

CORONACION P. BIABAN, COMPLAINANT, VS. EXECUTIVE JUDGE AMELIA K. DEL ROSARIO, CFI OF AKLAN, BRANCH II, AT KALIBO, RESPONDENT.

A.M. No. 1349-CFI. January 05, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

Complainant accuses respondent Judge Amelia K. del Rosario of the Court of First Instance of Aklan, of bias in deciding on appeal Criminal Case No. 2489 for Malicious Mischief.

It appears that this complaint stemmed from the dismissal of the case of Malicious Mischief instituted by complainant against Bibiana P. Bautista, her husband Longinos Bautista, and their four sons, Ely, Godofredo, Eduardo and Reynaldo. This case was filed first before the Municipal Court of New Washington, Aklan. After trial, the municipal court dismissed the case against Bibiana P. Bautista on the ground that she was exempt from criminal liability being the sister of the complainant, while all the remaining accused were convicted and sentenced to suffer twenty (20) days of imprisonment and to indemnify Coronacion Pastrana in the sum of Fifty Pesos (P50.00). On appeal, the Court of First Instance, presided over by respondent Judge, acquitted all the accused on the basis of its finding that damage, if any, was not inflicted due to hate, revenge or other evil motive. It was found established by the evidence that the cutting down of the star apple tree and the damage on the vegetable plants were apparently caused by the transfer, by Bibiana Bautista, of the house of her son, Godofredo Bautista, to the portion of the land which belonged to her. It was found, therefore, that no malice attended the aforementioned action of Bibiana. Indeed, if there is no malice in causing the damage to the property, there is no crime of malicious mischief, and the obligation to repair the damage is only civil. As correctly found by the Judicial Consultant, there is no showing from the record that respondent Judge acted with bias or partiality in the adjudication of the afore-mentioned case.

WHEREFORE, in view of the foregoing, this case is DISMISSED.

Barredo, (Acting Chairman), Aquino, Concepcion, Jr., and Guerrero, JJ., concur.

Fernando, (Chairman), and Santos, JJ., on leave.

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