

FELIZARDO SORIANO, COMPLAINANT, VS. JUDGE ALFREDO C. MABBAYAD, RESPONDENT.*A.M. No. 378-MJ. October 24, 1975*

Ponente: MAKASIAR, J.

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Complainant Felizardo Soriano of Roxas, Isabela, in a letter dated December 20, 1970 to District Judge Guillermo Romero of Isabela, charged respondent municipal judge Alfredo C. Mabbayad of Roxas with "grave abuse of discretion and/or gross incompetence and inefficiency amounting to ignorance of the law." The complainant is the brother of the deceased Pablo Soriano who was killed on or about May 5, 1970.

From the records, one Melencio Aban alias Inciong was charged with murder for the death of Pablo Soriano in Criminal Case No. 1072 filed on May 5, 1970 with the municipal court of Roxas, Isabela (Exh. 2, p. 65, rec.). After conducting the first stage of the preliminary investigation on May 19, June 1 and June 18, 1970, respondent who is the municipal judge of Roxas, Isabela since 1948, issued on June 18, 1970 the warrant for the arrest of the accused, fixing a bail bond of P12,000.00 (Exh. 14, p. 77, rec.). After his arrest, the accused Melencio Aban alias Inciong filed on July 1, 1970 a motion for the reduction of bail to P6,000.00, which was recommended by the prosecuting officer Sgt. Fausto Y. Nolasco and which respondent granted on the same day, July 1, 1970 (Exh. 15, p. 78, rec.). Upon the posting of the reduced bond of P6,000.00, respondent ordered the release of the accused on July 1, 1970 (Exh. 16, p. 79, rec.). However, upon motion of Second Assistant Provincial Fiscal Vivencio C. Guzman dated July 21, 1970 praying that the bail bond be increased to P20,000.00 as the information charges a capital offense (Exh. 17, p. 80, rec.), respondent issued an order dated July 21, 1970 increasing the bond to P20,000.00 and directing the re-arrest of the accused (Exhs. 18 & 19, pp. 81-82, rec.). Since then, the accused has not been re-arrested despite diligent efforts to locate him. Consequently, respondent could not conduct the second stage of the preliminary investigation (Exhs. 20 & 21, pp. 83-84, rec.).

The re-arrest of the accused could have been expedited had respondent forwarded the records of the case to the Court of First Instance so that the warrant of arrest could be issued and served anywhere in the Philippines.

The records reveal that in the criminal complaint dated May 7, 1970, PC Sergeant Fausto Y. Nolasco, Jr. charges Melencio Aban alias Inciong with murder for killing the deceased Pablo Soriano on May 5, 1970 with an unlicensed 12-gauge "paltik" qualified by treachery and aggravated by evident premeditation (Exh. 2, p. 65, rec.). Listed as witnesses are Teofilo Pante, Rodolfo Aban y Quinto, Mrs. Cecilia Aban y Quinto, Luis R. Tamayo, Chief of Police Nicanor Saludaes, and Patrolman Hilario Singson. Said complaint was filed with and sworn to before respondent municipal judge Alfredo C. Mabbayad on May 7, 1970 (Exh. 2, p. 65, rec.). Attached to the complaint are the sworn statements of the accused Melencio G. Aban executed by him on May 5, 1970 before the clerk of the municipal court (Exh. 9, p. 72, rec.); of Mrs. Cecilia Aban y Quinto, wife of the accused, executed on May 6, 1970 before respondent Judge (Exh. 4, p. 67, rec.); of Rodolfo Aban, son of the accused, executed on May 6, 1970 and sworn to before respondent Judge (Exh. 5, p. 68, rec.); and of Teofilo Pante executed on May 6, 1970, before respondent Judge (Exh. 6, p. 69, rec.).

In his sworn statement Exhibit 9 (p. 72, rec.), taken down by policeman Hilario Singson, the accused stated that at about 1 o'clock in the morning of May 5, 1970, he, his son Rodolfo and one Bonifacio Pante were looking for his stolen carabao which he found tied near a creek in Quiling, Roxas, Isabela; that on the way home, he saw the deceased Pabling Soriano who was then about to pasture his own carabao; that he accosted Pabling Soriano asking him why he stole his carabao; that when Pabling Soriano suddenly faced him as if to fight him, he shot him with his "paltik" (kibrang), which he bought in San Manuel, Pangasinan; and that thereafter, he went to the chief of police of their barrio.

In her affidavit Exhibit 4 (p. 67, rec.) taken down by PC Sergeant Fausto Nolasco, Jr., Cecilia Aban y Quinto, wife of the accused, stated that her husband, the accused, together with her son, Rodolfo, and Teofilo Pante, went to search for their lost carabao at about 2 o'clock in the morning of May 5, 1970; that later, she met her husband and his companions with the carabao at the riverside; that on the way to their barrio, she met the deceased Pablo Soriano; that her husband, the accused therein, talked to Pablo Soriano regarding the carabao which was followed by a little altercation between the two; that moments later, she heard two shots and saw Pablo Soriano lying on the ground; that the first shot did not hit Pablo Soriano who was hit by the second shot; and that she did not see her husband fire the second shot, about which she came to know only when her husband told her that Pablo is dead.

In his affidavit, Exhibit 5 (p. 68, rec.), also taken down by PC Sergeant Fausto Nolasco, Jr., Rodolfo Aban, the 20-year old son of the accused, stated that he and his father, together with Teofilo Pante, went looking for their lost carabao at about 5 o'clock in the morning of May 5, 1970 in barrio Quiling, Roxas, Isabela; that on the way home, they met Pablo Soriano who had a heated discussion with his father regarding the carabao; that not long after Pablo Soriano attempted to fight his father who shot him to death with his 12-gauge "paltik" in the presence of Teofilo Pante and his mother Cecilia Aban; that his father fired two shots at the victim; that thereafter, his father surrendered to Mayor Abad together with his 12-gauge "paltik"; that Pablo Soriano then had a bladed weapon; and that he knew that Pablo attempted to fight his father from his action in coming down from his own carabao.

In his sworn statement taken down by PC Sergeant Fausto Nolasco, Jr. on May 5, 1970 (Exh. 6, p. 69, rec.), 25 year old Teofilo Pante stated that he accompanied the accused Melencio Aban and his son, Rodolfo, searching for their lost carabao; that at about 6 o'clock in the morning of May 6, 1970 on their way home after recovering the lost carabao, they met the deceased Pablo Soriano; that not knowing of any misunderstanding between the accused and Pablo, he proceeded on his way; that moments later, he heard a shot and saw Pablo Soriano getting down from his carabao; and that on the second shot, he saw Pablo lying on the ground with his back bleeding; that he was about 40 meters from Melencio and Pablo when he heard the two shots; that Melencio then told him that he killed Pablo; that he advised Melencio to surrender; that Mrs. Cecilia Aban was about a meter from Melencio and Pablo at the time of the incident; and that he accompanied Melencio to the mayor to surrender that same morning.

Juanito C. Sinaban executed his affidavit which was taken down by police sergeant Pelagio M. Uy and duly sworn to by him on May 8, 1970 before respondent municipal judge (Exh. 10, p. 73, rec.), in which he stated that at about 6 o'clock in the morning of May 5, 1970, he was going to his farm behind Pablo Soriano and Obito Gaspar who were also going to their respective farms; that on the way Pablo Soriano met the accused Melencio Aban, his son Rudy Aban, Berting Aban and Bonifacio Pante, all holding firearms in their hands; that he heard them talking about a stolen carabao; that he heard the accused Melencio Aban accusing Pablo Soriano as the one who stole his carabao; that Pablo Soriano was going in the direction of his farm when Bonifacio Pante fired at him but missed him; that Melencio Aban then fired at Pablo Soriano, hitting him on his back; that thereafter he saw Melencio Aban, Rodolfo Aban, Berting Aban and Bonifacio Pante leaving in a hurry; and that he had known the accused,

his son Rodolfo, and Bonifacio Pante for more than two years.

At the preliminary examination conducted by respondent on May 19, 1970, 40-year old Cecilia Aban testified that at about 2 o'clock in the morning of May 5, 1970, her husband, the accused Melencio Aban, her son, Rodolfo, and Teofilo Pante went looking for their missing carabao; that she followed them and met them before reaching the river already with their recovered carabao; that on the way home, they met the deceased Pabling Soriano riding on a carabao; that Pablo Soriano dismounted from his carabao and talked with her husband Melencio Aban; that when her husband Melencio accused Pablo Soriano of stealing their carabao, Pablo Soriano tried to draw his 12-gauge "paltik" which her husband grabbed from Pablo Soriano and with which her husband shot Pablo Soriano; and that she did not state in her affidavit of May 6, 1970 that the "paltik" belonged to Pablo Soriano, because the appropriate question was not asked of her, she was then weak, it did not come to her mind, and she is not an expert in law (Exh. 11, p. 74, rec.).

At the continuation of the said preliminary examination on June 18, 1970, policeman Hilario Singson identified the affidavit of confession of accused Melencio Aban to the effect that he shot with his 12-gauge "paltik" Pablo Soriano for stealing his carabao; and that he (Singson) took down his confession in English but translated the same to the accused in Ilocano (Exh. 13, p. 76, rec.).

In his order dated June 18, 1970, respondent Judge stated that after conducting the preliminary examination, he found "that there is a prima facie case of murder committed by the accused in the manner as alleged therein and that the accused is probably guilty thereof," for which reason he issued the warrant for the arrest of the accused and fixed the bail bond in the amount of P12,000.00 for his provisional liberty (Exh. 14, p. 77, rec.).

It appears that, despite the exculpatory testimony at the preliminary examination of the defendant's wife (Exh. 11, p. 74, rec.) which changed the contents of her affidavit (Exh. 4, p. 67, rec.), the affidavit of confession of the accused himself (Exh. 9, p. 72, rec.) and the affidavits of his son, Rodolfo Aban, Teofilo Pante and Juanito Sinaban (Exhs. 5, 6, and 10, pp. 68, 69, 73, rec.), which affirmed that the accused Melencio Aban shot the victim from behind with his 12-gauge "paltik" which he brought from San Manuel, Pangasinan, and notwithstanding his finding of a prima facie case of murder against the accused, respondent Judge, upon motion of the accused with the conformity of PC Sergeant Fausto Y. Nolasco, Jr., who filed the criminal complaint, reduced the bail bond from P12,000.00 to P6,000.00 without first hearing the provincial fiscal on the said motion for reduction of bail bond (Exh. 15, p. 78, rec.). On July 7, 1970, the accused filed the reduced bond for which reason his release was ordered (Exh. 16, p. 79, rec.); but when Assistant Provincial Fiscal Vivencio P. Guzman filed a motion to increase the bail bond dated July 21, 1970 on the ground that the crime charged is a capital offense supported by the sworn extra-judicial confession of the accused himself and the affidavits of the other witnesses (Exh. 17, p. 80, rec.), respondent Judge on the same day, July 21, 1970, granted the motion, increased the bail bond to P20,000.00, and ordered the re-arrest of the accused (Exhs. 18 & 19, pp. 81-82, rec.), who, by then, could not be located and remains at large for over five years now.

Respondent municipal Judge conducted the preliminary examination for about a month, hearing one witness a day, namely, witness Cecilia Aban on May 19, 1970, witness Dr. Luis Tamayo (town health officer) on June 1, 1970, and witness Patrolman Hilario Singson on June 18, 1970 (pp. 58, 74, 75 & 76, rec.). He could have finished the preliminary examination of the three witnesses on the same day, May 19, 1970, since the other two witnesses Dr. Tamayo and Patrolman Singson hold office in the same municipal building.

The fact that respondent sent copies of the warrant for the re-arrest of the accused issued on July 21, 1970 to the chiefs of police of Malasiqui and Urdaneta, Pangasinan, despite which the accused could not be re-arrested because he could not be located in said municipalities as per indorsements dated April 16, 1971 and September

30, 1972, respectively, of the chiefs of police of Malasiqui and Urdaneta (Exhs. 20 & 21, pp. 83, 84, rec.), does not in any way mitigate, much less condone, his serious mistake in releasing the accused on a bail bond of P6,000.00. There is no showing even that he took steps towards the forfeiture of the said bond of P6,000.00.

Neither does his order dated July 21, 1970 increasing the bail bond to P20,000.00 extenuate his grave error; because the accused had by then already disappeared after he was released from custody on July 7, 1970 by order of respondent upon his filing of the ridiculously low bail bond of P6,000.00 for such a capital offense as murder (Exh. 16, p. 79, rec.), which he approved with "scandalous haste" on the very same day that the motion for the reduction of bail bond to P6,000.00 was filed on July 1, 1970 (Exh. 15, p. 78, rec.), without first seeking the views of the Provincial Fiscal thereon.

At the hearing before the Supreme Court on August 27, 1974, respondent Judge admitted that, being a municipal judge for the last 26 years since 1948, he is familiar with Department of Justice Circular No. 47 of 1946 and Circular No. 48 of 1963 recommending a bail bond for the provisional release of the accused at the rate of at least P2,000.00 for every year of the medium period of the imposable penalty. He also stated that the evidence adduced during the preliminary examination indicated homicide, not murder, the penalty of which is reclusion temporal or 12 years, one day to 20 years. Considering that the medium period of reclusion temporal is 14 years, 8 months, 1 day to 17 years and 4 months, the bail bond that he should have required for the provisional release of the accused should be at least P28,000.00 for homicide; and for murder, the medium period of which is reclusion perpetua or life imprisonment which is 30 years (Article 37, Revised Penal Code), the minimum bail bond is P60,000.00. The reasonability of the amount which is recommended in the aforesaid Department of Justice Circulars Nos. 47 and 48 has been sustained by the Supreme Court as early as May 10, 1954 in *Edaño, et al. vs. Honorable Sulpicio P. Cea, etc.* (L-6821) and re-affirmed on September 29, 1967 in *Villaseñor vs. Honorable Maximo Abañon, etc., et al.* (L-23599, 21 SCRA 312), wherein We stated:

"Here, petitioner is charged with a capital offense * * * it may call for the imposition of capital punishment. Then, Circular No. 47 dated July 5, 1946 of the Department of Justice, reiterated in Circular No. 48 of July 18, 1963, directing prosecuting attorneys to recommend bail at the rate of P2,000.00 per year of imprisonment, corresponding to the medium period of the penalty prescribed for the offense charged, unless circumstances warrant the higher penalty. The reasonableness of this Circular has already received this Court's imprimatur in one case (citing at the footnote *Edaño vs. Cea, supra*). WE are unprepared to downgrade this method of computation, what with the compound reduced peso value and the aggravating crime climate."

WE sustained the bail bond of P60,000.00 fixed by said respondent Judge in said case for the crime of direct assault upon an agent of a person in authority with murder (21 SCRA 312, 317).

Consequently, in originally fixing a bail bond of P12,000.00 for the charge of murder qualified by treachery and aggravated by evident premeditation, respondent Judge disregarded the aforesaid Circulars Nos. 47 and 48 of the Department of Justice. And his further reducing the already minimal bail bond of P12,000.00 to the ridiculous amount of P6,000.00 for such a capital offense, which enabled the accused to escape the toils of the law for over 5 years now, compounded by his failure for over 4 years to transmit the records of the case to the Court of First Instance so that the warrant of arrest could be issued for the apprehension of the accused anywhere within Philippine jurisdiction, constitutes grave abuse of discretion, gross incompetence and palpable inefficiency bordering on malicious misfeasance and nonfeasance. Until this date, the heirs of the victim are crying for justice which has been denied them because the accused cannot be apprehended.

WE ruled that a judge who resolved a motion to dismiss a criminal case only after 18 months and who failed to file the same and serve a copy thereof on the prosecution, or who repeatedly without reason absented himself from his station, is unfit to continue in office for thereby he "disregards deliberately or is ignorant of the basic

fundamentals of law and justice (Carreon vs. Flores, A.C. No. 111-MJ, May 30, 1975; Tadiar vs. Cases, A.C. Nos. 89-MJ & 1192, Oct. 21, 1974, 60 SCRA 215; Municipal Council of Casiguran, Quezon vs. Morales, A.C. Nos. 81-MJ & 559-MJ, Nov. 13, 1974, 61 SCRA 40). In the cases of Cases and Morales, the respondents were guilty merely of omission to perform a duty; whereas in the instant case, respondent is guilty of a positive arbitrary act of injustice. The removal of the respondent from office is justified under the facts and circumstances; although the same affords little consolation to the heirs of the victim whose rights can never be fully vindicated until the accused is arrested, tried and convicted.

Because the act of respondent seriously affects public interest, involving as it does the administration of justice, the motion of the complainant to withdraw his complaint dated October 14, 1972 (Exh. 2, p. 45, rec.) and reiterated on August 23, 1974, will not justify the dismissal of this administrative case against respondent. Until this date – after over five years – the accused in the aforesaid murder case has not been apprehended and the grave injustice perpetrated on the State as well as on the family of the victim has not been rectified or even assuaged.

WHEREFORE, RESPONDENT ALFREDO C. MABBAYAD IS HEREBY DISMISSED AS MUNICIPAL JUDGE OF ROXAS, ISABELA, WITH FORFEITURE OF ALL PRIVILEGES.

Castro, Acting C.J., Teehankee, Barredo, Antonio, Muñoz Palma, Aquino, Concepcion, Jr., and Martin, JJ., concur.

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