

SIMPLICIO J. CUSIT, COMPLAINANT, VS. MUNICIPAL JUDGE PANTALEON V. JURADO, STA. TERESITA, CAGAYAN, RESPONDENT.

A.M. No. 6998-MJ. February 10, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

In April, 1978, Simplicio J. Cusit filed in the municipal court of Sta. Teresita, Cagayan against Marcelino Bersola and five other persons a complaint for violation of the Anti-Cattle Rustling Law (PD No. 533) for having stolen in August, 1977 Cusit's eight-year-old carabao valued at P2,800 (Criminal Case No. 594).

Respondent judge conducted the preliminary examination. Having found probable cause, he issued a warrant of arrest on April 14, 1978. The proceeding in the municipal court was terminated on June 5, 1978 (p. 21, Rollo).

Respondent judge claims that about seven months later the sixty-page expediente of the case was brought by his clerk of court, Dominador R. Cabang, to the Aparri branch of the Court of First Instance of Cagayan, as shown in the carbon copy of his supposed letter of transmittal dated January 20, 1979 (Exh. B, p. 32, Rollo).

In that copy of the letter of transmittal, there is no notation that the expediente was actually received in the Court of First Instance.

Cabang testified that he supposedly delivered the record of the case to an employee of the office of the clerk of court at Aparri, whose name or identity he could not recall, and that he brought the receipt to the municipal court. That alleged receipt is not in the record (pp. 28-29, Record).

It is an undisputed fact that the sixty-page record of the case was never received in the Court of First Instance. It is now missing or it was irretrievably lost.

In a handwritten complaint to the Minister of Justice dated March 6, 1979, Cusit alleged that respondent judge instructed the wives of the six accused to convince the witnesses to withdraw their statements.

Cusit complained that the elevation of the record of the case to the Court of First Instance was purposely delayed in order that it could be settled amicably. He said that his relatives, told him that one of the accused named Jaime Qutoriano boasted that the case would never reach the Court of First Instance because it would "vanish like smoke" and that the accused had spent money to achieve that end.

Cusit was apprehensive that the case would not really reach the Court of First Instance because it would not take more than a month to elevate the record and yet, after a lapse of a considerable time, "I cannot even locate where is my case now".

Respondent Judge Pantaleon V. Jurado (he is now the municipal circuit judge of Gonzaga-Sta. Teresita, Cagayan) in his comment on Cusit's complaint said that he told the wives of the accused to talk to Cusit and his witnesses if they liked to settle the case and that if the case was not settled, he (respondent judge) was "very sorry" that the case would "go to the Court of First Instance".

The respondent believed that there was "nothing unusual" and illegal if he "advised the parties to talk to the complainant and his witnesses". He averred that Cusit was harassing him because he had allegedly elevated the case to the Court of First Instance long before Cusit filed his complaint (p. 4, Rollo).

Cusit, in his reply dated August 10, 1979 to Judge Jurado's comment, attached a certification from a clerk in the Aparri branch of the Court of First Instance attesting to the fact that the record of the case was not elevated to the Court of First Instance.

Cusit said that the fact that the record had not been elevated (contrary to the judge's claim) lends credence to his charge that the case was being "fixed" after Judge Jurado himself failed to silence his witnesses.

The complaint of Cusit was referred to Judge Napoleon R. Flojo for investigation, report and recommendation. Cusit was not able to appear at the investigation.

We find Judge Jurado to be guilty of dereliction of duty in not complying with the mandate in section 12, Rule 112 of the Rules of Court that "upon the conclusion of the preliminary investigation, the judge or corresponding officer shall transmit without delay to the clerk of the Court of First Instance having jurisdiction of the offense the record of the case".

Judge Jurado not only delayed the transmission of the record but in suggesting that the criminal case be settled and in exerting efforts to attain that end, he ignored, or was ignorant of, the elementary rule that, generally, criminal liability cannot be compromised (Art. 23, Revised Penal Code).

"By the universal consensus of judicial opinion in all ages it has been considered contrary to public policy to allow parties to make agreements designed to prevent or stifle prosecutions for crime" (*Velez vs. Ramas*, 40 Phil. 787, 791).

If the alleged transmittal of the record was not a fabrication, then it was Judge Jurado's duty to check whether his clerk of court, whom he branded as a drunkard (p. 22, Rollo), really delivered the record to the office of the clerk of court of the Court of First Instance.

Disciplinary action may be taken against a municipal judge, like Judge Jurado, who has not performed his duties properly. (Sec. 97, Judiciary Law.)

WHEREFORE, Judge Jurado is ordered to pay a fine equivalent to his salary for one month.

He is severely reprimanded for his censurable and unethical conduct in trying to effect a compromise of the criminal case and in unduly delaying the transmittal of the record which eventually resulted in its loss and may ultimately cause a miscarriage of justice.

A copy of this decision should be attached to his personal record.

Judge Jurado is furthermore directed to assist Judge Flojo in the reconstitution of the lost record. He should give Judge Flojo copies of the remnants of the record existing in the files of the municipal court.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

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