

**CARLOS LOPEZ, COMPLAINANT, VS. HON. AUGUSTO H. FERNANDEZ,
JUDGE OF MUNICIPAL COURT OF DIGOS, DAVAO DEL SUR,
RESPONDENT.**

A.M. No. 2124-MJ. September 11, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Administrative complaint against Municipal Judge Augusto H. Fernandez of Digos, Davao del Sur, charging him with "grave abuse of discretion amounting to ignorance of the law" for having modified the judgment of conviction he rendered in a criminal case entitled, "People vs. Carlos Lopez," by increasing the penalty from imprisonment of 1 month and 21 days to 2 months and 1 day of arresto mayor allegedly after the accused has perfected his appeal from the judgment of conviction.

It appears that a criminal action for grave threats[1] under Article 282 of the Revised Penal Code was filed against Carlos Lopez, the complainant herein, in the Municipal Court of Digos, Davao del Sur, docketed as Criminal Case No. 3418.

After trial, respondent judge Augusto H. Fernandez rendered a decision[2] dated January 8, 1979 convicting the accused Carlos Lopez of the offense charged, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds that the prosecution evidence measures up to the test of moral certainty for the conviction of the accused of the offense charged. He is sentenced to 1 month and 21 days of arresto mayor, to pay a fine of P50.00 and the costs."

A motion for reconsideration dated January 17, 1979 was filed by private prosecutor Hermenegildo Cabrerros praying for damages in the sum of P2,300.00 by way of attorney's fees since no civil damages had been awarded, and alleging that in accordance with Article 64 of the Revised Penal Code, the penalty imposable upon the accused is arresto mayor in its medium period, or 2 months and 1 day to 4 months, considering that there is neither mitigating nor aggravating circumstance. Hearing was had on said motion for reconsideration on January 22, 1979, and subsequent thereto, respondent judge issued the questioned order[3] dated January 22, 1979 modifying the decision dated January 8, 1979 increasing the penalty to 2 months and 1 day of arresto mayor (increase of 10 days), but he denied the award of damages. Pertinent portion of the order reads:

"The penalty imposable under paragraph 2, Article 282, Revised Penal Code, is arresto mayor and a fine not exceeding P500 if the threat shall not have been made subject to a condition. In the absence of neither aggravating nor mitigating circumstance, the penalty should be imposed in its medium period, i.e., 1 month and 1 day to 6 months, and the medium period is 2 months and 1 day to 4 months.

"WHEREFORE, the dispositive portion of the decision is hereby modified as follows:

"WHEREFORE, the Court finds that the prosecution evidence measures up to the test of moral certainty for the conviction of the accused of the offense charged. He is sentenced to 2 months and 1 day of arresto mayor, to pay a fine of P50, and the costs." (Italics supplied)

It appears from the records that on January 22, 1979, the same day the questioned order of modification of judgment was issued, the complainant herein filed a notice of appeal informing the court that "he is appealing to the Court of Appeals, Manila, from the decision rendered in the above-entitled case on January 8, 1979 convicting him of the crime charged." The accused-complainant received the questioned order amending the decision on January 25, 1979.[4]

On February 22, 1979, Carlos Lopez filed the instant administrative complaint charging respondent with "grave abuse of discretion amounting to ignorance of the law" upon the alleged modification of judgment increasing the penalty after an appeal thereof was perfected, and praying that "the respondent be removed from office." In his administrative complaint, he alleged the following, to wit:

" x x x

"1. That he modified a judgment rendered by him in Criminal Case No. 3418 of his Court entitled 'People vs. Carlos Lopez, for Grave Threats,' increasing the penalty after the accused had perfected his appeal considering that the appeal was duly filed on the same day but before the motion for reconsideration was heard and submitted which prompted the modification in gross disregard of the rule that he has lost jurisdiction over the case upon perfection of the appeal."

In his comment to the charge or complaint, respondent judge did not dispute the fact that he issued the order modifying the decision on the same day the notice of appeal was filed by complainant on January 22, 1979. However, he held, the view that complainant's appeal was perfected only on January 29, 1979 alleging "that it is the court that determines the date of the perfection of the appeal and not the accused-complainant.[5]

The essential issue involved herein is a question of fact: Whether or not the issuance of the respondent's order modifying the decision actually preceded the perfection of complainant's appeal of the judgment of conviction.

Under the Revised Rules of Court, Section 7 of Rule 120, the judgment of conviction may be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. Under Section 3, Rule 122, the appeal is perfected upon filing of the notice of appeal and serving a copy thereof on the adverse party or his attorney.

It is a well-settled rule that upon perfection of the appeal in conformity with the requirements of Section 3, Rule 122, the trial court loses jurisdiction over the case.[6] This Court, in the case of *Director of Prisons, et al. vs. Judge Teodoro, et al.*, L-9043, July 30, 1955, 97 Phil. 391, had ruled that "as a matter of principle, when an appeal has been perfected from a judgment in a criminal case, the court from which the appeal is made loses jurisdiction over the case, and this means both the record and the person of the accused-appellant."

Evidently, there was no clear showing that the filing of the notice of appeal with the Municipal Court of Digos, Davao del Sur preceded in fact the hearing of the motion for reconsideration and the subsequent order modifying the judgment of conviction of the accused Carlos Lopez. Assuming arguendo that the filing of the notice of appeal actually preceded the order of modification of judgment of conviction, the evidence on record does not show that there was service of the notice of appeal upon the adverse party or his attorney as specifically required under Rule 122, Section 3 of the Revised Rules of Court for perfection of an appeal, nor was there publication of notice of appeal under Section 4 of Rule 122 if personal service cannot be made, nor a waiver of the notice by the appellee under Section 5 of Rule 122.

Accordingly, this Court will not give due course to this administrative complaint and subject the respondent judge to removal from office when the act complained of was not established by reliable evidence to show that there was a total disregard of the rule, done whimsically, capriciously and maliciously. As this Court succinctly pointed

out in the case of Ludovico Ajeno vs. Hon. Inserto:[7]

"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. To hold therefore liable the respondent judge administratively for ignorance of the law, there must be reliable evidence to show that the judicial acts complained of was ill-motivated, corrupt or inspired by an intention to violate the law or were in persistent disregard of well-known rules. None of these have been presented in this case."

In the opinion[8] of the then Justice, subsequently Chief Justice, Makalintal, now retired, he pointed out with salutary emphasis, thus:

"To hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that he has erred, would be nothing short of harassment and would make his position unbearable."

At most, the error of the respondent judge herein would partake of the nature of erroneous judgment correctible by the remedies afforded by the Revised Rules of Court not through an administrative complaint.

Numerous administrative charges against erring judges have come to this Court and We viewed them with utmost care, because proceedings of this character, according to *In re Horrilleno*,[9] as set forth in the opinion of Justice Malcolm, are in their nature highly penal in character and are to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt. This 1922 decision has been subsequently adhered to in a number of cases decided by this Court.[10]

Undoubtedly, in the light of the evidence submitted to this Court by the complainant, the charges of "grave abuse of discretion amounting to ignorance of the law" against the respondent were not sufficiently substantiated by the complainant who has the burden of proof in administrative proceedings.[11] The proofs presented were not sufficiently convincing to compel this Court to exercise its disciplinary powers over the respondent judge mandated under Article X, Section 6 of the 1973 Constitution.[12]

Where charges of grave abuse of discretion amounting to ignorance of the law were not substantiated, this Court, nevertheless, would not give an imprimatur without warning, in view of the insistence of the respondent judge that he retained jurisdiction to modify the judgment even after complainant had filed the notice of appeal when, in his comment[13] to the complaint he stated as follows:

"V. Upon the perfection of the appeal on 29 January 1979, the Court ordered the elevation of the records to the appellate court, Annex 6. It is the Court that determines the date of the perfection of the appeal and not the accused-complainant. So that the charge of grave 'abuse of discretion amounting to ignorance of the law' is without foundation and justification on the modified decision was promulgated before the appeal was perfected." (Italics supplied)

The statement of the respondent judge is a clear indication of ignorance of a basic rule enunciated in the Revised Rules of Court which at least deserves a reprimand. It is imperative, to gain high respect towards and confidence in the members of the judicial branch, that judges should be conversant with the law including its latest amendments which they are to apply to a given case. The judiciary needs judges who read, study and ponder--judges who personify learning and equanimity. In the case at bar, respondent judge has been in the service of the judiciary for 23 years and has opted to retire upon reaching his 65 years on December 3, 1979.[14]

Considering the respondent's 23 years of service in the judiciary, his judicial mind should have been tempered with the delicate intricacies of the law and procedure. There is hardly any excuse for him to disregard the basic rule that "appeal in criminal cases is deemed perfected upon filing a notice of appeal in court, and by serving a

copy thereof upon the adverse party or his attorney", which is an express pro-vision of the Rules of Court. The Supreme Court clearly ad-verted to the solemn obligation of judges to be well-informed of the law and rulings affecting his jurisdiction.[15] Thus, in the aforecited case of Ludovico Ajeno vs. Hon. Inserto,[16] the Supreme Court said:

" x x x

"Even in the remaining years of his stay in the judiciary he should keep abreast with the changes in the law and with the latest decision and precedents. Although a judge is nearing retirement he should not relax in his study of the law and court decision. Service in the judiciary means a continuous study and research on the law from beginning to end. In this respect respondent judge has failed."

IN VIEW OF THE FOREGOING, the respondent judge is hereby reprimanded for ignorance of the law. Let a copy of this resolution be entered on the record of respondent judge Augusto H. Fernandez.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

[1] Article 282, Revised Penal Code -

Any person who shall threaten another with the infliction upon the person, honor, or property of the latter or of his family of any wrong amounting to a crime, shall suffer:

x x x

2. The penalty of arresto mayor and a fine not exceed-ing 500 pesos, if the threat shall not have been made subject to a condition.

[2] p. 3, Rollo.

[3] p. 36, Rollo.

[4] Ibid.

[5] p. 21, Rollo.

[6] Evaristo, et al. vs. Hon. Olegario Lastrilla, et al., G.R. No. L-14682, November 29, 1960, 110 Phil. 181; Alama vs. Abbas, G.R. No. L-19616, November 29, 1966, 18 SCRA 836.

[7] Administrative Matter No. 1098-CFI, May 31, 1976, 71 SCRA 166.

[8] Dizon vs. De Borja, Adm. Matter No. 163-J, January 28, 1971, 37 SCRA 46.

[9] 43 Phil. 212 (1922).

[10] Enrique vs. Araulla, Adm. Case No. 270-J, December 18, 1973, 54 SCRA 232 (1973); Tombo vs. Medina, Adm. Case No. 929, January 17, 1974, 55 SCRA 13 (1974); Lampanog vs. Villarrojo, Adm. Case No. 381-MJ, January 28, 1974, 55 SCRA 304 (1974); Bartolome vs. De Borja, Adm. Case No. 1096-CFI, May 31, 1976, 71 SCRA 153 (1976); De Guzman vs. De Leon, Adm. Case No. 1328-MJ, July 30, 1976, 72 SCRA 177 (1976); Meimban vs. Batete, Adm. Case No. 131-MJ, August 21, 1976, 72 O.G. 11077 (Dec. 1976), 72 SCRA 380 (1976); Tolentino vs. Tiong, Adm. Case No. 435-MJ, August 26, 1976, 72 SCRA 385 (1976); Amosco vs. Magno, Adm. Matter No. 439-MJ, September 30, 1976, 73 SCRA 107 (1976).

[11] Concepcion vs. Vela, Adm. Matter No. 309-MJ, May 31, 1976, 71 SCRA 133.

[12] Article X, Section 6, 1973 Constitution. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

[13] p. 21, Rollo.

[14] p. 23, Rollo.

[15] Vasquez vs. Malvar, Adm. Matter No. 884-CFI, August 31, 1978, 85 SCRA 10; Arpon vs. De la Paz, Adm. Matter No. 41-MJ, May 28, 1975, 64 SCRA 157.

[16] Administrative Matter No. 1098-CFI, May 31, 1976, 71 SCRA 166.

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