

ADORACION TUNA, COMPLAINANT, VS. HON. SERGIO Y. NAZARENO, MUNICIPAL JUDGE OF TAGBINA, SURIGAO DEL SUR, RESPONDENT.*A.M. No. 57-MJ. August 26, 1977*

Ponente: CONCEPCION, JR., J.

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Administrative case against Municipal Judge Sergio Nazareno of Tagbina, Surigao del Sur, for failure to transmit to the Court of First Instance of Surigao del Sur the records of Criminal Case No. 36 (for murder) filed with the Municipal Court of Tagbina, presided over by respondent Judge Sergio Nazareno after the respondent had conducted the second stage of the preliminary investigation, as required by Section 12, Rule 112 of the Revised Rules of Court.

The said Criminal Case No. 36 was filed by the Chief of Police of Tagbina on September 1, 1971, charging Wen-nie Doe, Fred Doe, and Gildo Doe for having attacked and killed one Leoncio Tuna, Jr. on August 15, 1971, at barrio San Vicente, Tagbina, Surigao del Sur.[1]

After the preliminary examination, Gildo Doe, subsequently identified as Herminigildo Coritana, was arrested on September 3, 1971. During the second stage of the said preliminary investigation conducted on November 2, 1971, prosecution witness Pedro Quenencia recanted his testimony, saying that he was forced to do so by one Patrolman Domingo Lemana. As a result, the respondent Judge issued an order dismissing the case against the accused Herminigildo Coritana.[2]

On March 21, 1972, Adoracion Tuna, sister of the deceased Leoncio Tuna, Jr., addressed a letter to the Secretary of Justice asking for the latter's help in bringing his brother's killers to justice, and stating among others, that she went to Tagbina on February 22, 1972 to inquire about the status of the said case and the respondent Judge told her that he dismissed the case for lack of interest.[3] The letter was indorsed to the respondent Judge for comment[4] and on June 25, 1972, the respondent replied giving reasons for the dismissal of the case.[5]

Upon receipt of the reply, it was determined that the respondent Judge had failed to transmit the records of Criminal Case No. 36 to the Court of First Instance of Surigao del Sur and was consequently ordered by the Secretary of Justice to explain why he failed to comply with the provisions of Section 12, Rule 112 of the Rules of Court.[6]

The respondent Judge answered, as required, impliedly admitting non-compliance with the rule and stating that while he gave instructions to the Clerk of his court to transmit the records to the Court of First Instance, compliance cannot be made because of lack of funds to defray the expenses.[7]

Upon consideration of the case, the Secretary of Justice recommended to the President the suspension of the respondent for six (6) months without pay.[8]

After the transfer of the administrative supervision of the courts to this Court, this Court, on March 12, 1974, referred the case to the Executive Judge of the Court of First Instance of Surigao del Sur for investigation, report

and recommendation on the respondent's failure to comply with Section 12, Rule 112 of the Rules of Court.[9]

On November 12, 1974, the investigating judge found the respondent guilty of delay and recommended the imposition of a reprimand upon the respondent in view of the desistance of Adoracion Tuna.[10]

The Judicial Consultant agrees with the finding of the investigator but recommends a suspension of fifteen (15) days without pay.

Indeed, the respondent judge is guilty of unreasonable delay in transmitting the records of Criminal Case No. 36 to the Court of First Instance of Surigao del Sur, as required by Section 12, Rule 112 of the Rules of Court. The preliminary investigation of one of the accused in said case was terminated on November 2, 1971, but it was only on September 29, 1972 when the respondent judge remanded the records, after having been reminded by the Secretary of Justice to do so on August 17, 1972. His claim of lack of funds to justify his non-compliance with Section 12, Rule 112 of the Rules of Court is patently untenable because it appears that the amount of P150.00 was appropriated for his court and of this amount only P109.01 had been spent. For sure, the amount of P40.99 was sufficient to defray the expenses of transmitting the records to the Court of First Instance. Considering that no prejudice had been caused thereby, the imposition of a fine equivalent to his salary for two (2) months, is sufficient.

WHEREFORE, judgment is hereby rendered ordering the respondent judge to pay a fine equivalent to his salary for two (2) months.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] Rollo, p. 16.

[2] Rollo, p. 67.

[3] Id., p. 6.

[4] Id., p. 9.

[5] Id., p. 12.

[6] Id., p. 15.

[7] Id., p. 16.

[8] Id., p. 1.

[9] Id., p. 70.

[10] Id., p. 176.

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