

EDNA D. DEPAMAYLO, COMPLAINANT, VS. JUDGE AQUILINA B. BROSTARLO, RESPONDENT.

A.M. No. MTJ-92-731. November 29, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint charging respondent judge of the Municipal Circuit Trial Court at Carles-Balasan, Iloilo with misconduct and ignorance of the law.

Complainant is the widow of Police Officer Nilo Depamaylo who was shot and killed at a cockpit in Barangay Kinalkalan, Balasan, Iloilo while serving a warrant of arrest. The suspect, Nerio Salcedo, a member of the Sangguniang Panlalawigan of Iloilo, surrendered to the police shortly after the incident, yielding a 12-gauge shotgun which he allegedly used in shooting the victim and a .38 caliber revolver. He was charged with murder in a complaint filed by the Chief of Police. The case was assigned to respondent judge of the MCTC of Carles-Balasan for preliminary investigation.

On June 3, 1992, Salcedo filed a petition for bail alleging that the evidence against him was not strong. His motion was set for hearing on June 5, 1992 at 9:00 o'clock in the morning, at which the Chief of Police appeared for the prosecution. At about 9:35 a.m., however, the provincial prosecutor filed a manifestation that he needed time to decide whether to oppose the petition or to recommend bail, because he had not been furnished copies of the complaint and supporting affidavits. He, therefore, asked that the hearing be reset on June 11, 1992. But respondent judge denied the motion on the ground that the matter had already been submitted for resolution earlier at 9:15 a.m. of that day.

On June 9, 1992, respondent judge issued a resolution in which she recommended that a charge of homicide instead of murder be filed against the accused on the ground that there was no circumstance which might qualify the killing to murder. No copy of the resolution was furnished to complainant.

On review, the provincial prosecutor found the crime to be murder and therefore filed the corresponding information in the Regional Trial Court against Salcedo. The provincial prosecutor based his finding on the autopsy which showed that the victim had been shot from behind.

Complainant then filed this complaint charging respondent judge with gross ignorance of the law and highly irregular conduct in (1) denying the prosecution an opportunity to be heard on the question of bail and not informing complainant of the proceedings; (2) hearing the petition for bail in violation of Rule 15, § 4 which requires that notice of hearing of a motion must be served on the adverse party at least three days before the hearing; and (3) reducing the crime charged from murder to homicide.

In her comment, Judge Brostarlo points out that complainant in this case was not the one who filed the criminal complaint, but it was the Chief of Police of Balasan, Inspector Norberto B. Simon. Nor was she listed as a witness. This was the reason, according to respondent judge, why complainant was not given notice of the

proceedings in the preliminary investigation she conducted.

With respect to the allegation that she arbitrarily denied the prosecution the opportunity to oppose the motion for bail of the accused, respondent claims that the hearing on the petition for bail had already been terminated and the matter had already been submitted for resolution when the provincial prosecutor asked for postponement. She claims that the prosecution, which was duly represented by Chief of Police Simon, had earlier rested its case. Respondent contends that the Chief of Police had authority to appear for the prosecution under § 5 of Rule 110, which provides:

Who must prosecute criminal actions. - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. However, in the Municipal Trial Courts or Municipal Circuit Trial Courts when there is no fiscal available, the offended party, any peace officer or public officer charged with the enforcement of the law violated may prosecute the case. This authority ceases upon actual intervention of the fiscal or upon elevation of the case to the Regional Trial Court.

As to the charge that she heard the defendant's motion for bail without observing the three-day notice requirement, she argues that rule 15, § 4 allows a court, for good cause, to hear a motion on shorter notice and that in this case the accused was "suffering from illness wherein his life was in danger,"[1] for which reason he was released to his physician's custody and confined in a hospital.

Finally, respondent states that she thought the crime was homicide and thus bailable, based on the affidavits and testimonies of the Chief of Police and two witnesses.

Complainant filed a reply, to which respondent submitted a rejoinder, after which this case was referred to Executive Judge Tito G. Gustilo of the Regional Trial Court of Iloilo City for investigation, report, and recommendation.

Judge Gustilo recommended the dismissal of the case in view of an Affidavit of Desistance dated August 17, 1994 executed by the complainant who cited as reason for her decision the fact that she was working in Manila as a helper and could not attend to the case. This was not considered by the Court to be a sufficient reason for the withdrawal of the complaint and the Investigating Judge was directed to proceed with the investigation.

On April 22, 1996, Judge Gustilo submitted his report finding that although the action of respondent was clearly erroneous, it did not appear to have proceeded from improper motives. For this reason, he recommended that respondent judge be found to be merely guilty of procedural lapses and reprimanded and given a warning that a repetition of the act will be dealt with more severely.

The Office of the Court Administrator disagrees. Although concurring in the factual findings of the investigating judge, Deputy Court Administrator Bernardo P. Abesamis believes that respondent judge "should not be let off lightly with a mere slap in the wrist" and, for this reason, recommends that the proper penalty should be a fine in the amount of P5,000.00 with warning.

This recommendation is well taken.

First. Respondent judge justifies her ruling denying the public prosecutor's request for time to study the bail petition of the accused on the pretext that the Chief of Police had already submitted the matter for resolution and, under Rule 110, § 5 of the Rules of Court, the Chief of Police had authority to prosecute the case. This is clearly wrong. The Rule allows the offended party or law enforcement agents to prosecute a case only where "no fiscal is available." In the case at bar, the provincial prosecutor had intervened. In fact, a copy of the petition for bail had been sent to him and he asked for time to study it. It is not claimed that the provincial prosecutor had authorized the Chief of Police to appear for the prosecution.

In any event, since the prosecutor sent in his motion at 9:35 a.m., shortly after she had terminated the hearing at 9:15 a.m., respondent judge should have granted the motion and in the meantime withheld action on the bail petition. This was the prudent thing for respondent to do, considering that the charge in the case before her was for murder and, therefore, whether the accused should be granted bail depended on the relative strength of the prosecution's evidence against him.[2] But what evidence could respondent judge consider if she did not give the prosecution a reasonable opportunity to present its evidence? Indeed, the State is entitled to due process as much as the accused. The claim that dispatch in the grant of bail to the accused was justified because he was ill and his life was endangered by confinement was never seriously looked into. Respondent simply relied on the affidavit of the Chief of Police for her finding that the accused was seriously ill without even trying to ascertain from what illness he was suffering. There was, therefore, simply no justification for respondent's hasty and arbitrary denial of reasonable opportunity to the prosecution to study the evidence in the case.

Second. The undue haste with which respondent judge granted bail also accounts for her disregard of the mandatory requirement in Rule 15, § 4 that notice of a motion must be served on all parties at least three days in advance of the hearing. Respondent contends that the same Rule allows a hearing on shorter notice for "good cause," but, as already stated, beyond the mere allegation that the accused was suffering from some ailment allegedly endangering his life, there was nothing to justify the respondent's shortcut. There was no medical testimony or certificate shown, but only the affidavit of the Chief of Police who released the accused to the custody of the latter's physician because of serious illness.

Third. Respondent judge justifies the grant of bail to the accused on the ground that the crime was not murder but only homicide. The case was before her, however, for preliminary investigation and for admission of the accused to bail. Her only authority was to determine whether there was probable cause against the accused and, if so, whether the evidence of guilt was strong, considering that the charge was for murder. But she had no power to reduce or change the crime charged in order to justify the grant of bail to the accused. As the Deputy Court Administrator states in his report:

Moreover, we find that respondent judge committed likewise an irregularity when she reduced the charge of Murder to Homicide. The Court in a number of cases has declared that a municipal judge has no legal authority to determine the character of the crime but only to determine whether or not the evidence presented supported prima facie the allegation of facts contained in the complaint. He had no legal authority to determine the character of the crime and his declaration upon that point can only be regarded as an expression of opinion in no wise binding on the court (*People vs. Gorospe*, 53 Phil. 960; *de Guzman vs. Escalona*, 97 SCRA 619). This power belongs to the fiscal (*Bais vs. Tugaoen*, 89 SCRA 101).

Respondent judge is not only guilty of procedural lapses or ignorance of law. The principles of law involved in this case are basic and clear. Her adamant refusal to grant the prosecution time to study its case, her haste in holding the hearing without observing the proper rule, and her attempt to downgrade the charge against the accused to justify the grant of bail bespeak of more serious lapses. Considered in its totality, her actions manifest partiality in favor of the accused in the criminal case.

In line with the rulings of this Court in similar cases,[3] the penalty on respondent judge should be P20,000.00 with warning.

WHEREFORE, the Court finds respondent guilty of misconduct and orders her to pay a fine of P20,000.00 with a warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Melo, Puno, Vitug, Kapunan, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.
Bellosillo, J., no part.

[1] Affidavit of Inspector Simon, Chief of Police of Balasan, Comment, p. 3, Rollo. p. 29.

[2] Gimeno v. Arcueno, 250 SCRA 376 (1995).

[3] Mamolo v. Narisma, Adm. Matter No. MTJ-96-1072, January 31, 1996; Buzon v. Velasco, Adm. Matter No. RTJ-94-1209, February 13, 1996.

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