

DAVID ORTIZ, COMPLAINANT, VS. JUDGE LUCIO P. PALAYPAYON, RESPONDENT.

A.M. No. MTJ-93-823. July 25, 1994

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Judge Lucio Palaypayon of the Municipal Trial Court of Tinambac, Camarines Sur is administratively charged with gross ignorance of the law tainted with vindictiveness and oppression relative to a criminal case pending before respondent judge.

The charge stemmed from a complaint for damage to property thru reckless imprudence filed before the respondent's sala on May 19, 1993 involving a collision between a Toyota Corolla owned by one Rosalinda Tanay and then driven by her husband, Roberto Tanay, and a mini-truck owned by one Juliana Lu which was entrusted to herein complainant, and then driven by one Rodrigo Vasquez.

It appears that on May 19, 1993, respondent judge issued an order for the arrest of accused Juliana Lu, Rodrigo Vasquez and herein complainant, David Ortiz, on the basis of mere affidavits by the offended party and without conducting the preliminary investigation required by Rule 112 of the Revised Rules of Court. Respondent judge is likewise charged with fixing and imposing a grossly excessive bond amounting to P30,000.00 for the accused's provisional liberty in violation of Article 365 of the Revised Penal Code and Department of Justice Circular No. 10 dated July 3, 1987 which provides that for crimes punishable only by fine, the amount of the bail shall be equal to three-eighths (3/8) of the amount of the fine but shall not exceed P6,000.00. Furthermore, it is alleged in the administrative complaint that herein complainant was wrongfully included as one of the accused even if there existed no basis for his indictment of the criminal act as he was not among the nine (9) passengers nor was he the driver of the mini-truck.

Respondent judge, instead of filing his comment on the complaint, filed a Motion to Dismiss alleging lack of factual or legal basis. He contends that Section 3, Rule 112 of Revised Rules of Court on Criminal Procedure, was substantially, if not entirely, complied with. He claims that pursuant to the said rule, he personally examined in writing and under oath the private complainant and his witnesses by asking the same questions propounded to them in their sworn statements and the same answers were given. At the same time, respondent judge maintains that it is customary for him to adopt the sworn statements of the complainant and the witnesses if he is satisfied of the existence of probable cause. This practice, he claims, will expedite the proceedings and save the party litigants' time and money.

With respect to the charge of excessive bail, respondent judge opines that under Department of Justice Circular No. 10 and the Bail Bond Guide of 1981 in the offense of Damage to Property thru Reckless Imprudence, the amount of bail is 3/8 of the value of the damage caused, thus, 3/8 of P80,000.00 (the value of the damage caused) is P30,000.00, the bail fixed for the herein accused's provisional liberty. He further argues that complainant is estopped from questioning the amount of bail because he failed to avail of the remedy of asking for the reduction

of the same in the first instance before his sala.

When asked why complainant was included as one of the accused, respondent judge explained that the civil aspect of the criminal complaint was deemed impliedly instituted with the latter, hence, he was included as one of the accused because his liability appeared civil in nature.

Complainant filed his Comment on the said Motion to Dismiss.

Complainant David Ortiz states that in averring that he asked the same questions and was given the same answers by the complainant and the witnesses, respondent judge, in effect, admits that he did not conduct the requisite preliminary investigation. He further contends (a) that he is not estopped from questioning the amount of the bail bond and (b) that his inclusion as caretaker and owner of the mini-truck in the criminal complaint is misleading.

On September 3, 1993, respondent judge submitted his comment which merely reiterates the arguments raised in his motion to dismiss. He likewise maintains that the instant case was filed to spite him as Ortiz bears a grudge against him.

The complaint has merit.

On May 19, 1993, Rosalinda Tanay and her husband, Roberto Tanay, executed sworn statements in question and answer form before the Tinambac Police Station.

On the same date, respondent judge adopted the said sworn statements as his own preliminary examination without personally examining the complainant and her witnesses. The respondent's order reads:

Finding the statement of the complainant and his (sic) witness to be sufficient and exhausted (sic) enough, same is duly adopted by the undersigned as his preliminary examination. There being probable cause that the crime of Damage to Property Thru Reckless Imprudence has been committed the accused are probably guilty thereof. Let warrants of arrest be issued against the accused and for their temporary liberty a bail bond in the amount of P30,000.00 each is hereby fixed.

SO ORDERED. (Rollo, p. 9).

The respondent judge's action clearly violates constitutional provisions and established rules of procedure.

Article III, Section 2 of the 1987 Constitution provides:

"xxx no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce xxx." (Emphasis ours).

In relation thereto, Rule 112, Section 6 (b) of the 1985 Rules on Criminal Procedure, as amended, provides:

"xxx xxx xxx

(b) By the Municipal Trial Court. - If the municipal trial judge conducting the preliminary investigation is satisfied after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest."

From the foregoing factual and legal milieu, it is evident that there was no preliminary investigation conducted. Respondent judge did not personally examine the complainant and her witnesses by asking searching questions and answers to satisfy himself of the existence of probable cause as mandated by law. He simply ignored the constitutional requirement of procedural due process. This Court cannot countenance such blatant practice of

disregarding fairly elementary legal principles and substituting it with an unorthodox and highly irregular practice which appears convenient only to respondent judge.

A person presiding over a court of law must not only apply the law but must live and abide by it and render justice at all times without resorting to short cuts clearly uncalled for. "Judges are not common men and women, whose errors men and women forgive and time forgets. Judges sit as the embodiment of the people's sense of justice, their last recourse where all other institutions have failed" (Office of the Court Administrator vs. Bartolome, 203 SCRA 337). As such, they must show and prove that they are men worthy of their robes.

Furthermore, under the 1985 Rules on Criminal Procedure, aside from municipal trial judges, only fiscals and provincial, city, and state prosecutors, can conduct preliminary investigation. A police officer was, and is not authorized to conduct preliminary investigation, hence, a judge cannot and must not rely on an inquiry made by a police investigator as the law mandates him to conduct his own preliminary examination.

We need not underscore the importance of a preliminary investigation or how the same should be conducted in order for it to conform with the essential requisites of due process, but for purposes of emphasis and clarity, we reiterate our ruling in the cases of Salonga vs. Pano, et al. (134 SCRA 438, 461-462) and Geronimo vs. Ramos (136 SCRA 435, 449-450), where we held that:

"The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials. (Trocio v. Manta, 118 SCRA 241; citing Hashim v. Boncan, 71 Phil. 216). The right to a preliminary investigation is a statutory grant, and to withhold it would be to transgress constitutional due process. (See People v. Oandasan, 25 SCRA 277). However, in order to satisfy the due process clause it is not enough that the preliminary investigation is conducted in the sense of making sure that a transgressor shall not escape with impunity. A preliminary investigation serves not only the purposes of the State. More important, it is a part of the guarantees of freedom and fair play which are birthrights of all who live in our country. It is, therefore, imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons (See La Chemise Lacoste, S.A. v. Fernandez, 129 SCRA 391). xxx"

For all the foregoing, we find respondent judge guilty of ignorance of the law.

With respect to the issue of inclusion of herein complainant as one of the accused in the criminal case, it would suffice to state that had the requisite preliminary investigation been conducted by respondent judge, the criminal complaint against Juliana Lu and herein complainant as owner and caretaker of the mini-truck, respectively, would have been dismissed as their liability, should there be any, is purely civil in nature.

Finally, the charge of excessive bail imposed finds no support in the Department of Justice Circulars and Bail Guides on the matter. Circular No. 10-A explicitly provides that the Bail Guide of 1981 as provided in Ministry Circular No. 36, Series of 1981, as amended by Ministry Circular No. 8, Series of 1985, shall be used in fixing the amount of bail for other offenses not specified therein. Circular No. 10-A enumerates only certain crimes and Damage to Property thru Reckless Imprudence, which is punishable only by fine, is not among those enumerated, hence, the Bail Bond Guide of 1991 still applies to it. Bail for the subject offense is therein set at three-eighth (3/8) of the value of the damage caused, hence, 3/8 of P80,000.00 is P30,000.00, the bail imposed by respondent judge

in the present case. Consequently, the bond fixed herein is neither excessive nor oppressive.

WHEREFORE, the Court resolves to hold respondent Judge Lucio P. Palaypayon administratively liable for gross ignorance of the law and to accordingly impose on him the fine of Ten Thousand Pesos (P10,000.00) with a STERN WARNING that subsequent commission of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.

Bellosillo, J., on leave.

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