

LUISA DE NACIONAL, COMPLAINANT, VS. HON. JUDGE SEGUNDO M. ZOSA, RESPONDENT.

A.M. No. 392. July 31, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

Respondent, the Honorable Segundo M. Zosa, District Judge of Samar is charged by complainant Luisa de Nacional with having committed an alleged miscarriage of justice in two criminal cases heard before him by imposing upon the accused in two separate criminal cases a penalty much lower than what the law provides for the offense charged therein. In Criminal Case No. 7882, accused Antonio Cortes was charged with "Frustrated Murder" of complainant's husband, Paul Nacional and was given a penalty of only two (2) months in jail after erroneously crediting him with the mitigating circumstances of drunkenness, voluntary surrender and plea of guilty.

In Criminal Case No. 395, the same accused Antonio Cortes was likewise charged with "Frustrated Murder" of complainant's husband and meted out an indeterminate sentence from six (6) months and one (1) day also due to alleged presence of three mitigating circumstances: voluntary surrender, drunkenness and plea of guilty in his favor.

Complainant claims that "there is something fishy or monkey business in both cases". She contends that it was improper for the respondent Judge to consider in favor of the accused the mitigating circumstances of voluntary surrender because according to the return of the policeman of Catbalogan, Samar, the accused did not voluntarily surrender but was in fact arrested; "drunkenness" as a mitigating circumstance because the accused was a habitual drunkard; and the "plea of guilty" as a mitigating circumstance because it was offset when the accused escaped from the provincial jail while in the custody of the police in Manila.

Respondent Judge in his comment claims that in his honest opinion the offense committed by the accused in Criminal Case No. 7882 was not "Frustrated Homicide" but only "Less Serious Physical Injuries" for which they were both duly convicted; and that in Criminal Case No. 395, he considered the mitigating circumstances of plea of guilty, voluntary surrender and drunkenness, which was not habitual, in favor of the accused in view of the lack of objection on the part of the fiscal, although he considered the aggravating circumstance of recidivism against the accused Antonio Cortes. He submits that his decisions in the two criminal cases "speak for themselves" and that the accusation of the complainant that "there is something fishy and monkey business in said cases is not only unfounded and baseless but an outright canard". To refute the charge of alleged miscarriage of justice respondent Judge claims that out of the 335 decisions he has rendered from July 1971 to December 31, 1972, only 3 criminal cases and 3 civil cases were appealed.

Evidently satisfied with the explanation of the respondent Judge with respect to the verdict in Criminal Case No. 7882, complainant finally admitted that she has no kick at all against the decision of the respondent Judge in Criminal Case No. 7882, but insisted that the decision in Criminal Case No. 395 was irregular, biased and unjust

because in imposing penalty upon the accused in said Criminal Case No. 395, he erroneously took into consideration the mitigating circumstances of drunkenness, voluntary surrender and plea of guilty without even conducting any hearing on said mitigating circumstances.

Evidently, not contented with the complaint she has filed with the Secretary of Justice, complainant filed on May 29, 1973 another complaint with the Supreme Court reiterating practically the same charges against the respondent Judge.

Accordingly, the Supreme Court in a resolution en banc dated March 19, 1974 referred the matter to Mr. Justice Mariano Serrano of the Court of Appeals for investigation, report and recommendation. The latter submitted his report and recommendation on September 23, 1974.

On June 16, 1975 the administrative case against the respondent Judge was set for hearing. He and his counsel and the counsel for the complainant appeared.

The focal point of the complaint against the respondent Judge lies in his crediting the accused in Criminal Case No. 395 with three mitigating circumstances – voluntary surrender, drunkenness and plea of guilty and thus enabling the accused in said case to merit a much lower penalty for the crime committed – "frustrated murder". Complainant bewails the consideration of the accused's surrender as voluntary. She insists that the accused did not surrender voluntarily but was placed under arrest by a police officer after the commission of a crime. What the true facts were, there is no way of telling, because the respondent Judge failed to have a hearing on the matter. What happened, according to the Judge, is that he examined Corporal Federico Cito on November 23, 1972 in open court without putting him on the witness stand:

"COURT (Questioning Corporal Cito)

Q Where did you serve the warrant of arrest?

A At Canlapwas.

Q Immediately after the commission of the crime?

A Yes, your Honor.

Q So, you did not arrest him by virtue of the warrant of arrest?

A Yes, sir.[1]

According to the respondent Judge, he was constrained to credit the accused with the mitigating circumstance of voluntary surrender because he was made to understand that after the accused had stabbed Paul Nacional, the complainant's husband, the latter chased the accused with a bolo forcing him to run but when the policeman saw him and whistled at him he immediately stopped. Under such circumstances the respondent Judge believed that if the accused did not surrender it was because the police officer came before he could do so. The respondent Judge may be right in his belief but undoubtedly he made a mistake in not conducting a hearing to determine whether the accused had in fact surrendered or not. It is not enough to ask an arresting policeman in open court without even placing him under oath, whether the accused surrendered to him voluntarily or he had to arrest him.

Respondent Judge's explanation that he did not conduct any hearing to determine the mitigating circumstance of voluntary surrender because the fiscal did not object when said mitigating circumstance was proposed, is highly untenable. The rule is well established that the mitigating or aggravating circumstances should be proven before they can be considered in the imposition of the proper penalty.

As to the mitigating circumstance of drunkenness, all that is shown in the records is that the fiscal made a manifestation before the respondent Judge that in his conference with the policeman the latter allegedly told him "that at that time when the accused was arrested he smelled (tuba) liquor".[2] Based on this, the respondent Judge readily took the alleged drunken condition of the accused as a mitigating circumstance, without even verifying whether the drunken condition of the accused was habitual or incidental to embolden him to commit the crime. Again, here, there was no way of gauging whether drunkenness was mitigating or aggravating. It was erroneous for the respondent Judge to rely on what the fiscal told him about the condition of the accused at the time the policeman apprehended him. He should have examined under oath the policeman who saw the accused after he had stabbed his victim.

Finally, complainant blames the respondent Judge for having allowed the accused in Criminal Case No. 395 to change his "plea of not guilty" to "guilty" after the prosecution has presented some of its witnesses. There is nothing irregular in this. In *People vs. Manibpel*[3] on arraignment, accused pleaded not guilty. During the trial and while the prosecution's third witness was being cross-examined the accused agreed that should said witness swear by the Koran, he would withdraw his plea of not guilty and substitute it with one of guilty. After concluding his testimony, the witness swore by the Koran and the accused was arraigned anew and pleaded guilty to the charge. The Supreme Court upheld the validity of the new arraignment. Evidently the respondent Judge is not without basis when he allowed the accused in Criminal Case No. 395 to change his "plea of not guilty" to that of "guilty". However, the respondent Judge was wrong when he considered the final plea of "guilty" as a mitigating circumstance for in the same case of *People vs. Manibpel*, supra., the Court held that a plea of guilty entered after several prosecution witnesses had completed their testimony cannot be considered as a mitigating circumstance.[4]

Accordingly, We find the actuations of the respondent Judge in crediting the accused in Criminal Case No. 395 with the mitigating circumstances of "drunkenness" and "voluntary surrender" without proof thereof, to be irregular and improper. Were it not for the fact that We sensed no bad faith in his actuations, We could have given more than a mere reprimand for his shortcomings. There was no bad faith because his failure to require proof of the mitigating circumstances of "drunkenness" and "voluntary surrender" was due to the fact that the fiscal readily agreed to the consideration of said mitigating circumstances. But just the same, the lack of bad faith of the respondent Judge did not necessarily excuse him from his duty to call for witnesses to prove the existence of the mitigating circumstances of "drunkenness" and "voluntary surrender". This is necessary so that in case of review of the decision of the lower court there would be something in the records to guide the appellate court accordingly. On the other hand, there was nothing wrong in allowing the accused to change his plea of "not guilty" to "guilty" even after the prosecution had presented its evidence. But, it was a clear error on his part to consider the final "plea of guilty" as a mitigating circumstance. This does not speak well of the efficiency of the respondent Judge for it plainly shows that he is not keeping abreast with the latest decisions of this Court to merit his position. At any rate since his consideration of the plea of "guilty" as a mitigating circumstance after the prosecution witnesses have testified, was a mere error of judgment, he cannot be held administratively liable therefor. Says the Court in *Dizon vs. de Borja*,[5] "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."

IN VIEW OF THE FOREGOING, the administrative charge against the respondent Judge is dismissed, with the admonition that a repetition of a similar error shall be dealt with severely.

SO ORDERED.

Castro, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

Teehankee, J., is on leave.

[1] Exhibit 4-C, tsn., p. 16.

[2] Exhibit 4-b.

[3] L-15077, December 29, 1962, 6 SCRA 936.

[4] People vs. Manibpel, supra; People vs. Bucu, 21 SCRA 5.

[5] Adm. Case No. 163-J, January 28, 1971.

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