

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, V. JUDGE WINLOVE M. DUMAYAS, BRANCH 59, REGIONAL TRIAL COURT, MAKATI CITY, RESPONDENT.

A.M. No. RTJ-15-2435 (Formerly A.M. No. 15-08-246-RTC). March 06, 2018

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PER CURIAM:

This case stemmed from the charges against respondent Judge Winlove M. Dumayas of Branch 59, Regional Trial Court (RTC), Makati City, for allegedly rendering a decision without citing the required factual and legal bases and by ignoring the applicable jurisprudence, which constitutes gross misconduct and gross ignorance of the law. The antecedents of the case at bar are as follows: In the July 7, 2015 issue of the Philippine Daily Inquirer, Ramon Tulfo wrote an article entitled "What's Happening to Makati Judges?," where he raised certain issues against three (3) Makati City judges, one of whom is respondent Judge Dumayas for supposedly imposing a light sentence against the accused in one criminal case, when he should have found them guilty of committing murder instead. Said case is Criminal Case No. 12-2065, entitled *People v. Juan Alfonso Abastillas, et al.*

Upon investigation and review of the July 2, 2014 Decision penned by Judge Dumayas in the aforementioned case, the Office of the Court Administrator (OCA) found two (2) issues with said ponencia, particularly in the imposition of the penalties:

First, he appreciated the presence of the privileged mitigating circumstance of incomplete self-defense by concluding that there was unlawful aggression on the part of American national George Anikow and that there was no sufficient provocation on the part of accused Crispin C. Dela Paz and Galiciano S. Datu III. In doing so, he totally ignored the positive testimony of security guard Jose Romel Saavedra and the physical evidence consisting of closed circuit television (CCTV) video footages of the incident clearly showing that Anikow had already fled, but was still pursued and viciously attacked and hit by the accused when they finally caught up with him. It is a well-settled rule that the moment the first aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist, and when the unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. Retaliation is not the same as self-defense. In retaliation, the aggression that the injured party started had already ceased when the accused attacked him, while in self-defense, aggression was still existing when the aggressor was injured by the accused.

Second, without mentioning any factual or legal basis therefor, Judge Dumayas appreciated in favor of Dela Paz and Datu III the ordinary mitigating circumstance of voluntary surrender, contrary to Saavedra's positive testimony that the four (4) accused, including Dela Paz and Datu III, warned him not to report the incident or note their plate number as they were leaving the scene of the incident. Besides, two (2) other Rockwell security guards testified that they apprehended the four (4) accused in the vehicle as they were leaving the Rockwell Center before they were turned over to the custody of the police. In appreciating said ordinary mitigating circumstance, Judge Dumayas never cited any factual or legal reason to justify the same, as there was nothing in the record that supports his conclusion. In fact, the evidence presented show otherwise. By deliberately not explaining in his

Decision how he arrived at his conclusion that Dela Paz and Datu III voluntarily surrendered, Judge Dumayas violated Section 14, Article VIII[1] of the Constitution.

In a Resolution dated August 25, 2015, the Court En Banc directed Judge Dumayas to show cause why no disciplinary action should be taken against him for ignoring existing jurisprudence on unlawful aggression and for inappropriately appreciating the ordinary mitigating circumstance of voluntary surrender without citing any basis, when he rendered his Decision dated July 2, 2014 in Criminal Case No. 12-2065.

In his Compliance dated October 18, 2015, Judge Dumayas argued that judges cannot be held civilly, criminally, and administratively liable for any of their official acts, no matter how erroneous, as long as they act in good faith. He vehemently denied having conveniently ignored the existing jurisprudence on unlawful aggression. He explained that his ruling was based on the fact that the mortal wound on Anikow's neck was inflicted when there was still unlawful aggression on his part against the accused, which placed the latter in legitimate self-defense. It was only after the first fist fight that Anikow ran away.

He likewise apologized for failing to quote in his Decision the portions of the testimony of the prosecution witnesses attesting to the voluntary surrender of the accused. He quoted the testimony of Dominador H. Royo, one of the security guards who apprehended the accused when they were trying to leave Rockwell Center:

xxxx

Q: What did you tell to the driver again?

A: I told him that there was a problem at the upper part of Rockwell Drive so I asked him to surrender his license to me, sir.

Q: Was there any resistance on his part to surrender his license or he just gave it to you voluntarily?

A: Voluntarily sir.

xxxx

Q: Now if the driver intended to leave he could just left you there and then he could just spread out correct?

A: Yes sir.

Q: But he did not?

A: Yes sir.

Q: So there was really no intention to escape, correct?

A: Yes sir. [2]

Judge Dumayas stressed that the aforementioned testimony clearly shows that the accused indeed voluntarily surrendered to the security guards who stopped them, and later to the police officers, when they were turned over to the latter's custody.

On April 18, 2017, the OCA recommended the imposition of the extreme penalty of dismissal, thus:

PREMISES CONSIDERED, we respectfully recommend for the consideration of the Court that Judge Winlove M. Dumayas, Branch 59, Regional Trial Court, Makati City, be ADJUDGED GUILTY of gross ignorance of the law or procedure and gross misconduct, and be METED the penalty of DISMISSAL from the service, with forfeiture of his retirement benefits, except his accrued leave credits, and with prejudice to reinstatement in any branch of the government, including government- owned and controlled corporations.

RESPECTFULLY SUBMITTED.[3]

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendations of the OCA.

It is clear that Judge Dumayas failed to hear and decide the subject case with the cold neutrality of an impartial judge. As aptly found by the OCA after its exhaustive investigation, first, Judge Dumayas downgraded the offense charged from murder to homicide. Second, he inappropriately appreciated the privileged mitigating circumstance of self-defense and the ordinary mitigating circumstance of voluntary surrender despite the overwhelming testimonial and physical evidence to the contrary. Third, he sentenced Dela Paz and Datu III to suffer an indeterminate penalty of imprisonment of four (4) years, two (2) months, and one (1) day, as minimum, to six (6) years of prision correccional, as maximum, which made them eligible for probation. Finally, he granted the separate applications for probation of Dela Paz and Datu III, effectively sparing them from suffering the penalties they rightfully deserve. The pattern of said acts appears to be deliberate, calculated, and meant to unduly favor the accused, and at the same time, can be characterized as flagrant and indifferent to the consequences caused to the other parties, including the State.

On November 27, 2012, an Information was filed charging Juan Alfonso Abastillas, Crispin Dela Paz, Osric Cabrera, and Galiciano Datu III with the crime of murder under Article 248 of The Revised Penal Code, thus:

On the 24[th] day of November 2012, in the City of Makati, Philippines, accused, conspiring and confederating with one another and all of them mutually helping and aiding, one another, with intent to kill and with the qualifying circumstance of abuse of superior strength did then and there wilfully, unlawfully and feloniously attack, assault, employ personal violence and stab one George Anikow with a knife, thereby inflicting upon the latter injuries and wounds on the different parts of his body, the fatal one of which is the stab wound on his neck, which directly caused his death.[4]

In his Decision, Judge Dumayas discussed his findings on the existence of self-defense, thus:

The prosecution's evidence, however, likewise proves that (1) there was unlawful aggression on the part of Anikow; and (2) there was no provocation on the part of any of the accused.

To quote again from the February 21, 2013 Resolution of the Court, "No Less than the sworn statement of the eyewitness Saavedra was explicit on this account."

"x x x at nagulat na lang ako ng may kumalabog at nakita ko na hinampas nitong foreigner gamit ang kanyang kamay ang gawing kaliwa ng sasakyan, at napatigil ang sasakyan at bumaba ang apat na lalaking sakay nito, at ito naman foreigner ay sumugod papalapit sa apat, at ako naman ay umawat at namagitan at don nakakasalitaan na at galit na din itong apat na lalaki, at don biglang sinugod at sinuntok ni foreigner ang isa sa apat at nagkagulo na, at ako naman at sige pa rin sa ka-aawat at ini-iwas ko rin ang aking hawak na shot gun dahil baka ito ay ma-agaw sa akin at don tumakbo na itong foreigner papalayo sa direksyon ng Burgos, mga 30 meters siguro ang estimate ko na nilayo niya at sumugod pa ang dalawa sa suspect, samantalang yung dalawa pang suspect ay naiwan sa tabi ng Volvo nila nang abutan nila ang foreigner ay nagakasuntokan pa uli hanggang sa bumagsak ang foreigner there be actual and positive attack." [Exhibit "C," emphasis supplied]

In fine, the prosecution's own evidence clearly and convincingly proves: (1) unlawful aggression on the part of Anikow, the primordial element of self-defense; and (2) lack of sufficient provocation on the part of the accused. Generally, aggression is considered unlawful when it is unprovoked or unjustified. (People vs. Valencia, 133 SCRA 82) The unlawful aggression of Anikow resulted in injuries to the accused. This Court takes judicial notice of the Medical Certificates issued by Dr. Nulud attesting to the said injuries attached to the records of this case.

In so far, however, as the second element of self-defense is concerned, this Court is convinced that the means employed by accused Dela Paz and Datu were unreasonable - there was no rational equivalence between the means of attack and the means of defense. Reasonableness of the means employed depends on the imminent

danger of the injury to the person attacked; he acts under the impulse of self-preservation. He is not going to stop and pause to find out whether the means he has in his hands is reasonable. (Eslabon vs. People, 127 SCRA 785) True, Anikow committed unlawful aggression against the accused with his fists. However, the means used by the accused were unreasonable.[5]

Curiously, Judge Dumayas himself stated in his Decision that the accused never invoked self-defense, and yet, he was quick to declare that there was unlawful aggression based on clear and convincing evidence, to wit:

x x x x

Accused Abastillas did not invoke self-defense but attempted to cast doubt on the prosecution's evidence that he inflicted the fatal wound on the neck of Anikow and a wound on his back.

x x x x

The Court attaches great significance and importance to the CCTV video footage and the image frames extracted from it. Bereft of the aforesaid objectionable evidence of the prosecution, the CCTV footages and images would show that it was not accused Abastillas who inflicted the fatal blow neither was he who inflicted the wound on the back of Anikow. xxx

x x x x

In this jurisdiction, in self-defense, the burden of proof rests upon the accused and must be established by clear and convincing evidence. (People vs. Corecor, 159 SCRA 84) In this case, however, the prosecution's own evidence clearly and convincingly establishes unlawful aggression and lack of provocation on the part of any of the accused, which relieves them from the duty of proving the same.[6]

It is settled that self-defense is an affirmative allegation and offers exculpation from liability for crimes only if timely invoked and satisfactorily proved. When the accused admits the act charged but interposes a lawful defense, the order of trial may be modified[7] and the burden shifts to the accused to prove that he indeed acted in self-defense by establishing the following with clear and convincing evidence: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on his part. Self-defense cannot be justifiably appreciated when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[8] Without a doubt, respondent judge seems to have forgotten this established legal principle.

In his Compliance, Judge Dumayas never denied the existence of evidence showing that Anikow fled from the accused after the first fist and after that the accused went after him. But he claims that the fatal wound was inflicted on Anikow during the first scuffle when the aggression on his part was still existing, which placed the accused in legitimate self-defense. In his Decision, however, it is clear that he appreciated the existence of the mitigating circumstance of incomplete self-defense even without the accused invoking and proving the same, simply because the prosecution itself clearly and convincingly proved the existence of unlawful aggression and lack of sufficient provocation from any of the accused. His complete disregard of the settled rules and jurisprudence on self-defense and of the events that transpired after the first fight, despite the existence of testimonial and physical evidence to the contrary, in the appreciation of the privileged mitigating circumstance of incomplete self-defense casts serious doubt on his impartiality and good faith. Such doubt cannot simply be brushed aside despite his belated justification and explanation.

Under Canon 3 of the New Code of Judicial Conduct, impartiality applies not only to the decision itself, but also to the process by which the decision is made. When Judge Dumayas chose to simply ignore all the evidence

showing that the accused still pursued Anikow after the latter had already run away, not even bothering to explain the irrelevance or lack of weight of the same, such act necessarily put the integrity of his entire Decision in question.

Likewise, his failure to cite in the Decision his factual and legal bases for finding the presence of the ordinary mitigating circumstance of voluntary surrender is not a mere matter of judicial ethics. No less than the Constitution provides that no decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based.[9] The Court cannot simply accept the lame excuse that Judge Dumayas failed to cite said bases due to a mere oversight on his part that was made in good faith.

Moreover, even if Judge Dumayas' explanation to such omission was acceptable, he still failed to sufficiently justify why he appreciated the ordinary mitigating circumstance of voluntary surrender on the part of the accused. For voluntary surrender to be appreciated, the following requisites must be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[10] In the case at bar, it was not shown from the evidence presented that the accused intended to surrender and admit the commission of the crime; they did not even invoke self-defense during trial. On the contrary and far from being spontaneous, security guard Saavedra even testified that accused warned him not to report the incident or note their plate number as they were fleeing the scene of the incident.

Indeed, it is settled that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases.[11] However, when the inefficiency springs from a failure to recognize such a basic and fundamental rule, law, or principle, the judge is either too incompetent and undeserving of the position and title vested upon him, or he is too vicious that he deliberately committed the oversight or omission in bad faith and in grave abuse of authority.[12] Here, the attendant circumstances would reveal that the acts of Judge Dumayas contradict any claim of good faith. And since the violated constitutional provision is so elementary, failure to abide by it constitutes gross ignorance of the law, without even a need for the complainant to prove any malice or bad faith on the part of the judge.

Corollarily, the Court finds Judge Dumayas guilty of gross ignorance of the law and gross misconduct.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Dumayas. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of a clear and unmistakable provision of the Constitution upends this presumption and subjects the magistrate to corresponding administrative sanctions.[13]

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other similar motive. Judges are expected to exhibit

more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart.[14]

Although a judge may not always be subjected to disciplinary actions for every erroneous order or decision he issues, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. If judges wantonly misuse the powers granted to them by the law, there will be, not only confusion in the administration of justice, but also oppressive disregard of the basic requirements of due process. For showing partiality towards the accused, Judge Dumayas can be said to have misused said powers.

Indubitably, Judge Dumayas violated the Code of Judicial Conduct ordering judges to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.[15] He simply used oversight, inadvertence, and honest mistake as convenient excuses. He acted with conscious indifference to the possible undesirable consequences to the parties involved.

Indeed, Judge Dumayas is also guilty of gross misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[16]

To hold a judge administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice.[17] The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them justice. They must trust the judge, otherwise they will not go to him at all. They must believe in his sense of fairness, otherwise they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.[18]

Interestingly, Judge Dumayas has the following administrative cases filed against him:

Complainant

Docket

Number

Date Filed

Nature

Status

1.

Asuncion, Gliceria

64-03-CA-J

Aug. 29, 2003

Rendering Unjust Decision

Case Dismissed (Oct. 7, 2003)

2.

Fortun, Raymond A.

08-2784

Jan. 18, 2008

Gross Ignorance of the Law

Case Dismissed (March 17, 2008)

3.

Co, Felix S.

08-3002-RTJ

Sept. 25, 2008

Knowingly Rendering Unjust Judgment

Case Dismissed (June 17, 2011)

4.

Reyes, Gemma

10-3555-RTJ

Nov. 17, 2010

Gross Ignorance of the Law

Case Dismissed (March 14, 2012)

5.

Estevez, Lourdita

11-3603-RTJ

Feb. 8, 2011

Knowingly Rendering Unjust Order and Ignorance of the Law

Case Dismissed (Sept. 12, 2011)

6.

RCBC CAP Corp. rep. by Ramon Posadas

RTJ-15-2411

Feb. 6, 2012

Gross Ignorance of the Law

Pending

7.

Montenegro, Gregorio A.

13-4095-RTJ

July 5, 2013

Grave Abuse of Discretion, Incompetence, Gross Ignorance of the Law, Viol. of R.A. 3019, Conduct Prejudicial to the Best Interest of the Service

Case Dismissed (Sept. 9, 2015)

8.

Fabularum, Alberto DC

13-4140-RTJ

Sept. 24, 2013

Grave Abuse of Discretion and Bias

Case Dismissed (June 25, 2014)

9.

PDIC rep. by Atty. R. Mendoza, Jr.

13-4162-RTJ

Nov. 21, 2013

Gross Ignorance of the Law

Pending

10.

PCSO rep. by Atty. J.F. Rojas II

RTJ-16-2477

Nov. 27, 2013

Gross Ignorance of the Law, Grave Abuse of Authority, Gross Neglect of Duty

Pending

11.

Tanjutco, Carolina

14-4332-RTJ

Nov. 10, 2014

Knowingly Rendering Unjust Judgment

Pending

12.

Yuseco, Francis, Jr. R.

15-4381-RTJ

March 26, 2015

Gross Ignorance of the Law, Grave Abuse of Authority and Gross Incompetence

Pending

13.

Sarrosa, Michael, et al.

16-4534-RTJ

Feb. 22, 2016

Gross Ignorance of the Law, Bias, Partiality, and Viol. of Code of Judicial Conduct

Pending

That a significant number of litigants saw it fit to file administrative charges against Judge Dumayas, with most of these cases having the same grounds, i.e., gross ignorance of the law or procedure and knowingly rendering unjust judgment, only shows how poorly he has been performing as a member of the bench. The Court takes the aforementioned incidents as evidence of respondent's stubborn propensity to not follow the rule of law and procedure in rendering judgments and orders. This definitely has besmirched the integrity and seriously compromised the reputation, not only of his court, but more importantly, of the entire judicial system which he represents.

WHEREFORE, the Court finds Judge Winlove M. Dumayas of Branch 59, Regional Trial Court, Makati City, GUILTY of gross ignorance of the law or procedure and gross misconduct and hereby DISMISSES him from the service with FORFEITURE of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.[19]

SO ORDERED.

Carpio,[*] Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr., and Gesmundo, JJ., concur.

Sereno, C.J., on leave.

Velasco, Jr., J., inhibit due to relation to a party.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the

law on which it is based.

[2] Rollo, pp. 35-36.

[3] Id. at 57.

[4] RTC Decision in Criminal Case No. 12-2065, dated July 2, 2014, records, p. 904.

[5] Id. at 918-919.

[6] Id. at 919, 920, and 921. (Emphasis ours.)

[7] Sec. 11(e), Rule 119 of the Rules of Court.

[8] *People v. Nestor M. Bugarin*, G.R. No. 224900, March 15, 2017.

[9] Sec. 14, Article VIII of the 1987 Constitution.

[10] *De Vera v. De Vera*, 602 Phil. 877, 886 (2009).

[11] *Andrada v. Judge Banzon*, 592 Phil. 229, 233-234 (2008).

[12] *DOJ v. Judge Misláng*, 798 Phil. 225, 235 (2016).

[13] Id.

[14] Id.

[15] Sec. 2, Canon 3 of the Code of Judicial Conduct.

[16] *Office of the Ombudsman v. De Zosa, et al.*, 751 Phil. 293, 300 (2015).

[17] *Andrada v. Hon. Judge Banzo*, supra note 9.

[18] *Lai v. People*, 762 Phil. 434, 443 (2015).

[19] Three (3) members of the Court considered the penalty too harsh.

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