

STATE PROSECUTOR RINGCAR B. PINOTE, PETITIONER, VS. JUDGE ROBERTO L. AYCO, RESPONDENT.

A.M. NO. RTJ-05-1944. December 13, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On August 13 and 20, 2004, Judge Roberto L. Ayco of Branch 26, Regional Trial Court (RTC) of South Cotabato allowed the defense in Criminal Case No. 1771 TB, "People v. Vice Mayor Salvador Ramos, et al.," for violation of Section 3 of Presidential Decree (P.D.) No. 1866, to present evidence consisting of the testimony of two witnesses, even in the absence of State Prosecutor Ringcar B. Pinote who was prosecuting the case.

State Prosecutor Pinote was on August 13 and 20, 2004 undergoing medical treatment at the Philippine Heart Center in Quezon City, hence, his absence during the proceedings on the said dates.

On the subsequent scheduled hearings of the criminal case on August 27, October 1, 15 and 29, 2004, State Prosecutor Pinote refused to cross-examine the two defense witnesses, despite being ordered by Judge Ayco, he maintaining that the proceedings conducted on August 13 and 20, 2004 in his absence were void.

State Prosecutor Pinote subsequently filed a Manifestation on November 12, 2004 before the trial court, he restating why he was not present on August 13 and 20, 2004, and reiterating his position that Judge Ayco's act of allowing the defense to present evidence in his absence was erroneous and highly irregular. He thus prayed that he should not be "coerced" to cross-examine those two defense witnesses and that their testimonies be stricken off the record.

By Order issued also on November 12, 2004, Judge Ayco, glossing over the Manifestation, considered the prosecution to have waived its right to cross-examine the two defense witnesses.

Hence, arose the present administrative complaint lodged by State Prosecutor Pinote (complainant) against Judge Ayco (respondent), for "Gross Ignorance of the Law, Grave Abuse of Authority and Serious Misconduct."

By Comment dated March 18, 2005, respondent proffers that complainant filed the complaint "to save his face and cover up for his incompetence and lackadaisical handling of the prosecution" of the criminal case as in fact complainant was, on the request of the Provincial Governor of South Cotabato, relieved as prosecutor in the case by the Secretary of Justice.

And respondent informs that even after complainant was already relieved as the prosecutor in the case, he filed a motion for his inhibition without setting it for hearing.

On the above-said Manifestation filed by complainant before the trial court on November 12, 2004, respondent brands the same as "misleading" and "highly questionable," complainant's having undergone medical treatment at the Philippine Heart Center on August 13 and 20, 2004 having been relayed to the trial court only on said date.

On his Order considering the prosecution to have waived presenting evidence, respondent justifies the same on

complainant's failure to formally offer the evidence for the prosecution despite several extensions of time granted for the purpose.

Finally, respondent proffers that no substantial prejudice was suffered by the prosecution for complainant was permitted to cross examine the two defense witnesses but he refused to do so.

By way of counter-complaint, respondent charges complainant with "Contempt of Court" and "Grave Misconduct" and/or "Conduct Unbecoming of a Member of the Bar and as an Officer of the Court."

On evaluation of the case, the Office of the Court Administrator (OCA), citing Section 5, Rule 110 of the Revised Rule on Criminal Procedure, finds respondent to have breached said rule and accordingly recommends that he be reprimanded therefor, with warning that a repetition of the same or similar act shall be dealt with more severely.

Rule 110, Section 5 of the Revised Rules of Criminal Procedure reads:

Sec. 5. Who must prosecute criminal actions. - All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. In case of heavy work schedule or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecution Office to prosecute the case subject to the approval of the Court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

x x x (Underscoring supplied)

Thus, as a general rule, all criminal actions shall be prosecuted under the control and direction of the public prosecutor.

If the schedule of the public prosecutor does not permit, however, or in case there are no public prosecutors, a private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecution Office to prosecute the case, subject to the approval of the court. Once so authorized, the private prosecutor shall continue to prosecute the case until the termination of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

Violation of criminal laws is an affront to the People of the Philippines as a whole and not merely to the person directly prejudiced, he being merely the complaining witness.[1] It is on this account that the presence of a public prosecutor in the trial of criminal cases is necessary to protect vital state interests, foremost of which is its interest to vindicate the rule of law, the bedrock of peace of the people.[2]

Respondent's act of allowing the presentation of the defense witnesses in the absence of complainant public prosecutor or a private prosecutor designated for the purpose is thus a clear transgression of the Rules which could not be rectified by subsequently giving the prosecution a chance to cross-examine the witnesses.

Respondent's intention to uphold the right of the accused to a speedy disposition of the case, no matter how noble it may be, cannot justify a breach of the Rules. If the accused is entitled to due process, so is the State.

Respondent's lament about complainant's failure to inform the court of his inability to attend the August 13 and 20, 2004 hearings or to file a motion for postponement thereof or to subsequently file a motion for reconsideration of his Orders allowing the defense to present its two witnesses on said dates may be mitigating. It does not absolve respondent of his utter disregard of the Rules.

WHEREFORE, respondent Judge Roberto L. Ayco is hereby ordered to pay a fine FIVE THOUSAND PESOS (P5,000.00) with warning that a repetition of the same or similar acts in the future shall be dealt with more

severely.

Respecting the counter-complaint against complainant State Prosecutor Ringcar B. Pinote, respondent is advised that the same should be lodged before the Secretary of Justice.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Vide: *People v. Ramos*, 207 SCRA 144, 152 (1992).

[2] Vide: *People v. Arcilla*, 256 SCRA 757, 763-764 (1996).

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