

EDNA BAGUYO, COMPLAINANT, VS. HON. OSCAR LEVISTE, DISTRICT JUDGE, CFI, BRANCH II, ROXAS CITY.

A.M. No. 2224-CFI. August 31, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

In a sworn complaint dated July 5, 1979,[1] Edna Baguyo, with the consent of her mother Rosario C. Baguyo, charged District Judge Oscar Leviste of the CFI of Capiz, Branch II, Roxas City, with "grave abuse of authority" and "violation of Section 5 of the Judiciary Act of 1948", allegedly committed as follows:

- (1) That Criminal Case No. 768, entitled "People of the Philippines vs. Fernando Azarraga" for rape, with the complainant herein as victim, was filed on August 15, 1977 before the CFI of Capiz, Branch II, Roxas City;
- (2) That after the prosecution rested its case, the accused Fernando Azarraga waived his right to testify, thus his counsel was constrained to submit the case for decision and the court ordered the case submitted for decision on September 26, 1978;
- (3) That respondent rendered a decision on March 20, 1979,[2] convicting the accused and sentencing him to EIGHT (8) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY;
- (4) That on March 30, 1979, before said decision became final, respondent Judge issued another Order (Amendment to Decision of March 20, 1979)[3] finding the accused Fernando Azarraga not guilty of the charge of rape for failure of the prosecution to prove the offense beyond reasonable doubt, without any Motion for Recon-sideration being filed by the accused;
- (5) That due to the haste in the preparation of the amendment of the decision, respondent incorrectly indicated Criminal Case No. 5567 instead of "768" and furnished a copy thereof to the Pro-vincial Fiscal instead of the City Fiscal of Roxas City;
- (6) That the criminal case was submitted for decision on September 26, 1978, and yet it was only decided on March 20, 1979, or 174 days after it was submitted for decision, in violation of Section 5 of the Judiciary Act of 1948 (R.A. 296).

On September 6, 1979,[4] respondent Judge, as required by this Court, submitted his comment with the following explanation:

That the records of Criminal Case No. 768, together with all exhibits, minutes, and transcripts, were submitted by interpreter Sabiniano Mendoza, who prepared the minutes, to respondent Judge only on January 19, 1979, so he could not prepare the decision within the 90 days counted from the order declaring the case submitted for decision on September 26, 1978; that even the stenographer assigned to type respondent's Certification (Certification of Service) failed to include said case for failure of the Deputy Clerk of Court to inform her of said case; that the respondent Judge amended his decision of March 20, 1979, before it became final and executory, and complainant is presumed to know that it is within the power of the court to amend its decision to conform to the evidence

before it becomes final and executory, even without notice to the parties; that whatever clerical mistakes might have been committed in placing the wrong case number on the "Amendment to the Decision" cannot be considered as the fault of the respondent Judge, but attributable to the clerk concerned; that the amendment to the decision made by respondent Judge is in accordance with law and the evidence, otherwise both the fiscal and the private prosecutor would have brought it up to the Supreme Court on certiorari, which neither did.

After a careful study of the record of this case, we find that the decision rendered in Criminal Case No. 768, declaring the accused therein guilty of the crime of rape was based on respondent Judge's evaluation of the evidence therein presented, supported by the well-established principle and recognized jurisprudence that the defense of alibi cannot prevail over the positive testimony of the prosecution. However, on March 30, 1979, before the said decision became final and executory, respondent Judge issued an amendment to the findings and dispositive part of the decision in question for the following reasons, namely, (1) the Court failed to consider in its judgment of conviction that the accused is, notwithstanding the waiver of his right to testify, entitled to the presumption of innocence and to the benefit of the doubt; (2) the Court should have relied on the strength of the evidence for the prosecution rather than on the silence of the accused; (3) the Court entertained reasonable doubt that the accused is guilty of rape, because the use of force or lack of consent was not proven; (4) the Court entertained that doubt because the prosecution evidence did not establish any indication of injury on the vagina and the body of the supposed victim, and the evidence of the prosecution proved the fact that it was the mother of the supposed victim who wanted to prosecute the case, and not the alleged victim who was only forced by the mother to complain to the police; (5) the Court found that after the alleged rape, the victim put on her blouse which had no indication of damage, thus negating her theory that force and violence was utilized in taking off the blouse and in raping her; and (6) the offense was not proven beyond reasonable doubt.

Section 7, Rule 121 of the Rules of Court provides:

"Section 7. Modification of judgment. - A 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. A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal."

As it is within the prerogative of a judge to correct his own decision before it becomes final and executory, so as to make it conform to the evidence presented and the applicable laws, herein respondent did not commit any grave abuse of discretion in the exercise of his prerogative in this case. He sufficiently explained the reasons why he amended *motu proprio* his own decision upon his realization that the available evidence and the pertinent jurisprudence on the matter showed the error in his judgment of conviction. The reasons given by respondent that compelled him to amend his decision are convincingly correct. Backed up by the good faith of respondent judge which has not been put in issue, the presumption of regularity in the performance of his official duties must be conceded to him. The Amendment to the Decision of March 30, 1979, in itself, contains an order that the Provincial Fiscal, counsel, complainant and the accused should be notified of the amendment, and if the parties did not receive the notification as ordered, the respondent Judge can no longer be faulted with such omission.

Finally, the explanation of the respondent Judge regarding the short delay in the disposition of the criminal case maybe considered satisfactory under the circumstances obtaining in this case. Anyway, after the judgment of conviction, and previous to it, complainant never complained of the delay in the disposition of the case. It was only after respondent Judge altered the judgment of conviction that complainant, perhaps feeling aggrieved, raised the question of delay in its disposition.

Be that as it may, We find that there is no need for a formal investigation in this case as the issues raised in the complaint were satisfactorily explained by respondent in his comment and this complaint may already be resolved

by mere recourse to the record.

The respondent Judge delayed the decision in said criminal case for about 174 days -- almost six (6) months --- from the date the said case was submitted for decision on September 26, 1978, and almost three months from the expiration of the first ninety (90) days, for which he deserves admonition.

WHEREFORE, RESPONDENT DISTRICT JUDGE OSCAR LEVISTE IS HEREBY ADMONISHED WITH THE WARNING THAT A REPETITION OF SUCH IRREGULARITY WILL BE DEALT WITH MORE SEVERELY. LET A COPY OF THIS RESOLUTION BE ENTERED IN HIS RECORD.

SO ORDERED.

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

[1] pp. 1-5, Rollo.

[2] pp. 6-21, Rollo.

[3] pp. 22-23, Rollo.

[4] pp. 27-29, Rollo.

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