

IN RE: THE HON. RAFAEL C. CLIMACO, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, BRANCH I, SILAY CITY.

A.C. No. 134-J. January 21, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

In a verified complaint filed on October 15, 1968 by Acting City Fiscal Norberto L. Zulueta, of Cadiz, Negros Occidental, and Eva Mabug-at, widow of the deceased Norberto Tongoy, respondent is charged with gross malfeasance in office, gross ignorance of the law, and for knowingly rendering an unjust judgment.

The aforecited charges stemmed from the order of respondent dated September 5, 1968 and his decision acquitting accused Carlos Caramonte promulgated on September 21, 1968, in Criminal Case No. 690, entitled "People of the Philippines versus Isabelo Montemayor, et al.," for Robbery in Band with Homicide.

In the Resolution of this Court dated October 22, 1968, the complaint was given due course, and respondent was required to file an answer to the complaint within ten (10) days from notice thereof, and after the filing of respondent's answer, the case was referred on December 17, 1968 to the Hon. Nicasio Yatco, Associate Justice of the Court of Appeals, for investigation and report. On April 11, 1968, after conducting the requisite investigation thereon, the investigator submitted his Report recommending the exoneration of respondent.

It appears from the record that Acting City Fiscal Norberto L. Zulueta, of Cadiz, Negros Occidental, filed a charge for Robbery in Band with Homicide against thirteen (13) persons as principals, seven (7) persons as accomplices, and two (2) persons as accessories, with the Court of First Instance of Negros Occidental, in Criminal Case No. 690. The case was assigned to Branch I, Silay City, presided over by the respondent. Out of the 13 persons charged as principals for the crime, only Carlos Caramonte was arrested and tried (the six other alleged principals, including Isabelo Montemayor, remained at large), while of the persons charged as accomplices and accessories, the case with respect to them was dismissed at the instance of the prosecution or with its conformity, in the following manner:

(a)

Before arraignment:-

Jorge Canonoyo

(b)

After arraignment:-

Agustin Cañete

Rosendo Cañete

Arsenio Luyao

Elias Giducos

Pedro Layon

Antonio Placencia

(c)

Accused Luciano Salinas was discharged from the information and utilized as state witness; and

(d)

Accused Honorato de Sales, Paulino Quijano, Cristeta Jimenez, Constancio Pangahin, Julio Elmo, Primitivo Mata, and Rene Fernandez before the Amended Information of April 26, 1968, were dropped.

After the case was submitted for decision, respondent issued an order, dated September 5, 1968, which reads as follows:

"The parties are notified that the Court intends to take judicial notice that the Mateo Chua-Antonio Uy Compound in Cadiz City is the hub of a large fishing industry operating in the Visayas; that the said compound is only about 500 meters away from the Police Station and the City Hall in Cadiz; and that the neighborhood is well-lighted and well-populated.

SO ORDERED."

Thereafter, or more particularly, on September 21, 1968, respondent promulgated his decision in the case acquitting Carlos Caramonte.

Subsequently, Acting City Fiscal Zulueta appealed the aforementioned decision to this Court; and when required to comment on said appeal, Solicitor General Antonio P. Barredo, now an Associate Justice of this Court, submitted his comment on November 28, 1968 to the effect that the prosecution cannot appeal from the judgment of acquittal in view of the constitutional protection against double jeopardy, and made the observation that "While the validity of the ocular inspection conducted by the lower court is open to doubt, the unvarnished fact remains that the judgment of acquittal was not premised solely on the results of said ocular inspection, as erroneously contended by the prosecutor. A cursory perusal of the decision will at once show that said acquittal was predicated on other well-considered facts and circumstances so thoroughly discussed by the lower court in its decision and the least of those was its observation arising from the ocular inspection."

On January 30, 1969, this Court, through Justice Fernando, promulgated its Resolution dismissing the appeal (G. R. No. L-29599). In the meantime, on October 15, 1968, the aforementioned complaint against respondent was instituted as aforestated.

In his Report, the investigator stated:

"Under the first indictment, complainants bewail as gross malfeasance in office and gross ignorance of the law, the following behaviour of the respondent Judge in the case:

'I. GROSS MALFEASANCE IN OFFICE

and

GROSS IGNORANCE OF THE LAW

'After both parties submitted their respective Memorandum attached herewith as Annexes 'C' and 'D', Criminal Case No. 690 for 'Robbery in Band with Homicide' was closed and submitted for Decision on July 1, 1968.

'About one and a half (1-1/2) months thereafter, or at about 3:00 o'clock in the afternoon of Sunday, 11

August 1968, respondent judge made a secret ocular inspection of the poblacion of the City of Cadiz. Without anybody to guide him, he visited the places which he thought erroneously were the scene of the robbery where the Chief of Police was killed by the Montemayor gang at about 11:00 o'clock of the dark night of December 31, 1967. It should be noted that Cadiz City is 65 kms. away from Bacolod City, the capital of the province. Because of that undeniably biased ocular inspection, the honorable trial judge, who is reputed to be brilliant, issued a reckless, extremely senseless and stupid order dated 5 September 1968, to wit:

'The parties are notified that the Court intends to take judicial notice that the Mateo Chua-Antonio Uy Compound in Cadiz City is the hub of a large fishing industry operating in the Visayas; that the said compound is only about 500 meters away from the Police Station and the City Hall in Cadiz; and that the neighborhood is well-lighted and well-populated.

'SO ORDERED.'—

which Order, as any student of law would tell you, is null and void, and illegal per se. Why respondent Honorable Judge went out of his way to gather those immaterial and 'fabricated' evidence in favor of the accused is shocking to the conscience. To say the least, it is gross ignorance of the law. Why did respondent judge show his hand unnecessarily and prematurely? Perhaps, a psychologist or a psychiatrist would explain that the Order of September 5th is that of an anguished mind; an Order issued by a Judge who for the first time had to violate his oath of office; by a judge who, due to political pressure and against his will and better judgment, had to acquit councilor Carlos Caramonte of the municipality of Bantayan, province of Cebu. Like an amateur murderer respondent judge left telltale clues all around. A murderer, however, may have a strong motive. But what of a judge who knowingly commits a 'revolting injustice' or through gross ignorance of the law?

"It could be gleaned from a careful perusal of the complaint that complainants bemoaned the fact that the respondent Judge conducted a 'secret ocular inspection' of the poblacion of the City of Cadiz at about 3:00 o'clock in the afternoon of Sunday, August 11, 1968, without anybody to guide him, much less in the presence of the prosecution and concluded that such alleged secret ocular inspection was the basis of the Order of September 5, 1968. A painstaking scrutiny of the records as well as the evidence presented by the parties does not show any concrete proof that respondent Judge did conduct a 'secret ocular inspection' of the poblacion of the City of Cadiz as seriously charged by the complainants. In fact, the lone witness presented by the complainants in this case did not even make an insinuation supporting such serious allegation of said complainants. The fact is, from the order of September 5, 1968, the respondent Judge took judicial notice 'that the Mateo Chua-Antonio Uy Compound in Cadiz City is the hub of a large fishing industry operating in the Visayas; that the said compound is only about 500 meters away from the Police Station and the City Hall in Cadiz; and that the neighborhood is well-lighted and well-populated.' Nowhere therefrom could it be deduced that respondent Judge took judicial notice of these facts by virtue of an ocular inspection he conducted on the date alleged by the complainants.

"In any event, there is likewise nothing in the record to support the charge of the complainants that the order of September 5, 1968, was made by the respondent Judge as the sole basis for the acquittal of Carlos Caramonte. In fact, the decision of the respondent Judge shows that in rendering a judgment of acquittal in the case before him, said respondent entertained serious doubts as to the guilt of Caramonte because of the failure of anyone — in the Chua and in the Uy households, the security guards, the policemen who engaged the robbers in battle — to identify Caramonte as one of the participants in the alleged crime. Thus, the decision pertinently reads:

'Is Caramonte guilty?

'In spite of the admission of Caramonte's Exh. C and the damaging inferences derived from his staying away from the ceremony when the newly--elected officials of Bantayan were inducted into office, there is doubt in the mind of the Court as to his actual participation in the bold raid on Cadiz City on December 31, 1967, because of the failure of anyone — the adults and the children in the Chua and in the Uy households, the

security guards, the policemen who engaged the robbers in battle — to say on the stand that Caramonte was indeed one of the robbers.

'The Uy spouses and Mateo Chua all took the stand. They and the other members of the household were tied up by the robbers, who then ransacked the two houses for about an hour. Thereafter, some of them were taken to the seashore to prevent the police from firing on the retreating robbers.

'Mateo Chua said at the trial:

'Q

At about 9:30 in the evening of Dec. 31, 1967, where were you?

A

I was in my house.

Q

Do you remember anything unusual that happened that evening in your house?

A

Yes, sir.

Q

Please tell the Court what happened?

A

Several men, pirates, came up my house and broke into my house.

Q

About what time did you notice those pirates forced themselves inside your residence?

A

Between 9:30 and 10:00 that evening.

Q

What was the first thing you noticed when the pirates as you said arrived?

A

I was about to sleep when they came up, three of them went straight up my house.

Q

How many floors has your house?

A

Two floors.

x x x xxx xxx

'Q

What did the robbers do when they came up your house?

A

They hogtied me and made me lie flat on the floor face down.

Q

At that time were not your family inside your house?

A

Yes, sir, my children and my wife.

Q

What did the robbers do with your wife and children?

A

Because I was hogtied and was lying flat on the floor face down, I cannot tell what did they do to my wife and children.

Q

What did the robbers do in your house?

A

They ransacked my house.

Q

How many minutes did the armed robbers stay in your house?

A

Almost one hour.

x x x xxx xxx

Q

After nearly one hour did the robbers who came up your house leave?

A

I don't know because I was lying flat on the floor.

Q

How did they come out, you cannot tell?

A

No, sir.

Q

Who untied you that evening?

A

My son untied me after the men left.

Court –

Q

This witness did not identify any of the accused?

Fiscal –

No, Your Honor.

'On her part, Mrs. Ong Sy San (wife of Uy) related on the witness stand that:

Q

Please tell the Court what unusual thing happened that evening in your house?

A

The robbers broke into our house.

Q

More or less, how many robbers broke into your house that evening of Dec. 31, 1967?

A

About four or five.

Q

Were they armed?

A

Yes, sir.

x x x xxx xxx

Q

After the four or five persons fired their shots inside your house, what did they do?

A

We were downstairs when they broke into our house, using the axe at the door and then after entering the first floor they went up.

x x x xxx xxx

Q

Can you identify any of the robbers that came up your house from among the accused in the courtroom?

A

I cannot, because I was frightened, I did not have a chance to look at them.

'The bold assault did not take place in absolute darkness. Why could no one in the Chua and Uy households say that Carlos Caramonte was one of the team of robbers?

‘The police battled with the raiders from a distance of about 60 meters, according to Patrolman Armando Maravilla. Two security guards employed by Uy (Placencia and Giducos) remained with the besieged families throughout the raid.

‘Security Guard Elias Giducos gave this testimony:

Q

At about 10:00 o'clock of that same evening of December 31, 1967, do you remember if there was anything unusual that happened?

A

Yes, sir.

Q

What was that which happened?

A

At about that time we heard a voice of a man and woman and they asked us where we were guarding.

Q

What did you answer?

A

At that time we were on duty at the gate of the house of Mateo Chua and then we heard the voice of a man and a woman.

Q

After you heard those voices of a man and a woman, what happened?

A

Then we were told not to go to the seashore because there were armed men.

Q

What did you do after hearing that?

A

My companion Antonio Placencia called me because he was the one who had talked to those persons. He told me not to go to the seashore because there were armed men there.

Q

What did you do after that?

A

My companion also suggested that we better call the Police Department by telephone because that was already 10:50 in the evening.

Q

Were you able to call the Police Department by telephone?

A

We went to the house of Erning Tan because there is a telephone there connected with the Police Department and the stand is also at the window overlooking the Caltex Station. So Antonio Placencia told me to call the Police Department and tell them that there are armed men in the seashore.

Q

What did you do after that?

A

Then we saw Erning Tan entered his store to use the telephone and then we saw Antonio (Kaya) Uy on the other side so we went to him and told him that there were armed men in the seashore and Antonio Uy told us, 'If anything happen don't resist because my children might be hit.'

x x x xxx xxx

Q

So what did you do after that?

A

Because there was a policeman there, we asked him where our companion security guard was.

Q

And what was his answer?

A

The policeman informed us that he did not report for duty and that it was Guarino who reported for duty that evening.

x x x xxx xxx

Q

When you went down, what happened?

A

When I went down, Antonio Uy saw me so he reprimanded me. He said, 'Why are you walking there? Come up.'

Q

And then you obeyed his order? You came up?

A

Yes, sir.

x x x xxx xxx

Q

What did Kaya Uy do when he heard the news?

A

Our employer Antonio Uy told us not to resist. He said, 'If they want to get something, just allow them to get it.'

Q

What happened after that?

A

Because we were there with him, we went to his office to hide.

Q

Did you notice anything while you were hiding there?

A

Yes, sir, we heard something.

Q

What did you hear?

A

We heard several shots.

x x x xxx xxx

Q

After the shots lasted, where did you go?

A

After the shooting stopped, the mother of Antonio Uy came to him and informed Mr. Uy that his wife was brought along by the armed men.

Q

What did Mr. Uy do because you were there?

A

He went down and returned to his own house.

Q

When Mr. Uy went down and returned to his own house, what did you do?

A

I followed him.

Q

Where did you go?

A

To his house and I called the rest of the guards.

Q

Were you able to reach his house?

A

Yes, sir.

which indicates that many people in the compound must or could have seen some or all of the robbers — and yet no one could say that Caramonte was one of them.

'The Court takes notice that the Uy Chua compound is the hub of a large fishing industry, and is located barely 500 meters from the Cadiz police station and City Hall. Also that there are many houses in the neighborhood. Under the circumstances, the failure of anyone — the members of the Chua and Uy households, the security guards and other employees of the fishing business, the police, the neighbors — to perceive the presence of Caramonte at the time of the attack raises doubts as to his participation therein.' (Decision, pp. 12-16).

"Be that as it may, under Section 173 of the Revised Administrative Code, the grounds for removal of a judge of first instance are (1) serious misconduct and (2) inefficiency. For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules. (In re Impeachment of Hon. Antonio Horilleno, 43 Phil. 212). In the case at bar, there has been no proof that in issuing the order of September 5, 1968 (Exh. B), and in rendering a judgment of acquittal the respondent Judge was inspired by a dishonest or corrupt intention which prompted him to violate the law or to disregard well-known legal rules. In fact, in spite of the biting language of the complainants in their complaint and in their memorandum, they admit that the respondent Judge is not dishonest as far as they know. Of course, there has been an insinuation that 'respondent Judge prostituted this Court and acquitted, obviously in bad faith, Councilor Caramonte of Bantayan, province of Cebu, in all likelihood because of the dirty hands of power politics.' Inasmuch as proceedings against judges as the case at bar, have been said to be governed by the rules of law applicable to penal cases, the charges must, therefore, be proved beyond reasonable doubt (In re Horrilleno, supra), and it is incumbent upon the complainants to prove their case not by a preponderance of evidence but beyond a reasonable doubt, and in this venture, it is believed they failed. There is, indeed, a paucity of proof that respondent Judge has acted partially, or maliciously, or corruptly, or arbitrarily or oppressively.

xxx xxx xxx

In issuing the order of Sept. 5, 1968, respondent Judge as stated in his answer, was guided by the Model Code of Evidence cited by Chief Justice Moran in his Comments on the Rules of Court. Whether in taking judicial notice of the facts stated in the order of September 5, 1968, respondent Judge erred or not, it is believed, this is not the proper forum to dwell on the matter. Since this is an administrative case against him, the controlling factor should be the circumstances surrounding the issuance of such order — whether in doing so the respondent Judge was arbitrary, corrupt, partial, or oppressive. As heretofore stated, the undersigned finds no proof beyond reasonable doubt along that line.

"Furthermore, it appears from the record that the Office of the City Fiscal received a copy of the Order of September 5, 1968 on September 13, 1968. If it were true as alleged by the complainants that the issuance of such order was illegal and that the matters taken judicial notice of therein were wrong, it behooves upon Fiscal Zulueta,

as the prosecutor of the case, to seek for a reconsideration of such order and at the same time to invite the attention of the court to the alleged errors, if there were any. But as the records show, the prosecution in the said case did not take any steps — from September 13 to September 21, or a span of eight days — to protect the interests of the State against what complainants herein term to be an 'illegality'. Of course, the complainants herein lean on the argument that —

‘Fiscal Zulueta

‘Because if I do that, Your Honor, respondent Judge would realize his mistake which we believe malicious.’
(p. 29, t.s.n.).

It may be pertinent to state at this juncture, that this attitude of the prosecution in Criminal Case No. 690 does not appear to be commendable. A prosecutor should lay before the court fairly and fully every fact and circumstance known to him to exist, without regard to whether such fact tends to establish the guilt or innocence of the accused (Malcolm, Legal and Judicial Ethics, p. 123) and to this may be added without regard to any personal conviction or presumption of what the Judge may do or is disposed to do. Prosecuting officers are 'presumed to be men learned in the law, of a high character, and to perform their duties impartially and with but one object in view, that being that justice may be meted out to all violators of the law and that no innocent man be punished (Malcolm, p. 124). In the pursuit of that solemn obligation, therefore, personal conviction should be ignored lest it may lead to a sacrifice of the purpose sought to be achieved. Fortunately, in Criminal Case No. 690, the very witness of the complainants affirmed the correctness of the matters taken judicial notice of by the respondent Judge. Thus, Mr. Agustin Javier, lone witness for the complainants, testified —

'Atty. Aquino —

Q

When Fiscal Zulueta on September 13, 1968 showed you that order of Judge Climaco wherein he stated that he was taking judicial notice that the Mateo Chua-Antonio Uy Compound in Cadiz City is a hub of a large fishing industry operating in the Visayas; that said compound is only around five hundred (500) meters from the City Hall in Cadiz and that the neighborhood is well-lighted and well-populated, after reading that order, did you make any comment to Fiscal Zulueta?

A

No, sir.

Q

But the statements here in the order are true?

A

Yes, you mean the 'Uy-Chua Compound'?

Q

I mean the statements in the order are true

A

Yes, sir. (pp. 64-65, t.s.n.)”

The charges impute upon respondent (a) dereliction of duty or misconduct in office (prevaricacion), which contemplates the rendition of an unjust judgment knowingly, and/or in (b) rendering a manifestly unjust judgment by reason of inexcusable negligence or ignorance.

In order that a judge may be held liable for knowingly rendering an unjust judgment, it must be shown beyond doubt that the judgment is unjust as it is contrary to law or is not supported by the evidence, and the same was made with conscious and deliberate intent to do an injustice. "Es tan preciso," commented Viada, "que la falta se cometa a sabiendas, esto es, con malicia, con voluntad reflexiva, que en cada de uno de estos articulos vemos consignada dicha expresion para que por nadie y en ningun caso se confunda la falta de justicia producida por ignorancia, la preocupacion o el error, con la que solo inspira la enemistad, el odio o cualquiera otra pasion bastarda y corrompida. Esta es la prevaricacion verdadera." [1]

To hold a judge liable for the rendition of a manifestly unjust judgment by reason of inexcusable negligence or ignorance, it must be shown, according to Groizard, that although he has acted without malice, he failed to observe in the performance of his duty, that diligence, prudence and care which the law is entitled to exact in the rendering of any public service.[2] Negligence and ignorance are inexcusable if they imply a manifest injustice which cannot be explained by a reasonable interpretation.[3] Inexcusable mistake only exists in the legal concept when it implies a manifest injustice, that is to say, such injustice which cannot be explained by a reasonable interpretation, even though there is a misunderstanding or error of the law applied, yet in the contrary it results, logically and reasonably, and in a very clear and indisputable manner, in the notorious violation of the legal precept.[4]

It is also well-settled that a judicial officer, when required to exercise his judgment or discretion, is not liable criminally, for any error he commits, provided he acts in good faith.

From a review of the record, We find that the decision of respondent contains clearly and distinctly the facts and law on which it is based. We cannot conclude on the basis thereof that respondent has knowingly rendered an unjust judgment, much less could it be held that respondent in the performance of his duty has failed to observe the diligence, prudence and care required by law.

As noted in the aforecited report, the Acting City Fiscal of Cadiz had employed offensive and abusive language in his complaint and memorandum. It bears emphasis that the use in pleadings of language disrespectful to the court or containing offensive personalities serves no useful purpose and on the contrary constitutes direct contempt.[5]

We must repeat what this Court thru Justice Sanchez stated in an earlier case:[6]

"A lawyer is an officer of the courts; he is 'like the court itself, an instrument or agency to advance the ends of justice.' (People ex rel. Karlin vs. Culkin, 60 A.L.R. 851, 855.). His duty is to uphold the dignity and authority of the courts to which he owes fidelity, 'not to promote distrust in the administration of justice.' (In re Sotto, 82 Phil. 595, 602). Faith in the courts a lawyer should seek to preserve. For, to undermine the judicial edifice 'is disastrous to the continuity of government and to the attainment of the liberties of the people.' (Malcolm, Legal and Judicial Ethics, 1949 ed., p. 160). Thus has it been said of a lawyer that '[a]s an officer of the court, it is his sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the court so essential to the proper administration of justice.'" (People vs. Carillo, 77 Phil. 572, 580).

"x x x It has been said that '[a] lawyer's language should be dignified in keeping with the dignity of the legal profession.' (5 Martin, op. cit., p 97). It is Sotto's duty as a member of the Bar '[t]o abstain from all offensive

personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.' (Section 20(f), Rule 138, Rules of Court)."

We have analyzed the facts, and there is nothing on the basis thereof which would in any manner justify their inclusion in the pleadings.

WHEREFORE, respondent judge is hereby exonerated of the aforestated charges. Acting City Fiscal Norberto L. Zulueta, of Cadiz City, is, nevertheless, censured for his use of offensive and abusive language in the complaint and other pleadings filed with this Court, with a warning that repetition of the same may constrain Us to impose a more severe sanction.

Makalintal, C.J., Zaldivar, Ruiz Castro, Esguerra, Fernandez, and Muñoz Palma, JJ., concur.

Fernando and Teehankee, JJ., concur in separate opinions.

Barredo, Makasiar, and Aquino, JJ., took no part.

[1] Viada, IV Codigo Penal, 1926 Ed., pp. 305-306.

[2] Groizard, 4 El Codigo Penal Español, 1912 Ed.

[3] Decisions of Supreme Court of Spain, March 28, 1911 and April 24, 1912.

[4] Decision of the Supreme Court of Spain, February 19, 1891.

[5] Salcedo vs. Hernandez, 61 Phil., 724.

[6] Surigao Mineral Reservation Board vs. Cloribel, L-11071, January 9, 1972, 31 SCRA 1, 16-17, 19.

CONCURRING OPINION

FERNANDO, J.:

The high quality of craftsmanship that is so typical of the work of Justice Antonio is once again in evidence. What is more, his opinion for the Court is so well-researched and so thorough that to add a few words might yield the impression that to do so is to magnify a trifling difference. That risk, if so it is, I take if only to give expression to a point of view not infused with too great a significance, I must admit, but possessed, in my way of thinking, of an implication that did preclude a full and complete acceptance of what is set forth in the dispositive portion of the decision of the Court. Hence this brief concurrence.

In addition to exonerating respondent Judge of the charges filed against him by another city fiscal, Norberto L. Zulueta of Cadiz, the resolution of this Court would censure the complainant for the use of offensive and abusive language. On both grounds, I am fully in agreement. I am not, at this stage, prepared to go along, however, with the last clause in the dispositive portion of our resolution with its "warning that repetition of the same may constrain Us to impose a more severe sanction." [1] It is not that such a penalty would be inappropriate. Certainly, a proper sense of decorum, not to say the degree of civility expected of a dignitary like a city fiscal, ought to have cautioned against resort to what Dean Pound aptly termed epithetical jurisprudence. To paraphrase the then Chief Justice Bengzon in *Lagumbay vs. Comelec*, [2] the employment of intemperate language serves no purpose but to detract from the force of the argument. That is to put at its mildest a well-deserved reproach to such a propensity. A member of the bar who has given vent to such expressions of ill will, not to say malevolence, betrays gross disrespect not only to the adverse party, but also to this Tribunal. That is not all there is to the matter though. I

view with a certain degree of misgiving, perhaps not altogether justified, the warning as to the more severe penalty to be inflicted in case of a repetition of such offense thus made in the dispositive portion of the opinion for, to my mind, it could, in some way, however slight, limit the freedom of a future Court to deal with such a situation if and when it occurs. It is only in that sense that I am unable to join the rest of my colleagues in yielding complete and unconditional assent to the highly persuasive and otherwise impeccable opinion of Justice Antonio.

[1] Adm. Case No. 134-J.

[2] L-25444, January 31, 1966, 16 SCRA 175.

CONCURRING OPINION

TEEHANKEE, J.:

I concur in the result of the main opinion of Mr. Justice Antonio, which exonerates respondent judge of the charges, since a judicial officer required to exercise his judgment or discretion who in the process acquits an accused on grounds of reasonable doubt in view of his non-identification by the prosecution witnesses (notwithstanding his admission and "the damaging inferences derived from his staying away (as a newly elected councilor) from the ceremony (on January 1, 1968) when the newly-elected officials of Bantayan (Cebu) were inducted into office" as he was charged with participation in the pirate raid in Cadiz City on the night of December 31, 1967, as noted by respondent judge himself in his decision)[1] may not be held liable criminally or administratively for any error of judgment that he may commit, absent any showing of bad faith, corruption, malice, a deliberate intent to violate the law or a persistent disregard of well-known legal rules and principles.

Respondent judge based his acquittal verdict on the stated premises that "(T)he bold assault did not take place in absolute darkness. Why could no one in the Chua and Uy households say that Carlos Caramonte was one of the team of robbers" and followed this up with a statement of judicial notice that "the Uy Chua compound is the hub of a large fishing industry, and is located barely 500 meters from the Cadiz police station and City Hall. Also that there are many houses in the neighborhood. Under the circumstances, the failure of anyone — the members of the Chua and Uy households, the security guards and other employees of the fishing business, the police, the neighbors — to perceive the presence of Caramonte at the time of the attack raises doubts as to his participation therein."

Such taking of judicial notice in turn was the result of an ex-parte ocular inspection conducted by himself alone without notice to nor the presence of the parties on August 11, 1968, over a month after the hearings had been closed and the case submitted for decision on July 1, 1968 and is the main target of the present complaint.

In view of the result reached, respondent judge's verdict of acquittal on the ground of non-identification is now a closed matter, although the prosecutor-complainant could cite the fear and terror under which the victims-witnesses were held by the notorious band of pirates who hogtied them and made them lie on the floor face down. They had previously ordered their security guards to offer no resistance "because (their) children might be hit" and the wife of one of them (Mr. Uy) was brought along by the armed men as a hostage.[2]

The purpose of this brief opinion is merely to avoid any undue inference of approval or sanction of the ex -parte ocular inspection conducted by respondent judge. As noted by then Solicitor General, now Associate Justice Antonio P. Barredo in his comment[3] "the validity of the ocular inspection conducted by the lower court is open to doubt."

Indeed, such ex-parte ocular inspection conducted by respondent judge alone without notice to nor the presence of the parties and after the case had already been submitted for decision was improperly made and may not be sanctioned. If he had entertained doubts that he wished to clear up after the trial had already terminated, he should have ordered *motu proprio* the reopening of the trial for the purpose, with due notice to the parties for their participation therein is essential to due process.

As succinctly restated by Chief Justice Moran, "(T)he inspection or view outside the courtroom should be made in the presence of the parties or at least with previous notice to them in order that they may show the object to be viewed. Such inspection or view is a part of the trial, inasmuch as evidence is thereby being received, which is expressly authorized by law. The parties are entitled to be present at any stage of the trial, and consequently they are entitled to be at least notified of the time and place set for the view. It is an error for the judge to go alone to the land in question, or to the place where the crime was committed and take a view, without previous knowledge or consent of the parties, inspected the place of collision, and in his decision stated that after having viewed the place, he was convinced that the testimony of one of the witnesses was incredible." [4]

As was aptly held by the appellate court in setting aside such ex-parte ocular inspection conducted by a trial judge "(W)e know of no rule of law or practice which authorizes a trial judge, after a cause had been submitted to him for determination, to search of his own motion and without the consent of the parties for extrinsic testimony and circumstances, and apply what he may learn in his way to corroborate the testimony upon one side or to cast discredit on the testimony of the adverse party." [5]

[1] At page 6, main opinion.

[2] At pages 7-10, main opinion.

[3] At page 3, main opinion.

[4] 5 Moran's Rules of Court, 1970 Ed., p. 81, italics supplied.

[5] *Idem.*, at p. 82, quoting from *Denver Omnibus & Cab Co. vs. Ward Auction Co.*, 47 Colo. 446, cited in *Balon vs. Moreno*, 57 Phil. 60, 69.

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