.

Atty. Lapak apparently also filed a petition for habeas corpus with the Supreme Court (UDK-8770). The writ was granted; however, the case was eventually dropped from the Court's agenda in a resolution dated February 9, 1989 for failure of Atty. Lapak to file the appropriate pleading.

In a resolution dated August 10, 1989 in G.R. No. 84239 (Delfin Ang, et al. v. Dictado), We dismissed complainant's petition on the inhibition of respondent "[i]n view of the fact that a decision of a trial judge against the herein petitioner will not necessarily lead to a repetition of the same adverse judgment when the case is remanded by the appellate court to the trial court" (Record, Civil Case No. 2981, p. 463).

Complainant Ang and Atty. Lapak allege that respondent used his contempt powers oppressively. On the other hand, respondent deemed the statements in the motion for voluntary inhibition contemptuous.

Direct contempt is conduct assailing the authority and dignity of the court (*Silva v. Lee, Jr.*, 169 SCRA 513 [1989]; and cases cited therein). The mere fact that respondent did not see any validity in the grounds given in the motion for his voluntary inhibition does not render the movants liable for direct contempt. It may be true that the contents of the motion were critical of respondent's prior actions and expressed concern regarding his impartiality. *Ang and Atty. Lapak* may have insulted respondent. This, however, cannot be considered derogatory, offensive, or malicious as to undermine the integrity and dignity of the court and hamper the administration of justice.

We cannot countenance respondent's misappreciation of the scope of his contempt powers in the present case, which resulted in *Ang and Atty. Lapak's* imprisonment.

A.M. No. RTJ-89-320

Complainant Catalino Jerez charges respondent with:

- I. Unjust denial of the motion for re-examination;
- II. Requiring or suggesting that complainant change his counsel *Atty. Lapak*;
- III. Improper imposition of a high penalty;
- IV. Knowingly rendering an unjust judgment.

I. Unjust denial of the motion for re-examination

In Criminal Case No. 4407, accused Catalino Jerez, complainant in this administrative complaint, was charged with grave threats. The criminal case arose from letters allegedly written by the accused to *Elsa O. Ilagan*.

On September 23, 1987, hearing was re-set to October 15 to allow the accused to get an expert witness. On October 9, the accused filed a motion requesting the trial court to direct the NBI to transmit to the PC Crime Laboratory several documents where the accused's handwriting appeared and which were used by the prosecution to establish that the handwriting on the letters was that of the accused. The accused manifested that he wanted to avail of the services of the PC Crime Laboratory because he could not avail of the services of a private handwriting expert.

The motion was denied on the ground that "the court will be making [the NBI and the PC] quarrel" (*TSN*, November 24, 1987, p. 6).

The accused was eventually convicted and sentenced to the penalty of six years and one day to eight years imprisonment.

On appeal to the Court of Appeals (CA-G.R. CR No. 05914), the decision was reversed. The appellate court agreed with the manifestation of the Solicitor General that: "1) [t]he standards used by the expert witness were not sufficient to establish that appellant wrote the threatening letters; and 2) [a]ppellant was denied due process of law."

On the matter of the denial of the complainant's motion, the Solicitor General stated that:

"It should be stressed that appellant's conviction was based solely on the testimony of the NBI expert. On the other hand, only appellant could testify in his defense. Under the circumstances, appellant was deprived of his right to present another witness when the trial court denied his motion for it to issue an order directing the NBI to transmit the questioned documents to the PC Crime Laboratory for another examination.

On motion of the accused showing good cause and with notice to all parties, the court may order the

production or inspection of material evidence in the possession or under the control of the prosecution, the police, or any other law investigating agencies (Sec. 11, Rule 116, Rules of Court). Appellant's motion that the questioned documents be ordered transmitted to the PC Crime Laboratory for another examination was not unreasonable. Its denial in effect deprived him of the opportunity to be heard, since his defense turned on the refutation of the testimony of the NBI handwriting expert" (Manifestation and Motion in Lieu of Appellee's Brief, p. 25).

The record does not show any circumstance that is manifest of any ill motive on the part of respondent in denying the request of complainant to secure the assistance of the PC Crime Laboratory in his defense. However, We cannot ignore that respondent's denial of the motion violated complainant's right to have compulsory process to secure the production of evidence in his behalf (Sec. 14 (2), Art. III, 1987 Constitution).

II. Requiring or suggesting that complainant change his counsel Atty. Lapak

Complainant alleges that after the decision in Criminal Case No. 4407 was rendered, he spoke with respondent in the latter's sala to request the reduction of the penalty imposed upon him so that he could avail of the provisions of the Probation Law. Respondent allegedly told him to terminate the services of Atty. Lapak and to hire a certain Atty. Narra. He further alleges that when he went to see Atty. Narra, the latter told him to prepare P500.00 for respondent (TSN, March 21, 1991, pp. 18-19).

We accept the finding of the investigating Justice that complainant was not a credible witness and that his testimony regarding this charge was self-serving and uncorroborated.

III. Improper imposition of a high penalty

In determining the penalty to be imposed upon complainant, respondent did not apply the Indeterminate Sentence Law. Unawareness or unfamiliarity with the application of the Indeterminate Sentence Law is censurable (In Re: Jose G. Paulin, 101 SCRA 605 [1980]).

IV. Knowingly rendering an unjust judgment

The Court of Appeals did not make any finding of bad faith relative to respondent's decision in Criminal Case No. 4407. We cannot infer bad faith merely from the reversal by the appellate court of respondent's decision. Furthermore, during the investigation conducted in this administrative case, complainant did not point to specific circumstances which may show that respondent consciously and deliberately intended to perpetrate an injustice.

A.M. No. RTJ-89-389

Complainant Florencia Ropeta charges respondent with:

- I. Infidelity in the custody of public documents;
- II. Knowingly rendering an unjust judgment; and
- III. Failure to observe the 90-day period for deciding cases.

I. Infidelity in the custody of public document; and III. Failure to observe the 90-day period for deciding cases

These two charges, being interrelated, shall be discussed jointly.

Complainant alleges that respondent removed from the record of Civil Case No. 5287 (Amada Balon v. Santos Ropeta) the duplicate original of the decision in that case and substituted in its place a supposed original. According to complainant, the decision initially attached to the record contained the date when the decision was received by the clerk of court of respondent's sala, whereas the copy inserted in substitution gave no such

indication. The substitution was allegedly done to conceal the fact that the decision was antedated, and to feign compliance with the 90-day period for deciding cases.

It appears that Civil Case No. 5287 was considered submitted for decision on November 4, 1987, pursuant to the respondent's order of October 20, 1987, which provided that the "parties are given 15 days from [that day] within which to submit their memorandum simultaneously, with or without which, the case will be considered submitted for decision." Plaintiff's memorandum dated October 28, 1987 appears in the record, but no-where in the record is defendant's memorandum.

Defendant filed a motion for voluntary inhibition on March 7, 1988, which respondent denied in his order dated March 11, 1988. In this order, respondent stated that:

"x x x x x x x x x x"

The Court, after going over the motion for voluntary inhibition is convinced that said motion is now moot and academic considering that the court has already decided the case as of January 18, 1988, the release of which was delayed due to the many works (sic) that the steno-reporters of this court have. x x x"

The original of the decision attached to the record is dated "January 18, 1988" or well-within the 90-day period mandated by the Constitution. The registry receipts attached to the decision show that copies thereof were mailed to the counsel of the parties on March 9, 1988 and March 10, 1988.

The evidence on record, while giving rise to the suspicion that respondent antedated his decision, is not sufficient in law to support said charge.

However, while it may be accepted that respondent did pen the decision within the 90-day-period, We cannot ignore the fact that he failed to timely release the same. It is not enough that a judge writes his decision; it is important to promulgate and make it known to all concerned at the earliest possible time (*Nidua v. Lazaro*, 174 SCRA 581 [1989]; *Mangulabnan v. Tecson*, 101 SCRA 810 [1980]) if only to dispel any suspicion that something sinister is going on. One of the laments of litigants is the withholding by judges of their decisions which they had long prepared and signed.

We cannot understand respondent's passing the blame for the delay in the release of the decision, as distinguished from its preparation, to the stenographers-reporters. The respondent cannot take refuge behind the inefficiency or mismanagement of his court personnel (*Nidua v. Lazaro*, supra).

II. Knowingly rendering an unjust judgment

Respondent decided Civil Case No. 5287 in favor of the plaintiff therein. On appeal, the Court of Appeals (CA-G.R. No. CV No. 17765) reversed the decision stating that "the evidence was not sufficient to sustain the judgment of the trial court and that said judgment was contrary to the law and jurisprudence."

On the matter of the motion for inhibition, the appellate court stated as follows:

"In the language of the renowned Justice Holmes of the United States Bench, "a judge must learn to suppress his personal emotion, must show a willingness to suspend judgment until a comprehensive survey of the ground, and an appreciation and understanding of the different attitudes and viewpoints of those involved in the controversy has been made and must learn to transcend his own narrow prejudices or prejudgment." We find these worthy traits of a judge wanting in the author of the decision now on appeal, and find his honor lacking in that degree of impartiality expected of him (Record, Civil Case No. 5287, p. 140; Underlining supplied).

On appeal to the Supreme Court (G.R. No. 90064), We affirmed the above resolution.

The appellate court found that the decision of the respondent was not supported by the evidence, and furthermore, was contrary to law and jurisprudence, thus prompting said court to question respondent's impartiality.

We find that respondent's actuations in the instant case display his partiality.

* * * * *

In consideration of the reports of the investigating Justice and the records of the administrative complaints, the Court DISMISSES for lack of merit:

(i) In A.M. No. RTJ-86-50, the third and fourth charges (refusing to abide by a restraining order issued by the Court of Appeals against the enforcement of an unjust decision, and, citing the plaintiffs in Civil Case No. 5340 for contempt on the ground of alleged disobedience of the unjust decision);

(ii) In A.M. No. RTJ-88-222, all the charges of graft and corruption, except that in relation to respondent's acceptance of benefits from a litigant, the second charge of questionable trial scheduling, and, the fifth charge of injudicious and immoral acts, except the specific charge relative to respondent's use of a room in the court premises as his living quarters;

(iii) In A.M. No. 88-224, the first and second charges (failure to give due notice of hearings and the decision, and, undue denial of appeal in Civil Case No. 2981);

(iv) In A.M. No. RTJ-89-320, the second and fourth charges (requiring or suggesting that complainant change his counsel Atty. Lapak, and, knowingly rendering an unjust judgment); and,

(v) In A.M. RTJ-89-389, the first and third charges (infidelity in the custody of public documents, and, failure to observe the 90-day period for deciding cases).

In all the remaining charges, the Court finds that respondent failed to meet the exacting standards required of his office, as set forth in Canons 1, 2 and 3 of the Code of Judicial Conduct, which provide as follows:

"Canon 1

A judge should uphold the integrity and independence of the judiciary.

Canon 2

A judge should avoid impropriety and the appearance of impropriety in all activities.

Canon 3

A judge should perform his official duties honestly, and with impartiality and diligence."

The Court finds respondent GUILTY:

(i) In A.M. No. RTJ-86-50, of evident partiality under the first and second charges, as manifested by his acts in connection with the issuance of the writ of execution in Civil Case No. 5340;

(ii) In A.M. No. RTJ-88-222, of gross misconduct in accepting material benefits from a litigant, of gross ignorance of the law relative to the third charge, and of misconduct under the fifth charge;

(iii) In A.M. No. RTJ-88-224, of oppressive use of his contempt power under the third charge;

(iv) In A.M. No. RTJ-89-320, of violating the complainant's right to have compulsory process to secure the production of evidence in his behalf under the first charge, and, of gross ignorance of the law relative to the improper imposition of the penalty in Criminal Case No. 4407 under the third charge; and,

(v) In A.M. No. RTJ-89-389, of evident partiality under the second charge.

The infractions of respondent, especially when viewed together instead of as separate and isolated acts, show that he is unfit to discharge the duties and functions of a judge so as to warrant the imposition of the extreme penalty of DISMISSAL from the service.

WHEREFORE, respondent Judge Luis D. Dictado is hereby DISMISSED from the service with prejudice to reinstatement or appointment to any public office including government-owned or controlled corporations. He may, however, enjoy all vacation and sick leave benefits that he has earned during the period of his government service.

This judgment is immediately executory and respondent is hereby ordered to forthwith vacate his position and desist from performing any further official functions appertaining to said office.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Padilla, J., on official leave.

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