

GREGORIA V. BONDOC, COMPLAINANT, VS. HON. JOSE DE GUZMAN, RESPONDENT.

A.C. No. 279-J. May 30, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

In Criminal Cases Nos. 33 and 71 of the Court of First Instance of Tarlac, Fourth Judicial District, Branch III, both entitled "The People of the Philippines vs. Florante Bungay," wherein the accused was charged with two (2) offenses of rape, committed on one and the same victim, contained in two (2) separate criminal informations, a judgment of acquittal was rendered, on January 25, 1973, by the trial judge, Hon. Jose de Guzman, after the said two cases were jointly heard. Accused Florante Bungay was, however, held civilly liable under Article 21 of the New Civil Code, and was ordered to pay and indemnify the victim the sum of P12,000.00 and another sum of P12,000.00, to the parents of the victim.

The victim of the alleged offenses was Noemi Bondoc, a little over 12-years old, whose mother, Gregoria V. Bondoc, in a sworn complaint dated March 7, 1973 charged herein respondent judge with gross ignorance of the law, grave abuse of discretion and knowingly rendering an unjust judgment, specifying that: –

"(1) (We feel that justice was not given us in the decision.) Evidences were presented to the court to prove the guilt of the accused. While we had many witnesses to prove our contention, the accused had none but himself only.

"(2) There was a time when the hearing of the case was postponed to give chance to the accused and his father to approach us and ask for forgiveness from us. This was done in the presence of Atty. Castaneda, the lawyer of the accused, in the sala of Fiscal dela Cruz. Also on July 25, 1971, at about 10:00 o'clock in the morning, Atty. Castaneda together with the accused and two jail guards and his parents went to our house and asked for forgiveness.

"From these two instances, can we not conclude that the accused is guilty. He will not ask for forgiveness if he had not committed the crime.

"(3) The decision has no findings of facts.

"(4) The decision indicates that the Judge believes that the accused has in fact committed the crime that's why he even went to the extent of ordering payment of damages.

"(5) The decision is contrary to the facts proved by the law.

"(6) The decision was known to the family and relatives of the accused ten days before reading the promulgation."

Pursuant to this Court's resolution of March 13, 1973, respondent judge filed on March 29, 1973 his comment denying the specific charges and explaining the facts on which they were predicated and justifying the decision he rendered in the aforesaid two (2) criminal cases (Annex A).

It is well to emphasize that the questioned decision of respondent Judge is not herein being reviewed, "except insofar as its text and the considerations articulated by the respondent with respect to the evidence before him may yield some prima facie semblance of merit in the complaint so as to justify a formal investigation." (Vda. de Zaballa vs. Hon. Manuel Pamaran, June 10, 1971, 39 SCRA 433).

Refuting complainant's first allegation, respondent contended that witnesses are to be weighed, and not numbered. Extensively, he then proceeded to explain defendant's acquittal, notwithstanding prosecution's numerical superiority in witnesses, as follows:

"To be sure, the record will show that the prosecution presented nine (9) witnesses, including complainant. Upon the other hand, the defense relied solely on the testimony of the accused. But this circumstance alone does not, and should not result in a successful prosecution as complainant would seem to believe. 'In determining in a criminal action where the weight of evidence on the issues involved lies, the Court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means, and opportunities of knowing the facts to which they are testifying, the nature of the facts to which they testified, the probability or improbability of the persons' credibility so far as the same may ultimately appear on the trial. The Court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.' (U.S. vs. Claro, 32 Phil. 413). Familiar is the doctrine that 'the credibility of witnesses does not depend upon their number or the coincidence of their statements. (U.S. vs. Oracion, et al., 18 Phil. 530). That witnesses are to be weighed, (People vs. Marasigan L-2235, Jan. 3, 1950, reiterated in People vs. Orzame, et al., L-17773, May 19, 1966, 17 SCRA 161, 165) and not numbered, (Foulke vs. Thalmessinger, 28, N.Y. Supp. 684, 685) and that quantitative superiority does not necessarily make for legal preponderance.' Verily, it is not the number of witnesses that is important, but the degree of credibility given to a testimony of a witness that is essential.

"Moreover, as quoted in Respondent's questioned Decision itself, 'The conviction of an accused must be based on the evidence of the prosecution, which by and in itself, must show guilt, to a moral certainty and not on the weakness of the evidence for the defense.' x x x"

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With respect to complainant's second allegation, respondent avers that he never granted a postponement of any of the scheduled hearings for the purpose of enabling the parties to settle the criminal cases herein involved. Recounting the proceedings in his court, and explaining and justifying the orders he issued therein, respondent further declared:

"The record is replete with motions for postponements and continuance, and the corresponding orders relative thereto. Glaringly noticeable therefrom is the fact, that all were based on legal and equitable grounds. The accusation of the complainant in her second charge does not appear on record. If after a resetting of a trial, due to meritorious grounds, the parties meet and confer elsewhere, unrecorded and unknown to the respondent the latter could not be answerable for whatever was discussed and transpired therein. It would be expecting too much of a trial Judge to know everything that not introduced and offered in evidence. It should be noted, that the accused allegedly asked for forgiveness in the 'sala of Fiscal dela Cruz', and in the house of the complainant in Bamban, Tarlac, where the respondent was never present.

"It is humbly submitted further, that the daughter of the complainant, during the trial of Criminal Case Nos. 33 and 71, both for Rape, was represented by Fiscal Gabriel dela Cruz and a Private Prosecutor. During all the scheduled hearings and continuations, the complainant was present, and had easy access to the Public and Private Prosecutor. It was not too much or difficult for her then, to call the attention of these lawyers about her gripes, particularly on the fact that the accused asked for forgiveness, so that the same could be introduced and placed on record as evidence. To hold the Respondent liable for acts and omissions of the parties themselves outside the courtroom is downright unfair, if not unkind."

Clearly refuting charges 3 and 5, the challenged decision of respondent Judge states:

"To begin with, the complainant was twelve (12) years and four (4) months old, at the time the alleged acts were committed in December, 1968. She was born on August 1, 1956.

"Observing the physical features of the complainant at close range, while in the courtroom and on the witness stand, the Court noted, that she has a warm, open, beautiful and radiant face, and her body, already ample in shape. She is tender, full of youthful hopes, and CHARMING in every language under heaven.

"On the other hand, a close look into the appearance and physique of the accused, will readily show, that from the hips down, are two (2) legs, both useless and paralyzed. However, upwards, is a well-developed torso similar to that of an athlete, with two (2) strong and normal hands, and a face, which may easily be graded as handsome, or one not very hard to look at. He uses a small cart, about a square foot, to support his trunk and his two (2) hands, for locomotion. The accused is a second cousin of the father of the complainant. Undeniably therefore, the offended party is the niece of the accused.

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"Looking in retrospect at what is depicted in the first Information, and narrated by the offended girl, it appears, that the first incident happened before Christmas of December 1968, in a room of the house of the complainant. Having just taken an afternoon bath, she was standing before a mirror, and combing her hair. At this juncture, the accused appeared, and closed the door. He took hold of her right arm. He pushed and pulled her down to the floor. He went on top of her and raised her dress. He pulled down her pantie, unbuttoned his pants, removed his gun and placed it where he could reach it, and warned her not to shout, or he will shoot. Thence, he brought out his penis and inserted it into her private parts.

"To the foregoing, the complainant added, that the accused took five (5) minutes to insert his penis into her vagina because she was struggling. When she felt weak, he was able to pin her down. After the accused has inserted his penis into her vagina, he made the push and pull movement, but all the while, she was struggling and pushing him because, 'I did not want it to be done to me.'

"Bearing this story of the complainant in mind, and simultaneously taking a look at the accused with his infirmity, we are posed to ask, --- Can the sexual act be committed in the manner, sequence and precision as narrated, in the light of the struggles made by the offended girl?

"We have to go deep into what the complainant has alleged, in order to unfold her credibility, as well as that of her version. The complainant claims, among others, that after closing the door, the accused held her arm, and pushed and pulled her. At that precise moment, still unaware of the intentions of the accused, she could have shouted at the top of her voice to draw the attention of neighbors or passersby. Or better still, she could have hit him with her comb. She could have kicked him direct and straight to his face. She did not do any of these. In fact, she allowed herself to be pulled down to the floor, so much so, that the accused was able to go on top of her. With the two (2) feet of the accused inert, immobile, or so to say, useless, it would seem very difficult, if not entirely impossible, for the accused to raise the complainant's dress and pull down her pantie, unbutton his pants, remove his gun, bring out his penis and commit the sexual act, assuming it to be true, that she was struggling, boxing and pushing the accused, all the while that he was on top of her.

"Disregarding for a moment, the girl's assertions that she fought hard in the wake of the force and threat, before and during the first intercourse, let us analyze and consider her behaviour after the consummation of the act. Let it be remembered, that the complainant was very emphatic, when she stated that she was struggling before and during the process of intercourse because 'I did not want it to be done to me.' Without delving deep into this statement of the offended girl, we could easily see that she is intelligent. Indeed, very intelligent. She knew fully well, that what had befallen on her, was something against honor and morals. She knew that with that act, there would be a smear of infamy upon her, that even death could not obliterate. And in the light of all these

circumstances, what did the offended girl do, immediately after the abuser had left, ever-conscious that a heinous crime had been committed upon her? She simply put on her pantie and sat down because she felt weak. Even after she has regained her composure, she never thought of running to the house of her relatives which was not very far away. She kept it to herself, even when her father and mother arrived in the evening. She did not reveal the incident to her brothers and sisters. She kept quiet. She remained silent. Neither did she take precautions so that the accused would no longer have a chance to get near her again.

"The second incident. The complainant claims that a week, after the first incident, that is, after Christmas of December 1968, and while in the same room watching the television shows with an abnormal sister, the accused arrived and 'took my arm, pulled me down, raised my dress, pulled down my pantie, removed his pants, and took his penis, and inserted it to my private parts.'

"The complainant added, that she was boxing and pushing the accused and was continuously struggling. After this second sexual act, the accused left with the warning not to report the incident.

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"Analyzing how the second sexual intercourse was committed, and recalling the statement of the complainant during the first incident, that she kept struggling because she did not want that thing to happen to her, it is amusing to note, why, when the accused arrived, she failed to run to the door of her room and lock the same. She failed to undertake anything to defend herself, aware that the accused was approaching. She could not deny this fact. The accused uses a cart for locomotion and it produces a creak. Their gate was made of iron. When opened, it necessarily squeaks. She was forewarned of his arrival. But she was complacent watching the TV. What immediately strikes the mind of one who hears the story of the complainant, as regards the second incident, is as to why she never attempted to prevent the entry of the accused into her room knowing that he was again approaching. She could have easily locked her room then, but she did not. She could also have availed of any hard, blunt or sharp object inside her room to hit the accused if he attempts to repeat the act. This, she did not also do. On this score, the complainant was again found wanting in what really an abused and offended woman would normally do, when her abuser approaches.

"While the accused was in the process of having carnal knowledge with her, the complainant could have bitten him with her teeth, kicked and squeezed his testicles to cause him pain. She failed to do either. She never attempted to reach for the gun which she knows how to manipulate and fire.

"The complainant stated that on April 17, 1969, in the evening, she felt that somebody was touching her breast and upon waking up, saw the accused. From that time on, she planned to reveal the incidents to her mother. She claims that she would rather die, than have the same thing repeated to her. But what is amusing again is that, despite the fact that the touching of her breast took place on April 27, it was only in the later part of May, or one (1) month after, that she reported the matter to her mother.

"Before she was actually brought to Dra. Makabali in San Fernando, Pampanga, on June 2, 1969, she still kept to herself, the two (2) sexual incidents. It was only after she was examined by Dra. Makabali, that she revealed her sexual experiences to her mother.

"From the start, the complainant knew that she was dishonored. From the start, the complainant knew that the acts committed upon her by the accused will cast aspersions on her future and would mean her shameful moral extinction before the eyes of a decent community. Yet, during all those times, the complainant kept silent. She remained silent. In other words, she kept unto herself what she had experienced. She was thus making a cruel sacrifice, but no one induced her to make it so. It was she, alone by herself, that kept the cruel, moral and physical pain.

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"A fact which obliterates totally, all assertions of force, threats, or intimidation is the delay, if not reluctance,

of the complainant to reveal to her mother, her being sexually assaulted. The apparent refusal or unreasonable delay on the part of the offended girl to assert her right, is strongly persuasive and indicative of a lack of merit in her story, because it is human nature, based on everyday experience, to assert a right most strongly, when first attacked and invaded.

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"For having chosen to keep and burden her conscience alone with the sexual acts, when she could have easily complained to her parents, brothers, sisters, and relatives about it, x x x for her seeming refusal and reluctance to reveal all, despite the existence of splendid opportunities to do so, . . . it could be stated almost with absolute certainty, that the testimony of the complainant about the use of force, threats and intimidation in the two (2) cases is not only highly improbable, but also absurd. Evidence, to be worthy of credit, must not only proceed from credible source, but must be credible in itself."

From that portion of the decision wherein respondent ordered the payment of damages in favor of the victim and her parents, complainant erroneously draws the conclusion that respondent himself believed that " x x x accused has in fact committed the crime x x x" (Allegation No. 4.) The respondent Judge found that the sexual act was committed but there was no crime as there was lack of convincing and persuasive proof of violence or intimidation.

Thus far, We find respondent's explanation satisfactory. In going over the decision of respondent, which is the main basis of this present administrative complaint, We failed to discover gross or patent errors in the appreciation of evidence that may produce an inference of ignorance or bad faith, or that the Judge knowingly rendered an unjust decision. Ordinary or mere errors are irrelevant and immaterial in an administrative complaint of this nature; for "(n)o one, called upon to try the facts or interpret the law in the process of administering justice, can be infallible in his judgment." Indeed, the decision of respondent Judge is faithful to the norms of judicial duty which a judge should adhere to as succinctly stated by then Associate Justice, now Chief Justice, Querube C. Makalintal, in *Vda. de Zaballa vs. Hon. Manuel Pamaran*, June 10, 1971, 39 SCRA 433, as follows:

"x x x All that is expected of him is that he follow the rules prescribed to ensure a fair and impartial hearing, assess the different factors that emerge therefrom and bear on the issues presented, and on the basis of the conclusions he finds established, with only his conscience and knowledge of the law to guide him, adjudicate the case accordingly."

Said decision contains an impartial restatement of the declarations or testimonies of all the witnesses presented during the trial by the prosecution and the defense. Therefrom, respondent judge made a painstaking review of the record and likewise analyzed the importance and significance of each piece of evidence on record. Conflicts in the declarations of witnesses were objectively evaluated by respondent judge and were likewise tested against the background of related physical facts which were either established by evidence, or admitted or which by their nature can hardly be disputed. Also, all conclusions made or arrived at by respondent judge were well-reasoned out and/or supported with authorities.

With respect to complainant's last grievance, respondent judge declares that it was impossible for the family and relatives of the accused to know of the decision ten (10) days before its promulgation. He further states that:

"Modesty aside, respondent who had practiced law, and had occupied responsible and delicate positions for years, has never been suspected of betraying the trust reposed upon him. Now as a District Judge, he is ever conscious of the sacredness of his position and always zealous to protect his Oath of Office, even at the sacrifice of his life. Respondent wishes to state further, that he has penned numerous Decisions, and has never been accused by any of the lawyers or litigants involved therein, that it was prematurely released or promulgated. This accusation of the complainant is ridiculous, and exists as a figment of her imagination only.

It is certainly baseless and false."

Corroborating these assertions of respondent Judge are Atty. Teofilo I. Molina, Branch Clerk of Court, and Eden A. Guzman, the stenographer utilized by respondent judge in the preparation of the decision involved herein, who both executed their individual affidavits which were made part of respondent's comment as Annexes "B" and "C", respectively. Both affidavits show, among others, the impossibility and falsity of complainant's last grievance. In the light of the above explanation of respondent Judge and considering that complainant's allegation on this matter bears no corroboration, complainant's last grievance is without merit.

The respondent Judge explained that, despite the acquittal of the accused, he awarded damages to the complainant, "because of the incalculable injury to the reputation of the young girl and that of her parents," invoking Article 21 of the new Civil Code which imposes such liability "upon any person who wilfully causes loss and injury to another in a manner that is contrary to morals, good customs, or public policy. ..." We cannot opine that said award was completely devoid of any legal basis, considering the moral obligation of the accused as an uncle of the victim of so tender an age.

WHEREFORE, finding no basis to warrant further proceeding against respondent Judge, the complaint is hereby dismissed.

Makalintal, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Antonio, Esguerra, Fernandez, Munoz Palma, and Aquino, JJ., concur.

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