

JOAQUIN ROBERTO GOZUN, ROMEO MAURICIO, EDUARDO LAXAMANA, NOEL MORALES, MANUEL CUENCO, QUIRINO DE LEON, NELSON REYES, PEDRO AQUINO, AND JOEY CABUSO, COMPLAINANTS, VS. JUDGE VINCI...

A.M. NO. MTJ-00-1324. October 05, 2005

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d0b4a02429a9/>

CARPIO, J.:

The Case

This is an administrative complaint against respondent Judge Vinci G. Gozum ("respondent Judge") of the Municipal Trial Court, Floridablanca, Pampanga ("MTC") for Grave Abuse of Authority and Gross Ignorance of the Law.

The Facts

Complainants Joaquin Roberto Gozun, Romeo Mauricio, Eduardo Laxamana, Noel Morales, Manuel Cuenco, Quirino De Leon, Nelson Reyes Pedro Aquino, and Joey Cabuso ("accused complainants") and several others[1] were the respondents in a complaint for Destructive Arson filed by several individuals[2] ("arson complainants"). The complaint,[3] docketed as Criminal Case Nos. 5282-5287, was filed in respondent Judge's sala. On 9 September 1998, respondent Judge, without notifying accused complainants (and their co-accused), conducted a preliminary investigation. During the investigation, the counsel for arson complainants presented in evidence the testimonies of arson complainants Roberto David and Jimmy Sotto ("arson complainants David and Sotto") and several photographs. After questioning arson complainants David and Sotto, respondent Judge issued a warrant of arrest, with no bail recommended. The accused were arrested and detained from 12 September 1998 to 11 November 1998.

Accused complainants and their co-accused sought a re-investigation with the Office of the Provincial Prosecutor of Pampanga ("Office of the Provincial Prosecutor"). In the Resolution of 6 November 1998, 1st Provincial Prosecutor Roman S. Razon ("Prosecutor Razon") found probable cause to charge accused complainant Joaquin Roberto Gozun ("accused complainant Gozun") and four others[4] with the lower offense of Arson under Presidential Decree No. 1613. Prosecutor Razon dismissed the complaints against the rest of the accused.[5]

The corresponding Information was filed with the Regional Trial Court of Guagua, Pampanga ("RTC").

Accused complainant Gozun and the other individuals indicted in the 6 November 1998 Resolution appealed to the Secretary of the Department of Justice ("Secretary of Justice"). In the Resolution of 12 July 1999, the Secretary of Justice set aside Prosecutor Razon's 6 November 1998 Resolution and ordered the Office of the Provincial Prosecutor to withdraw the Information from the RTC.[6]

The RTC allowed the withdrawal of the Information.

In this Complaint, accused complainants contend that respondent Judge should be held liable for gross ignorance of the law and grave abuse of authority for conducting the preliminary investigation in Criminal Case Nos. 5282-5287 "ex parte." Accused complainants contend that had they been given the chance, they would have presented evidence negating respondent Judge's finding of probable cause against them for Destructive Arson. Accused complainants further fault respondent Judge for ordering their arrest which caused them suffering and embarrassment. Accused complainants also find irregular the participation of arson complainants' counsel in the preliminary investigation. Lastly, accused complainants submit that the questions respondent Judge propounded to arson complainants David and Sotto during the preliminary investigation were insufficient to show "prima facie evidence" for Destructive Arson.[7]

In his Comment, respondent Judge denies accused complainants' allegations. Respondent Judge claims that the investigation he conducted in Criminal Case Nos. 5282-5287 was only the "preliminary examination" of arson complainants David and Sotto to determine probable cause for the issuance of a warrant of arrest. Hence, he did not yet require accused complainants to file counter-affidavits. Respondent Judge adds that he would have conducted the "preliminary investigation proper" had accused complainants not "opted to waive the same and moved that the investigation be conducted by the Provincial Public Prosecutor's Office [in] Pampanga xxx." On his questions to arson complainants David and Sotto, respondent Judge invokes the rule vesting ample discretion on judges in the examination of the complainant and his witnesses during the preliminary investigation. Respondent Judge also defends his finding of probable cause against the accused in Criminal Case Nos. 5282-5287.[8]

The Recommendation of the Office of the Court Administrator

In its Report dated 27 June 2000 ("Report"), the Office of the Court Administrator ("OCA") sustains respondent Judge's contention of having conducted only the "preliminary examination" for the issuance of a warrant of arrest during which accused complainants are not entitled to be heard. The OCA also finds nothing irregular in respondent Judge's questions to arson complainants David and Sotto. Nevertheless, the OCA recommends that the Court reprimand respondent Judge for "not strictly observing the rules on the conduct of preliminary investigation" for allowing arson complainants' counsel to examine two of his clients. The Report reads:

On the charge that respondent judge issued the warrant of arrest without notifying the herein complainant[s], we find for the respondent. Under Rule 112, Sec. 6(b) of the Rules of Court, the only procedural requirement for the issuance of a warrant of arrest is that the judge should personally examine the complainant and his witnesses in the form of searching questions and answers and that the examination be in writing and under oath. Clearly, the rule does not require that the respondent in the criminal complaint be notified and given an opportunity to be present during the investigation. The procedure for determining whether or not probable cause exists for the issuance of a warrant of arrest is different from the procedure in determining the existence of probable cause for the filing of an information in court, in which case the respondent is notified of the complaint against him and given an opportunity to submit counter-affidavit. xxx

On the matter of allowing the private prosecutor to ask questions during the investigation, we find the complaint meritorious. While it is true that the respondent judge also made some searching questions and answers on the two (2) complaining witnesses he did so only after the private prosecutor was able to establish in the minds of the witnesses the things he wanted them to say before the Investigating Judge. The respondent judge allowed the private prosecutor to play a pivotal role in the determination of probable cause for the issuance of a warrant by permitting him to ask questions. This is an error on the part of the judge. This is because the duty to conduct such preliminary investigation (in the form of searching questions and answers) pertains to the respondent alone and he should not allow anybody to take this responsibility from him. He must

conduct the same personally without the assistance or participation of the private complainants' counsel. xxx

As to the charge that respondent did not ask the witnesses searching questions, we agree with respondent that there is no hard and fast rule in determining whether the questions propounded by the investigating judge comply with the constitutional requirement.[9] xxx

The Ruling of the Court

The Court finds respondent Judge liable for Gross Ignorance of the Law and imposes on him a fine of P20,000.

The Procedure in Preliminary Investigation

Under Rule 112 of the 1985 Rules
on Criminal Procedure

The procedure in preliminary investigation to find probable cause to hold the accused for trial and to place him under arrest is prescribed in Sections 3 and 6 of Rule 112 of the 1985 Rules on Criminal Procedure ("1985 Rules"), as amended. These provisions state:

SEC. 3. Procedure. - xxx

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss the same if he finds no ground to continue with the inquiry, or issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents. Within ten (10) days from receipt thereof, the respondent shall submit counter-affidavits and other supporting documents. He shall have the right to examine all other evidence submitted by the complainant.

(c) Such counter-affidavits and other supporting evidence submitted by the respondent shall also be sworn to and certified as prescribed in paragraph (a) hereof and copies thereof shall be furnished by him to the complainant.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall base his resolution on the evidence presented by the complainant.

(e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned.

(f) Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.[10]

SEC. 6. When warrant of arrest may issue. - (a) By the Regional Trial Court.- Upon the filing of an information, the Regional Trial Court may issue a warrant for the arrest of the accused.

(b) By the Municipal Trial Court.- If the municipal trial judge conducting the preliminary investigation is satisfied[,] after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest.[11]

Respondent Judge contends that under Sections 3 and 6(b), the preliminary investigation conducted by first level

court judges consists of two stages, namely:

- Preliminary examination of the complainant and his witnesses prior to the arrest of the accused. Its purpose is to determine whether or not there is a ground to issue [a] warrant of arrest. xxx [; and]
- Preliminary [i]nvestigation proper. At this stage, the accused, after his arrest, is informed of the complaint or information filed against him and shall be given access to the testimonies and evidence presented against him in the preliminary examination. Thereafter, he is permitted to introduce evidence in his favor, if he so desires. Its purpose is to determine whether or not the accused should be released or held xxx for trial xxx.[12]

Respondent Judge argues that since the issuance of the warrant of arrest belongs to the "first stage," the warrant can be issued right after the examination of the complainant and his witnesses.

Respondent Judge is correct in his contention on the issuance of the warrant of arrest but wrong on his claim on the stages in preliminary investigation.

The two-stage investigation respondent Judge invokes prevailed under the 1940 and 1964 Rules of Court. However, the 1985 Rules did away with such procedure and, in its place, provided a single and continuous proceeding. We explained in *Samulde v. Salvani, Jr.*: [13]

Both the 1940 and 1964 Rules of Court provided for two (2) stages of the preliminary investigation, to wit: (1) the "previous inquiry or examination" of the complainant and his witnesses to determine whether a warrant of arrest should issue against the defendant, and (2) the preliminary investigation proper of the defendant himself to determine if he should be held for trial. Thus, [under Sec. 1, Rule 108 of the 1940 Rules of Court] the preliminary investigation was defined as:

"x x x a previous inquiry or examination made before the arrest of the defendant by the judge x x x for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the defendant is probably guilty thereof, so as to issue a warrant of arrest and to hold him for trial."

xxx

In Section 1, Rule 112 of the 1964 Rules of Court, the distinction between a preliminary examination and preliminary investigation was more clearly defined by using the term "preliminary examination" in Section 1 of the Rule to differentiate the first stage of the preliminary investigation (where only the testimonies of the complainant and his witnesses were taken), from the second stage where, after the arrest of the defendant, he was informed of the complaint against him and given a chance to testify and present his evidence (Sec. 10, Rule 112, 1964 Rules of Court). The purpose of the preliminary examination was still to determine "whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial." (Sec. 1, Rule 112, 1964 Revised Rules of Court.)

xxx

However, the rule on preliminary investigation underwent some modifications in the 1985 Rules on Criminal Procedure, xxx.

[U]nder the 1985 Rules on Criminal Procedure there is only one (1) way of conducting a preliminary investigation, and that is by affidavits and counter-affidavits submitted by the parties to the investigating judge under Section 3, Rule 112. On the basis of the affidavits, the investigating judge shall "determine whether or not there is sufficient ground to hold the respondent for trial" (subpar. f). Gone is the requirement in the 1940 and 1964 Rules of Court that "he must issue a warrant or order" for the arrest of the defendant.

To determine whether a warrant of arrest should issue against the accused, the investigating judge must examine

the complainant and his witnesses "in writing and under oath xxx in the form of searching questions and answers." When he is "satisfied that a probable cause exists, and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice," he may issue the warrant as provided in Section 6, par. b, of the 1985 Rules on Criminal Procedure. (Italicization in the original; underlining supplied)

The change in procedure was patterned after Presidential Decree No. 911 ("PD 911")[14] governing preliminary investigations conducted by provincial and city fiscals and state prosecutors.[15] As the Court en banc held in the subsequent case of *Sangguniang Bayan of Batac, Ilocos Norte v. Albano*:[16]

Presidential Decree 911, upon which the present rule is based, removed the preliminary examination stage and integrated it into the preliminary investigation proper. Now, the proceedings consist only of one stage. (Emphasis supplied)

Thus, under the 1985 Rules, a judge conducting a preliminary investigation must proceed under Section 3. If, in the course of the investigation, the private complainant prays, or the facts call, for the issuance of a warrant of arrest, then the investigating judge should be guided by Section 6(b). In no case, however, should the investigating judge by-pass Section 3 to go directly to Section 6(b). Section 3(b) clearly states that "the investigating officer shall xxx issue a subpoena to the respondent, xxx." This means that the investigating judge, if he does not dismiss outright the complaint, must issue a subpoena to the respondent notifying him to submit his counter-affidavit even after the investigating judge had issued a warrant of arrest. In short, the investigating judge must still observe the procedure prescribed in Section 3. This affords the respondent an opportunity to be heard.

Respondent Judge invokes the ruling in *Pangandaman v. Casar*,[17] promulgated on 14 April 1988, to support his contention that the two-stage preliminary investigation was retained in the 1985 Rules. Respondent Judge's invocation is unavailing. As framed by the Court, the issue in that case was:

[W]hether or not the respondent Judge had the power to issue the warrant of arrest without completing the entire prescribed procedure for preliminary investigation. Stated otherwise, is completion of the procedure laid down in Section 3 of Rule 112 a condition sine qua non for the issuance of a warrant of arrest? (Emphasis supplied)

The Court, consistent with Sections 3 and 6(b), ruled in the negative and held:

There is no requirement that the entire procedure for preliminary investigation must be completed before a warrant of arrest may be issued. What xxx Rule [112] provides is that no complaint or information for an offense cognizable by the Regional Trial Court may be filed without completing [the] procedure [in Section 3]. But nowhere is it provided that the procedure must be completed before a warrant of arrest may issue. xxx[18] (Emphasis supplied)

It appears, however, that respondent Judge would capitalize on the following discussion in *Pangandaman*:

There can be no debate about the proposition that in conducting a preliminary investigation of any crime cognizable by the Regional Trial Courts, a judge of an inferior court xxx must observe the procedure prescribed in Section 3 of Rule 112, 1985 Rules on Criminal Procedure. And although not specifically so declared, the procedure mandated by the Rule actually consists of two phases or stages.

The first phase consists of an ex-parte inquiry into the sufficiency of the complaint and the affidavits and other documents offered in support thereof. And it ends with the determination by the Judge either: (1) that there is no ground to continue with the inquiry, in which case he dismisses the complaint and transmits the order of dismissal, together with the records of the case, to the provincial fiscal; or (2) that the complaint and the supporting documents show sufficient cause to continue with the inquiry and this ushers in the second phase.

This second phase is designed to give the respondent notice of the complaint, access to the complainant's

evidence and an opportunity to submit counter-affidavits and supporting documents. At this stage also, the Judge may conduct a hearing and propound to the parties and their witnesses questions on matters that, in his view, need to be clarified. The second phase concludes with the Judge rendering his resolution, either for dismissal of the complaint or holding the respondent for trial, which shall be transmitted, together with the record, to the provincial fiscal for appropriate action.[19]

Far from supporting respondent Judge's claim, Pangandaman merely re-states the procedure provided in Section 3(b), (e), and (f) and Section 5[20] of Rule 112. Although Pangandaman's division of the preliminary investigation into two "phases" calls into mind the two "stages" prevailing under the 1940 and 1964 Rules of Court, such similarity is more apparent than real. Nowhere in Pangandaman did the Court state that the investigating judge must first conduct the "first phase" of the preliminary investigation to determine whether the accused should be arrested. Indeed, Pangandaman unequivocally states that the investigating judge "must observe the procedure prescribed in Section 3 of Rule 112 xxx."

Respondent Judge Conducted a Preliminary Investigation Without Complying with the Procedure in Sections 3, 5, and 6(b) of Rule 112

Having taken cognizance of Criminal Case Nos. 5282-5287 for preliminary investigation under Rule 112 of the 1985 Rules,[21] it was thus error for respondent Judge to follow the procedure under the 1964 Rules of Court. While, as held in Pangandaman, an investigating judge need not complete the procedure for preliminary investigation before issuing the warrant of arrest, respondent Judge should have issued a subpoena to accused complainants to allow them to submit their counter-affidavits. Respondent Judge chose to hear only the side of the arson complainants before completing the preliminary investigation, contrary to the requirement in Pangandaman that he "must observe the procedure prescribed in Section 3 of Rule 112."

Further, respondent Judge precipitously issued the warrant of arrest in Criminal Case Nos. 5282-5287. Under Section 6(b), it is not enough that the investigating judge find probable cause to issue a warrant of arrest. He must also find a "necessity of placing the respondent under immediate custody xxx." [22]

Without passing upon the merits of respondent Judge's finding of probable cause to arrest the accused in Criminal Case Nos. 5282-5287, the Court finds that there is nothing in the records showing any need to place these accused under immediate custody. On the contrary, the circumstances obtaining in those cases - i.e., accused complainant Gozun is a doctor and his co-accused are either related or known to him; accused complainants and their co-accused are residents of Floridablanca, Pampanga; and none of the accused appears to have any criminal record - reduce if not negate the risk of flight and, correspondingly, the need to immediately arrest them.

Respondent Judge compounded his liability when he forwarded the records of Criminal Case Nos. 5282-5287 to the Office of the Provincial Prosecutor after issuing the warrant of arrest but before finding probable cause to hold the accused for trial. This contravenes Section 5 which requires the investigating MTC judge to transmit the records of the case to the provincial or city fiscal (now prosecutor) within ten days after the conclusion of the preliminary investigation.[23] Respondent Judge's contention that he no longer conducted the "preliminary investigation proper" because accused complainants waived their right to such and opted instead for the transfer of Criminal Case Nos. 5282-5287 to the Office of the Provincial Prosecutor is belied by the 6 November 1998 Resolution. That Resolution states that it was while Criminal Case Nos. 5282-5287 were pending review by the Office of the Provincial Prosecutor, after respondent Judge had conducted the preliminary investigation, that accused complainants requested a re-investigation, thus:

While this case was pending review by our office after it was transmitted to us by Investigating Judge, Hon.

Vinci G. Gozum of the Municipal Trial Court of Floridablanca, Pampanga, after the conclusion of his preliminary investigation finding the existence of a prima facie case for Destructive Arson, the accused through their respective counsel moved for reinvestigation.[24] (Emphasis supplied)

On the Private Prosecutor's Participation in the Preliminary Investigation

Nothing in the 1985 Rules authorizes a private prosecutor to examine the parties and their witnesses during the preliminary investigation. On the contrary, in the proceeding to determine probable cause to hold the accused for trial, Section 3(e)[25] provides that should the investigating officer decide to conduct a hearing, "the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine." The parties can only submit questions to the investigating officer who may propound the questions to the parties or the witnesses. Similarly, in the proceeding to determine probable cause to issue a warrant of arrest, Section 6(b) limits the right of examination of the complainant and his witnesses to the investigating judge.[26] Consequently, when respondent Judge allowed the private prosecutor in Criminal Case Nos. 5282-5287 to examine two of his clients (arson complainants David and Sotto) during the preliminary investigation as if the latter were on the stand on direct examination, respondent Judge again revealed his lack of familiarity with these provisions of Rule 112.

On Whether Respondent Judge Propounded "Searching Questions"

The Court, however, sustains the OCA's finding that in questioning arson complainants David and Sotto, respondent Judge satisfied the requirement under Section 6(b) for the investigating judge to examine the complainant and witnesses in the form of "searching questions and answers." We explained in *Luna v. Plaza*[27] that a number of factors determine compliance with this requirement, thus:

What would be searching questions would depend on what is sought to be inquired into, such as: the nature of the offense, the date, time, and place of its commission, the possible motives for its commission; the subject, his age, education, status, financial and social circumstances, his attitude toward the investigation, social attitudes, opportunities to commit the offense; the victim, his age, status, family responsibilities, financial and social circumstances, characteristics, etc. The points that are the subject of inquiry may differ from case to case. The questions, therefore, must to a great degree depend upon the Judge making the investigation xxx. (Emphasis supplied)

The transcript of stenographic notes taken in Criminal Case Nos. 5282-5287 on 9 September 1998 shows that the questions respondent Judge asked of arson complainants David and Sotto pertained to the alleged participation of the accused in the commission of the crime charged, the property damaged, and personal knowledge of arson complainants David and Sotto of the accused.[28] These questions substantially comply with Section 6(b).

The Basis of Respondent Judge's Liability

The Court has held that an investigating judge's failure to comply with the procedure for preliminary investigation[29] and his hasty issuance of a warrant of arrest[30] constitute gross ignorance of the law. This is not the first time respondent Judge is found deficient in his grasp of the rules on preliminary investigation. In *Capulong v. Judge Gozum*,[31] the Court found respondent Judge guilty of gross ignorance of the law for dismissing two criminal complaints "for failure on the part of the prosecution to conduct the preliminary investigation." In that case, we reminded respondent Judge that:

Municipal Judges are the front-line officers in the administration of justice. They have direct contact with the grass roots. As such, they are the most visible representation of the Judiciary. Having accepted the exalted position of a judge, he owes the public and the court the duty to be proficient in law. The Court has repeatedly

impressed on judges the need to be diligent in keeping abreast with developments in law and jurisprudence, for the study of law is a never-ending and ceaseless process.[32] (Emphasis supplied)

We reiterate this reminder. Judges should endeavor to master the laws they are called upon to apply because their incompetence not only reflects on the judiciary but is also the "mainspring of injustice." [33] In the present case, accused complainants were imprisoned for nearly two months for a non-bailable crime without any showing of flight risk and on one-sided evidence the Secretary of Justice later found wanting. As the Code of Judicial Conduct succinctly puts it: "A Judge should be the embodiment of competence xxx." [34] The Penalty Against Respondent Judge

Considering respondent Judge's prior record, [35] we impose a fine of P20,000. [36] We warn respondent Judge that his commission of any further administrative offense will be dealt with more severely.

WHEREFORE, we find respondent Judge Vinci G. Gozum of the Municipal Trial Court, Floridablanca, Pampanga GUILTY of Gross Ignorance of the Law. We FINE respondent Judge Vinci G. Gozum P20,000 with WARNING that his commission of any further administrative offense will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Complaint, Annex "B." Tony Gozun, Jojo Gozun, Jobert Gozun, Albert Siongco, Aquino Sunga, Maning Cuenco, Noel Morales, Nognog, Joseph Sulit, Bong Ticsay, Jaquelyn Timpug, Nelson Reyes, Suato Lintag, Nestor Manabat, Rudy Ignacio, Flor Gozun, Pilita Songco, Sgt. Romeo Dizon, PAF, Sgt. Ernesto Tayag, PAF, Tisoy Manalang, Sion Lintag, Gil Aquino, Pedro Aquino, Og Laxamana, Junior Mallari, Ricky Dizon, Pepe Dizon, Dennis Ticsay, Cito Casupanan, Quitong de Leon, Joel Roldan, Ian Roldan, Susie Aquino, Rey Viscayno, Reynaldo Viscayno, Nicolas Dizon, Ury Romero, Ernesto Mari, Dan Romero, Adriano Romero, Capt. Rico Tayag, PAF, and Babylyn Tayag.

[2] Ronnie V. Garcia, Edilberto Rosario, Flora Alarcon, Herminia Joves, Ronald Otanes, Maximo Ticsay, Estanislao Cano, Ronald De Leon, Eddie Lapid, Roberto David, Jimmy Sotto, and Cenen Tungol.

[3] Complaint, Annex "B." The complaint, as amended, alleged:

That on or about the 23[rd] day of August 1998, between the hours of 9:30 to 10:00 o'clock in the morning in Sitio Caritas Barangay San Jose, Floridablanca, Pampanga and within the jurisdiction of this Honorable Court, said accused, by conspiring, confederating and mutually aiding each other, did then and there wilfully, unlawfully, feloniously and maliciously set on fire and totally burned the houses of the undersigned complainants with the use of flammable liquid and burning materials.

The names of complainants Eduardo Laxamana, Manuel Cuenco, and Quirino De Leon do not appear in the caption for Criminal Case Nos. 5282-5287 although individuals named Og Laxamana, Maning Cuenco, and Quitong de Leon were among those impleaded as accused.

[4] Ibid., Annex "E." Joaquin V. Gozun, Jr., Tony Gozun, Jose Marie T. Gozun, and Albert Songco.

[5] Ibid., Annex "D."

[6] Ibid., Annex "E." The Secretary of Justice made the following findings: (1) the land where the alleged arson took place belonged to a corporation owned by complainant Gozun's family, and (2) what was burned were nipa shacks (not houses) illegally constructed in the Gozun property.

[7]Ibid., pp. 1-12.

[8] Comment, pp. 1-5.

[9]Report, pp. 3-4.

[10]Superseded by Section 3, Rule 112 of the Revised Rules of Criminal Procedure, effective 1 December 2000 ("Revised Rules").

[11] Superseded by Section 6, Rule 112 of the Revised Rules.

[12]Comment, pp. 2-3.

[13]No. L-78606, 26 September 1988, 165 SCRA 734.

[14]Dated 23 March 1976.

[15] II Regalado, Remedial Law Compendium, 296 (1995 ed.).

[16] A.M. No. MTJ-94-1004, 21 August 1996, 260 SCRA 561 (internal citations omitted). Reiterated in *Almojuela, Jr. v. Ringor*, A.M. No. MTJ-04-1521, 27 July 2004, 435 SCRA 261; *Bagunas v. Actg. Judge Fabillar*, 352 Phil. 206 (1998) cited in *Villanueva v. Judge Almazan*, 384 Phil. 776 (2000) and *Calvan v. Court of Appeals*, 396 Phil. 133 (2000). See also *Mayor Sales v. Judge Calvan*, 428 Phil. 1 (2002).

[17]No. L-71782, 14 April 1988, 159 SCRA 599.

[18]Ibid.

[19] Ibid.

[20]Section 5, par. 1 provides:

Duty of investigating judge.- Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, stating briefly the findings of facts and the law supporting his action, together with the entire records of the case, which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused; (d) the order of release of the accused and cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

[21] Section 3 of Rule 112 provides that "no complaint or information for an offense cognizable by the Regional Trial Courts shall be filed without a preliminary investigation having been first conducted xxx." Destructive Arson is punishable by reclusion perpetua to death (Section 10, Republic Act No. 7659), thus cognizable by the Regional Trial Courts. An MTC judge is among the officers authorized to conduct preliminary investigations (Section 2, Rule 112). However, under Section 2, Rule 112 of the Revised Rules, as amended by A.M. No. 05-8-26-SC, effective 3 October 2005, judges of first level courts are no longer included among those authorized to conduct preliminary investigations.

[22] *Sps. Arcilla v. Judge Palaypayon*, 416 Phil. 875 (2001); *Bersales v. Arriesgado*, A.M. No. MTJ-93-773, 3 September 1996, 261 SCRA 320.

[23] Supra note 20.

[24]Complaint, Annex "D."

[25]Section 3(e) provides:
Procedure. - xxx

(e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned. (Emphasis supplied)

[26] Section 6(b) provides:

When warrant of arrest may issue. - xxx

(b) By the Municipal Trial Court. - If the municipal trial judge conducting the preliminary investigation is satisfied[,] after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest. (Emphasis supplied)

[27] 135 Phil. 329 (1968). Reported as *Luna v. Hon. Plaza, etc., et al.*

[28] TSN, 9 September 1998, pp. 16-40.

[29] *Sps. Arcilla v. Judge Palaypayon*, supra note 22.

[30] See *Sps. Arcilla v. Judge Palaypayon*, supra note 22; *Bersales v. Arriesgado*, supra note 22.

[31] 445 Phil. 524 (2003).

[32] *Ibid.*

[33] *Spouses Bio v. Judge Valera*, 327 Phil. 249 (1996).

[34] Rule 1.01. Section 3, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary (A.M. No. 03-05-01-SC), effective 1 June 2004, exhorts judges to "take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for the proper performance of judicial duties, xxx."

[35] In *Capulong v. Judge Gozum* (supra note 31), the Court required respondent Judge to pay a fine of P10,000.

[36] Effective 1 October 2001, gross ignorance of the law under Section 8(9) in relation to Section 11(A) of Rule 140 of the Rules of Court, as amended by A.M No. 01-8-10-SC, is punishable by:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
2. Suspension from the office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
3. A fine of more than P20,000.00 but not exceeding P40,000.00.

This schedule of penalties has no retroactive application (*Capulong v. Judge Gozum*, supra note 31).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.