

MARIANO DEL ROSARIO, JR., PETITIONER, VS. JUDGE NICASIO BARTOLOME, MTC, STA. MARIA, BULACAN, RESPONDENT.

A.M. No. MTJ-97-1114. April 04, 1997

Ponente: MELO, J.

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MELO, J.:

Municipal Trial Court (Sta. Maria, Bulacan) Judge Nicasio Bartolome is once again named respondent in the instant administrative case for gross ignorance of the law and for knowingly rendering an unjust judgment.

It appears that on July 1, 1996, complainant Mariano del Rosario filed on behalf of his minor daughter Jennifer, a complaint for acts of lasciviousness against Roderick Lazaro, which was thereafter docketed as Criminal Case No. 10273 of the Municipal Trial Court of Sta. Maria, Bulacan. Later that same day, a motion was filed to amend the charge to attempted rape. After additional statements were taken from complainants, an amended complaint for attempted rape was filed before the same court (p.1, Office of the Court Administrator Report).

On July 5, 1996, respondent judge issued the following Order, from which the charges against him stemmed:

ORDER

Upon conclusion of the preliminary examination by conducting searching questions and answers of the witnesses for the prosecution Rosalia del Rosario, mother and the daughter Jennifer del Rosario respectively, this Court finds prima facie evidence to admit the complaint as charged that is, Acts of Lasciviousness as there was no evidence found to support a case of Attempted Rape as the testimonies could not show that there was even an attempt on the part of the accused to lie with the offended party or to have sexual intercourse it being the second occasion already according to the testimony of the mother. Thereafter, the complainant thru counsel filed a motion to amend complaint to attempted rape and supporting the amended complaint with additional statement. On the other hand there is a motion on the part of the accused to reduce bail previously fixed for Acts of Lasciviousness. The afterthought of the complainant for Attempted Rape operates as an abandonment of the previous case and therefore, appears to have lost interest to further prosecute the same.

WHEREFORE, this case is hereby dismissed and the matter of having the same amended is referred to the Office of the Provincial Fiscal, Malolos, Bulacan for further action.

The Station Commander or any of his authorized representative is hereby ordered to release the living person of the accused upon receipt of this Order unless held on some other charges.

SO ORDERED (p. 11, Rollo).

In a letter to the Clerk of Court of the Municipal Trial Court of Sta. Maria, Bulacan, complainant requested that the records of the case be forwarded immediately to the Office of the Provincial Prosecutor since the release order increased the possibility of Lazaro fleeing. Complainant also manifested his opinion that Lazaro should not be ordered released because he is still being held on another charge by reason of the amended complaint for attempted rape (p.12, Ibid.).

True enough, after his release, Lazaro could no longer be located, his whereabouts unknown (p. 1, Office of the Court Administrator Report).

Thereafter, complainant Mariano del Rosario filed the instant letter-complaint dated July 26, 1996 (pp.1-2, Rollo).

In the comment dated October 25, 1996 required of him, respondent explained that his acts were all done according to procedure. His theory is that the filing of the amended complaint for attempted rape constitutes an abandonment of the complaint for acts of lasciviousness. Furthermore, as accused Lazaro was being held in detention without a warrant of arrest even before the filing of the complaint for acts of lasciviousness, he had to be released pending the preparation of the proper charge (pp. 14-15, Ibid.).

The case was ordered referred to the Office of the Court Administrator for evaluation, report, and recommendation in this Court's Resolution dated November 18, 1996 (p. 16, Ibid.). Perplexed as to why respondent judge conducted a preliminary investigation of an offense cognizable by his court, when it was not necessary, and thereafter, referring the amended complaint for attempted rape to the Office of the Provincial Prosecutor for preliminary investigation when he could have conducted it himself, Senior Deputy Court Administrator Reynaldo L. Suarez submits that respondent is guilty of gross ignorance of the law. Noting that he was previously censured and warned by the Court in Adm. Matter No. MTJ-95-1068 for gross ignorance of the law on account of granting a motion for extension of time to file answer, a prohibited pleading, in an action subject to the Rules on Summary Procedure, a fine of P10,000.00 is recommended as the proper sanction, with a stern warning that the same or similar acts shall be dealt with more severely (pp.4-5, Office of the Court Administrator Report).

The Court agrees with the findings of the Office of the Court Administrator, although we deem it fit to reduce the fine.

The Revised Penal Code imposes the penalty of prision correccional for acts of lasciviousness, which penalty has a duration of six months and one day to six years (Articles 27 & 336). Exclusive and original jurisdiction over offenses punishable by imprisonment not exceeding six years is lodged with the Municipal Trial Courts (Section 2, R.A. 7691, amending Section 32(2), B.P. 129). For crimes cognizable by Municipal Trial Courts, a preliminary investigation is not required for such is only warranted for offenses cognizable by the Regional Trial Court (Section 1, Rule 112, Revised Rules on Criminal Procedure). Thus, it was patent error for respondent judge to conduct a preliminary investigation after the complaint for acts of lasciviousness was filed for none was required in the first place. To compound such error, he passed the responsibility of conducting the preliminary investigation after the complaint was amended to attempted rape to the Office of the Provincial Prosecutor when he should have done it himself. Section 1, Rule 110 of the Rules states that the prosecution of an offense falling under the jurisdiction of the Regional Trial Court is commenced by "filing the complaint with the appropriate officer for the purpose of conducting the requisite preliminary investigation." Being among the appropriate officers enumerated in Section 2 of Rule 112, respondent judge's failure to follow these basic commands of the law and the Rules constitutes gross ignorance of the law.

Respondent justifies his assailed order by saying that the release of accused Lazaro was necessary in view of his already long detention without any warrant of arrest, although he failed to note the motion to reduce bail filed by the accused, which motion may be considered as a waiver of any irregularity attending his arrest. This, however does not absolve respondent.

WHEREFORE, respondent Judge Nicasio Bartolome is hereby ordered to pay a FINE of Eight Thousand (P8,000.00) pesos to be paid within fifteen (15) days from receipt of this Resolution, and is sternly WARNED that the same or similar conduct in the future will be dealt with even more severely.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Francisco, and Panganiban, JJ., concur.

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