

**SPOUSES RODOLFO AND SYLVIA CABICO, COMPLAINANTS, VS.
JUDGE EVELYN L. DIMACULANGAN- QUERIJERO, PRESIDING JUDGE,
REGIONAL TRIAL COURT, CABANATUAN CITY, BRANCH 26,
RESPONDENT.**

A.M. NO. RTJ-02-1735. April 27, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is an administrative complaint filed by spouses Rodolfo and Sylvia Cabico (complainants) against Judge Evelyn L. Dimaculangan-Querijero (respondent Judge), Presiding Judge, Regional Trial Court of Cabanatuan City, Branch 26 (trial court). Complainants charged respondent Judge with ignorance of the law, abuse of authority, and conduct unbecoming a trial court judge.

The Facts

In their complaint^[1] dated 16 October 2001, complainants stated that they are the parents of AAA (victim), the 17-year old rape victim in Criminal Case No. 10383-AF then pending before respondent Judge's sala. Complainants stated that of the three accused in the criminal case, namely, Edwin Azarcon y Macabante (Azarcon), Rayshawn dela Rosa (Dela Rosa), and Rodrigo Nadora, Jr. (Nadora), only Azarcon was detained as the other two were at large.

Complainants asserted that at the hearing on 12 October 2001, their counsel manifested in open court that no settlement of the case would be pursued as one Atty. Ildefonso J. Cruz informed him that the remaining amount for the settlement of the case would not be given to complainants. Complainants asserted that it was at this point that respondent Judge called Sylvia Cabico and uttered angrily with a loud voice the following:

Mrs. Cabico, isauli mo ang lahat ng pera nila, ngayon din at 'di puwedeng hindi, ngayon din.^[2]

Complainants alleged that the utterance caused Sylvia Cabico great embarrassment. Complainants asserted that respondent Judge's actuation violated Rule 3.04 of the Code of Judicial Conduct.

Moreover, complainants alleged that when they were about to return home after the trial of the case was reset to 9 November 2001, someone called them and ordered them to appear before Atty. Fraizerwin Viterbo (Atty. Viterbo), Clerk of Court of the trial court.

Complainants alleged that at his office, Atty. Viterbo ordered them and the victim to sign an Affidavit of Desistance. Complainants alleged that Atty. Viterbo warned them, "Hindi maaari na di kayo pumirma at magagalit ang judge sa inyo."

Complainants asserted that when they refused to sign the affidavit, Atty. Viterbo uttered, thus:

Maaari naman kayong kumuha ng ibang abogado at maaari ninyong palitan maski ilan. Ang totoo niyan ay ubra naming pawalan 'yan wala kayong magagawa.[3]

Complainants asserted that Atty. Viterbo then went inside the chambers and informed respondent Judge about complainants' refusal to sign the affidavit. Complainants asserted that respondent Judge came out of her chambers and in a loud and angry voice, uttered the following:

Misis, bakit ayaw mong pumirma. Sige, huwag mo ng asahan na masisingil mo pa si Nadora. Didismisin ko ang lahat ang tatlo na iyan. Pumunta ka ng Batangas at doon mo pabistahan si Nadora. Mas takot kayo sa abogado ninyo kaysa sa akin.[4]

Complainants asserted that, on that same day, 12 October 2001, despite the absence of an affidavit of desistance, respondent Judge issued an order, thus:

There being a receipt today from the private complainant that she received the balance of the full amount of P50,000.00 from accused Rayshawn dela Rosa and P50,000.00 from accused Edwin Azarcon as payment for the civil liability and that she is no longer interested in the criminal aspect, this case is as it is hereby DISMISSED with prejudice against both accused.

District Jail Warden Rufino M. Santiago, Jr. of the BJMP, Camp Tinio, Cabanatuan City or his authorized representative is directed to release immediately Edwin Azarcon unless he is detained for other lawful cause or causes.

Issue warrant of arrest against Rodrigo Nadora, Jr. alias "Johny" as he is still at large.

SO ORDERED.[5]

Complainants stated that in view of that order, Azarcon was released from detention.

Complainants also asserted that the issuance of the order shows respondent Judge's gross ignorance of the law as criminal actions cannot be compromised and the trial court has not acquired jurisdiction over the person of Dela Rosa. Complainants also claimed that respondent Judge violated Canon 2, Rule 2.01 of the Code of Judicial Conduct for having shown partiality in favor of the accused.

In its 1st Indorsement dated 10 December 2001, the Office of the Court Administrator (OCA) required respondent Judge to file her comment on the complaint.[6]

In her Comment dated 10 January 2002, respondent Judge offered the following explanations:

- This administrative complaint arose from the machination and prodding of Atty. Carlito Inton on the spouses Rodolfo and Sylvia Cabico to get even with the undersigned judge as he lost the Petition for Habeas Corpus of his client under SP. Proc. No. 840-AF entitled Amelia J. Nazareno vs. Dominador G. Nazareno on August 24, 2001 which was tried in the sala of the undersigned. x x x

Atty. Inton is notorious as an ambulance chaser and a perennial loser in his political aspirations in Nueva Ecija as he was continuously repudiated by the electorate. To prove his notoriety, it is of common knowledge that a grenade was thrown at his house and gasoline poured on said house to burn it;

- Atty. Inton entered his appearance only on September 26, 2001 in Criminal Case No. 10384-AF entitled People vs. Rayshawn dela Rosa, Rodrigo Nadora, Jr. and Edwin Azarcon, subject of this Complaint, on complaint of Maria Liza Cabico, a 17-year old girl who was working as a Guest Relations Officer in a beerhouse in Cabanatuan City. Before Atty. Inton's appearance, Mrs. Cabico and her daughter, the private complainant, manifested in Court that accused Azarcon had already paid P47,500.00 leaving a balance of P2,500.00; and dela Rosa paid P49,000.00 leaving a balance of P1,000.00 and that private complainant was no

longer interested in the penal aspect of the case. The Court did not act on their manifestation as there were balances from Azarcon and dela Rosa. Thus, the issuance of the Orders of this Court dated August 3, and 10, 2001, which are attached hereto and marked as Annexes "A" and "B";

- In the hearing of September 26, 2001, Atty. Inton, the ambulance chaser, upon learning thru court manifestation that private complainant had P96,500.00 from Azarcon and dela Rosa, voluntarily offered his services and entered his appearance. He stealthily advised the private complainant and Mrs. Cabico not to obey the Order of this Court to execute an affidavit of desistance in favor of Azarcon and dela Rosa upon receipt of the balances. He assured them that they could demand more money from the accused and still proceed with the trial on the merits. Of course, Atty. Inton will be insured of continuous appearance fees. This information was relayed to the undersigned by a member of her staff who was seated near Atty. Inton, the private complainant and Mrs. Cabico. Thus, this Court issued the attached Order of September 26, 2001 as the affidavit of desistance could not yet be executed because of the unpaid balances from Azarcon and dela Rosa and marked as Annex C;

- In the October 12, 2001 hearing, the balance of P2,500.00 from Azarcon and P1,000.00 from dela Rosa were paid to private complainant. Following the legal advice of Atty. Inton, private complainant refused to sign the Pag-uurong ng Habla, which is attached and marked as Annex D. To administer justice to the poor accused who in good faith thought that the case could be settled amicably and so as not to be under the mercy of Atty. Inton and the private complainant for their selfish motives, this Court issued the Order of October 12, 2001 with the receipt of the balances from Azarcon and dela Rosa, which are attached and marked as Annexes E and E-1. Edwin Azarcon, a detainee at the BJMP, Camp Tinio, Cabanatuan City was ordered released.

- The undersigned did not act in an emotional manner in the hearing of October 12, 2001 when she advised Mrs. Cabico, who was adamant for the conduct of a trial on the merits immediately, as dictated upon by Atty. Inton. What the undersigned stated was:

Mrs. Cabico, kung gusto ninyong matuloy ang bista ay isauli ninyo ang perang ibinigay ng mga akusado at ngayon din ay bibistahan ang kaso kung handa ang inyong testigo

Utterances of this kind would not produce embarrassment. The undersigned was just stating a fact in good faith. Even Assistant City Prosecutor Edward O. Joson did not interpose an objection or comment to my said statement. Mrs. Cabico presumably was embarrassed because she could no longer return the P100,000.00 to Azarcon and dela Rosa as Mrs. Cabico herself confessed to a member of the staff that Atty. Inton collected P43,000.00 out of said amount. The statements allegedly uttered by the undersigned in the Complaint are mere concoctions of Atty. Inton to place the undersigned in a bad light;

- Due to the continuing heavy pressure of work, the undersigned had an oversight that accused dela Rosa was already under the jurisdiction of this Court. To rectify immediately, in the hearing of November 21, 2001, the undersigned motu proprio ordered the issuance of a Warrant of Arrest against said accused. The Order of November 21, 2001 is attached and marked as Annex F. Dela Rosa voluntarily submitted himself to the Court and was arraigned on November 23, 2001. Likewise, accused Rodrigo Nadora, Jr., who was previously at large, voluntarily submitted to the Court and was arraigned on November 21, 2001. Certificates of their Arraignment are hereto attached and marked as Annexes G and G-1; Receipt of P50,000.00 from Rodrigo Nadora, Jr. as civil liability for private complainant is not interested in penal and is marked as G-2;

- On November 23, 2001, private complainant finally signed a Salaysay ng Pag-uurong ng Habla and placed on the witness stand to testify thereon. On the same date, the attached Order of the Court was issued dismissing the case and marked as Annex H;

- At no time has the undersigned acted in a harsh and oppressive manner. She knows that a judge is under the sanction of law.

Moreover, has she been harsh and oppressive in her actuaciones in and out of Court, the officials of the IBP Nueva Ecija Chapter could have supported Atty. Inton by endorsing the filing of this administrative case as Atty. Inton tried to, but miserably failed to do so.[7]

On 20 February 2002, Atty. Carlito R. Inton (Atty. Inton), complainants' counsel, filed for the complainants a Reply to Respondent's Comment.[8] Atty. Inton alleged that he never prodded complainants to file the present complaint. Atty. Inton asserted that he was not a notorious ambulance chaser and that he even tried to persuade complainants not to pursue the case.

Atty. Inton also asserted that on 16 October 2001, complainants prepared and signed a complaint which included Atty. Viterbo as respondent. Atty. Inton asserted that he was able to persuade complainants not to pursue the case against Atty. Viterbo.

Moreover, Atty. Inton denied respondent Judge's allegation that the victim was a Guest Relations Officer in a beerhouse in Cabanatuan City. Atty. Inton stated that the victim never worked in any such establishment as she and her family were members of Iglesia ni Cristo.

Atty. Inton asserted that the fact that respondent Judge dismissed the criminal case when the trial court had not yet acquired jurisdiction over the accused and mentioned in her order payment of money as ground for the dismissal of the case only shows her ignorance of the law. Atty. Inton denied the other allegations of respondent Judge as mere assumptions and are but collateral matters.

In her Supplemental Answer with Leave of Court[9] dated 21 March 2003, respondent Judge asserted that in the disposition of the present case, she applied Section 2(a), Rule 18 of the Rules of Court which required courts to "consider the possibility of an amicable settlement or of a submission to alternative modes of resolution."

Respondent Judge reiterated that the present administrative matter was filed because Atty. Inton had an ax to grind against her. Respondent Judge asserted that Atty. Inton wanted "to get even with her" because his appeal from her 24 August 2001 decision in a habeas corpus case was dismissed.

On 10 April 2003, complainants filed a Reply to Supplemental Answer and Affidavit.[10] Complainants asserted that respondent Judge acted with malice because she issued her 12 October 2001 order even without the consent of both the public prosecutor and the victim. Complainants also stated that "perjured witnesses" executed the affidavits which respondent Judge submitted before the Court.

The OCA's Report and Recommendation

In its evaluation of the allegations of both complainants and respondent Judge, the OCA stated:

After careful evaluation of the record of the case, the undersigned finds merit in the charge.

The complaint presented the issues of manifest partiality of respondent Judge in favor of the accused; discourtesy in insulting complainant in open court; and gross ignorance of the law in dismissing the criminal complaint against one of the accused despite the fact that being at large, the court has not obtained jurisdiction over his person.

x x x [T]he mere filing of affidavit of desistance or "Salaysay ng Pag-uurong ng Habla" by the aggrieved party herself, does not ipso facto make the criminal case dismissible. Article 266-C does not include desistance of the offended party as a ground for extinction of criminal liability whether total or partial.

x x x x

Respondent judge committed gross ignorance of the law when she issued the order dated 12 October 2001,

dismissing the criminal case with prejudice against both accused after the latter had paid their individual civil liability. x x x

On the issue of respondent's partiality towards the accused, the same was very much apparent when respondent issued an order on 12 October 2001 dismissing the complaint against all three accused, she stated therein that the civil liability has been paid and that private complainant was no longer interested in the criminal aspect of the case, despite of the fact that on the same date complainant and the victim refused to sign the affidavit of desistance prepared for them. Due to respondent's haste to dismiss the criminal complaint, she even forgot the fact that the accused therein Rayshawn dela Rosa has not yet been arraigned. It was only on 21 November 2001 that the two accused were arraigned.[11]

The OCA recommended that this case be re-docketed as a regular administrative case and that respondent Judge be fined P5,000, with warning that a commission of any of the same or similar act shall be dealt with more severely.

The Court's Ruling

The evaluation and the recommendations of the OCA are well-taken, except for the penalty.

There is no question that on 12 October 2001, respondent Judge dismissed with prejudice Criminal Case Nos. 10384-AF and 10383-AF[12] against Dela Rosa and Azarcon after they had paid their individual civil liability. This is in utter disregard and in gross ignorance of the law, for payment of civil liability does not extinguish criminal liability. Article 89 of the Revised Penal Code provides:

How criminal liability is totally extinguished. — Criminal liability is totally extinguished:

- By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
- By service of the sentence;
- By amnesty, which completely extinguishes the penalty and all its effects;
- By absolute pardon;
- By prescription of the crime;
- By prescription of the penalty;
- By the marriage of the offended woman, as provided in Article 344 of this Code.

On the other hand, Article 94 of the Revised Penal Code provides:

Partial extinction of criminal liability. — Criminal liability is extinguished partially:

- By conditional pardon;
- By commutation of the sentence; and
- For good conduct allowances which the culprit may earn while he is serving his sentence

The victim's affidavit of desistance[13] could not have justified the dismissal of the criminal cases. Republic Act No. 8353, otherwise known as the "Anti-Rape Law of 1997,"[14] has reclassified rape as a crime against persons. Hence, any public prosecutor, even without the complaint of the victim or her parents, or guardian, can prosecute the offender.[15]

Even if we consider the victim's affidavit of desistance, still it would not justify the dismissal. By itself, an

affidavit of desistance or pardon is not a ground for the dismissal of an action, once the action has been instituted in court.[16] Here, the victim made the so-called pardon of the accused after the institution of the action.[17] Hence, the victim had already lost the right or absolute privilege to decide whether the rape charge should proceed because the case had already reached and must therefore continue to be heard by the trial court.[18]

When a law or a rule is basic, a judge owes it to his office to simply apply the law. Anything less is gross ignorance of the law.[19] As an advocate of justice and a visible representation of the law, a judge is expected to keep abreast with and be proficient in the interpretation of our laws. A judge should be acquainted with legal norms and precepts as well as with statutes and procedural rules. Having accepted the exalted position of a judge, respondent Judge owes the public and the court she sits in proficiency in the law. Respondent Judge failed to live up to these standards.[20]

Respondent Judge has also clearly violated Rule 2.01 of Canon 2 of the Code of Judicial Conduct which provides:

A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Respondent Judge showed partiality in favor of the accused when she issued her 12 October 2001 order dismissing the subject criminal case. Respondent Judge stated in her order that she dismissed the criminal case because Dela Rosa and Azarcon had already paid their civil liability and "private complainant was no longer interested in the criminal aspect of the case." [21] However, the record reveals that on the same day that the dismissal order was issued, complainant Sylvia Cabico and the victim had also refused to sign the affidavit of desistance that was prepared for them.[22]

Also, respondent Judge dismissed with prejudice the criminal case against Dela Rosa even when he had not been arraigned. By her own admission, respondent Judge made an "oversight that accused Dela Rosa was already under the jurisdiction of the court." [23] Thus, in her order of 21 November 2001, respondent Judge ordered the issuance of a warrant of arrest against Dela Rosa.[24]

Respondent Judge's actuations in the premises only betray her gross ignorance of procedural rules. Jurisdiction over the person of the accused is acquired by arrest.[25]

Rule 3.01, Canon 3 of the Code of Judicial Conduct mandates that a judge shall be faithful to the law and maintain professional competence. Unfamiliarity with the Rules of Court is a sign of incompetence. When a judge displays an utter lack of familiarity with the rules, such incompetence erodes the public's confidence in the competence of our courts. Basic rules of procedure must be at the palm of a judge's hands.

When the law is so elementary, not to be aware of it constitutes gross ignorance of the law. When the inefficiency springs from a failure to consider so basic and elemental a rule, a law, or a principle in the discharge of his duties, the judge is either too incompetent and undeserving of the position and title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.[26]

We cannot countenance respondent Judge's discourtesy in insulting Sylvia Cabico during the hearing on 12 October 2001. Respondent Judge's statement was unbecoming a judge. Her behavior towards Sylvia Cabico betrayed her impatience in the conduct of the hearing.

A display of petulance and impatience in the conduct of a trial is a norm of behavior incompatible with the needful attitude and sobriety of a good judge.[27] Respondent Judge's actuations violated Rule 3.04 of Canon 3 of the Code of Judicial Conduct, thus:

Rule 3.04. — A judge should be patient, attentive, and courteous to lawyers, especially the inexperienced, to

litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts for the litigants.

Clearly, respondent Judge has failed to observe courtesy and civility to the litigants who appeared before her.

Respondent Judge's reliance on Section 2(a), Rule 18 of the Rules of Court[28] in disposing of the criminal case is misplaced.[29] While the effort of respondent Judge to hasten the resolution of the cases before her is commendable, that task, however, should not be done in utter disregard of the rudiments of the law and procedure. The duty to dispose of the court business promptly and to decide cases within the reglementary periods should be consistent with a faithful compliance with the prescribed set of procedures. The avowed purpose of acting on cases as early as possible does not justify even the slightest abuse of judicial authority and discretion or excuse due observance of the basic elements of the rule of law.[30]

A judge must render justice without resorting to uncalled for shortcuts.[31] Respondent Judge failed to live up to the standards required of her high position.

Under Rule 140, Section 8(9) of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge and penalized with dismissal, suspension, or a fine ranging from above P20,000 to P40,000.[32]

Under the circumstances prevailing in the present case, we find that a fine of P21,000 is in order.

WHEREFORE, we find Judge Evelyn L. Dimaculangan-Querijero of the Regional Trial Court of Cabanatuan City, Branch 26 liable for GROSS IGNORANCE OF THE LAW and FINE her P21,000. We STERNLY WARN her that a repetition of the same or similar act in the future shall merit a more severe sanction.

SO ORDERED.

Puno, C.J., Quisumbing, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Nachura, JJ., concur.

Ynares-Santiago, J., no part.

Velasco, Jr., J., no part due to prior action in OCA.

[1] Rollo, pp. 1-8.

[2] Id. at 2.

[3] Id. at 3.

[4] Id.

[5] Id. at 23.

[6] Id. at 13.

[7] Id. at 15-17.

[8] Id. at 30-33.

[9] Id. at 56-57.

[10] Id. at 74-77.

[11] Id. at 48-49.

[12] Complaint mentions only Criminal Case No. 10383-AF.

[13] Rollo, p. 29.

[14] An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as The Revised Penal Code, and For Other Purposes.

[15] Section 2, Republic Act No. 8353.

[16] *People v. Ramirez, Jr.*, G.R. Nos. 150079-80, 10 June 2004, 431 SCRA 666; *People v. Montes*, 461 Phil. 563 (2003); *People v. Trelles*, 395 Phil. 38 (2000).

[17] Rollo, p. 29.

[18] *People v. Ramirez, Jr.*, *supra* note 16.

[19] *Almonte v. Bien*, A.M. No. MTJ-04-1532, 27 June 2005, 461 SCRA 218.

[20] *Jamora v. Bersales*, A.M. No. MTJ-04-1529, 16 December 2004, 447 SCRA 20.

[21] Rollo, p. 9.

[22] *Id.* at 22.

[23] *Id.* at 17.

[24] *Id.* at 25.

[25] Rule 113, The Revised Rules of Criminal Procedure; Herrera, Remedial Law, Vol. I, 83 (2000).

[26] *Pesayco v. Layague*, A.M. No. RTJ-04-1889, 22 December 2004, 447 SCRA 450; *Almojuela, Jr. v. Ringor*, A.M. No. MTJ-04-1521, 27 July 2004, 435 SCRA 261.

[27] *The Officers and Members of the IBP Baguio-Benguet Chapter v. Pamintuan*, 464 Phil. 900 (2004).

[28] Section 2(a), Rule 18 of the Rules of Court provides:

Nature and purpose. — x x x The court shall consider: (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution.

[29] Rollo, p. 56.

[30] *Torres v. Villanueva*, 387 Phil. 516 (2000).

[31] *Zuiñigo v. Cabebe*, A.M. OCA No. 03-1800-RTJ, 26 November 2004, 444 SCRA 382.

[32] *Fortune Life Insurance, Co., Inc. v. Luczon, Jr.*, A.M. No. RTJ-05-1901, 30 November 2006; *Rockland Construction Co., Inc. v. Singzon, Jr.*, A.M. No. RTJ-06-2002, 24 November 2006.

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