

**LORETO JOAQUIN, PETITIONER, VS. JUDGE FE ALBANO MADRID,
PRESIDING JUDGE, REGIONAL TRIAL COURT SECOND JUDICIAL
REGION BRANCH 21, SANTIAGO CITY, RESPONDENT.**

A.M. No. RTJ-04-1856 (Formerly OCA IPI No. 03-1750-RTJ). September 30, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On complaint of Loreto Joaquin,[1] Judge Fe Albano Madrid, Presiding Judge of the Regional Trial Court (RTC) of Santiago City, Branch 21, is administratively charged of Gross Misconduct arising from her issuance of orders in Criminal Case No. 3946, People v. Engr. Loreto Joaquin, for Homicide, of which complainant is the accused.

THE FACTS

An Information for Homicide,[2] following an inquest, was filed on July 19, 2002 by the Santiago City Prosecutor against complainant at the RTC of Santiago City where it was docketed as Criminal Case No. 3946. The victim being a minor, the case was raffled to Branch 21, of which respondent is the Presiding Judge.

Upon the filing of the Information, complainant at once posted a bailbond which was approved by respondent, on account of which she, by Order of July 19, 2002, ordered his release.

The case was set for arraignment on August 5, 2002 which was reset to September 18, 2002 and then to October 21, 2002.

The scheduled arraignment on October 21, 2002 did not push through, complainant's counsel having filed a Motion to Reset arraignment. The private prosecutor also moved for a deferment of the arraignment in light of a pending Motion for Reinvestigation before the Office of the City Prosecutor in order to upgrade the charge from Homicide to Murder. On even date, the attention of respondent having been invited by the prosecution that an unlicensed firearm was used in the killing of the victim, she, on "review of the information," found out that indeed complainant was charged with the killing of a minor with the use of an unlicensed firearm, hence, she believed the crime to be non-bailable. Respondent thereupon issued an Order[3] for the detention of complainant "during the pendency of the case" and reset the pre-trial and arraignment of the case to November 26, 2002.

The following day or on October 22, 2002, respondent left for Baguio City to attend a 2-day seminar. On even date, at about 10:00 a.m., complainant filed a "Motion for the Release of Accused,"[4] with notice that said motion be heard at 2:00 p.m. of the same day. Since respondent had left for Baguio City, the motion was referred to the pairing judge, Judge Anastacio D. Anghad, for resolution. Also on even date, Judge Anghad issued an Order[5] granting complainant's "Motion for the Release of Accused" upon the following evaluation:

There is no question that the charge filed against the accused is Homicide, which is a bailable offense. Indeed, the accused posted his bail and was approved by the Court. The accused was given temporary liberty.

A perusal of the arguments raised by the accused, thru counsel, convinced this Court that the accused should

not have been detained. With due respect to the position taken by the Executive Judge, this Pairing Judge is of the considered view that until and after the charge of Homicide is amended, or a new charge of Murder is filed by the prosecution, the official Information of Homicide so filed by the prosecution dated July 19, 2002, should remain as the proper Information. For obvious reasons, this Court defers to the wide discretion of the prosecution in the filing of charges against suspects. Unless tainted with abuse of discretion or judgment, the Court, normally cannot interfere into the terrain of the prosecution.

Besides, there was an urgent motion to reset and defer the arraignment of the accused filed by the Private Prosecutor, Atty. Nicasio Bautista III, and this fact was noted by the Court when it issued the October 21, 2002 Order. This should have been a caution for the Court that the private prosecutor is also in accord with the resolution of the City Prosecution regarding the filing of Homicide. Declaring the offense charged to be non-bailable, the accused should have been given his day in court to rebut and traverse what the prosecution, thru Private Prosecutor, orally manifested on October 21, 2002.

Finding the urgent motion filed by the accused, thru counsel Atty. Pedro R. Perez, Jr., to be justified and in order, and with due respect to the Order of Detention issued by the Honorable Executive Judge Fe Albano Madrid, this Pairing Judge finds that there is basis in ordering the release of the accused from further detention. This order shall take effect immediately upon receipt of this Order considering that on record his bail of P40,000.00 has not been increased revoked or disapproved.

If by this order of release it takes the ire of the Honorable Fe Albano Madrid, then so be it but this judge would not harbor any ill feeling or personal grudge. This judge did it, based from his conscience and based from legal grounds. (Underscoring supplied)

On respondent's return from the seminar in Baguio City and apprised of the grant by Judge Anghad of the "Motion for the Release of Accused" in her absence, she issued on October 29, 2002 an order setting aside the order of Judge Anghad which granted complainant's "Motion for the Release of Accused" and setting to November 5, 2002 the hearing of said motion, along with the Motion to Inhibit her which was also filed.

After the November 5, 2002 hearing of complainant's motions, respondent denied the "Motion for the Release of Accused" in this wise, by Order of even date:[6]

Indeed the accused is charged with homicide but it is also alleged in the body of the information that he killed Andrew Ancheta a 16-year old minor with an unlicensed firearm. The accused conceded that the use of an unlicensed firearm is an aggravating circumstance in homicide but insists that there is no change in the penalty.

Republic Act 8294 which took effect on July 6, 1997 provides that if homicide or murder is committed with the use of an unlicensed firearm, such use shall be considered as a special aggravating circumstance. With the enactment of Republic Act 8294 which amended P.D. 1866 the use of an unlicensed forearm is no longer distinct and separate offense but a special aggravating circumstance such that penalty for homicide or murder with the use of an unlicensed firearm was increased from reclusion temporal to reclusion perpetua to death. (Underscoring supplied)

Respondent denied too the Motion to Inhibit her.

Complainant's wife thereupon filed on November 19, 2002 a Petition for Habeas Corpus[7] at the Court of Appeals (CA), docketed as SP Proc. No. 73901.

THE COMPLAINT

On May 6, 2003, complainant filed the present administrative complaint for "gross misconduct constituting violations of the Code of Judicial Conduct" arising from

“[t]he violation of the constitutional and legal rights of the Complainant by the Respondent Judge, taken together with the palpable mistakes in the application of fundamental legal principles, utter disregard of the rights of the Petitioner, showing bias, partiality, and abuse of authority, and the errors in the appreciation and interpretation of laws and jurisprudence.”

In the meantime, the CA, which issued a writ of Habeas Corpus,[8] granted complainant’s petition by Decision of June 25, 2003,[9] it holding that since complainant was not charged with a capital offense or one which, under the law at the time of its commission and at the time of application for bail, is punishable by reclusion perpetua and the evidence of guilt is strong, bail was a matter of right.

RESPONDENT’S COMMENT

In her Comment, respondent admits having ordered the detention of complainant during his scheduled arraignment on October 21, 2002 as she does admit having issued the Order of November 5, 2003.

Inviting attention to the Information filed against complainant, denominated as Homicide,[10] which reads:

That on or about the 3[rd] day of July 2002 in the City of Santiago (Isabela), Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously, and with intent to kill Andrew Ancheta a sixteen-year old minor, assault, attack and wound the said Andrew Ancheta with an unlicensed firearm thereby inflicting upon him a gunshot wound on his face which directly caused the death of the said Andrew Ancheta (Underscoring supplied),[11]

respondent explains: Since the victim was a minor, the case was immediately sent by the Officer-in-Charge Clerk of Court to her sala which is the designated Family Court in RTC Santiago City. On noting that the information alleged that the accused-herein complainant did “assault, attack and wound” the minor victim with the use of an unlicensed firearm, she wondered why the designation of crime was Homicide in light of her belief that the killing was qualified by abuse of superior strength. Respondent amplifies:

In its Resolution the prosecution did not find the presence of treachery. I did not even think of questioning this but treachery is not only the qualifying circumstance to elevate homicide to murder. Certainly there are others such as abuse of superior strength (Article 248, No. 1, Revised Penal Code). When the prosecution made a finding that the accused did “assault, attack and wound” the minor victim with the use of unlicensed firearm does it not mean that there was abuse of superior strength. Can it not be said that the assault and attack of a child with the use of a gun is inherently murder notwithstanding that the prosecution refuse[d] to call it as such. Ordinarily there is no need to assault and attack a child with the use of a firearm. Harsh words or the fist is enough to cow and chastise a child and he could not fight back.

The judge wondered. What will prevail? The name given to the crime or the allegations of the information on how the crime was committed. It has been held many times that it is the allegations of the information that controls (sic).

To best illustrate what happens sometimes. An information for child abuse is filed wherein it is alleged that the accused whipped a child which caused injury to him. What really is the crime charged? Is it slight physical injuries or child abuse. It is my humble opinion that the crime is only slight physical injuries because the element of prejudice to the child’s development is not alleged in the information. Can the judge allow the accused his liberty on recognizance considering that slight physical injuries is a light offense or exact the recommended bailbond of P20,000.00 or more because the penalty for child abuse is prison mayor minimum (Sect. 10, R.A. 7610)? For whatever action the judge takes, can he be administratively charged with gross misconduct?

To illustrate another situation. An information for acts of lasciviousness was filed alleging that the accused

inserted his penis into the mouth of the child. What is the crime? Is it acts of lasciviousness or rape under R.A. 8353? How about an information itself states that the taking of the property was through force and intimidation? What is the crime? Is it theft or robbery?

How does a judge act when confronted with these situations? Shall the judge follow the safe and even path, remain passive and wait what will happen. Or shall he do something to correct any errors that might result in the miscarriage or worst, mockery of justice. Wouldn't judges be a little more aggressive and innovative. Would not the judge be a little creative to remedy such procedural mistakes or irregularities that might result in the imbalance of justice?

In this particular case would I allow the accused to be free because of a defect in the designation of the crime as homicide when in fact the allegations of the information on how the crime was committed shows that it is murder, even if the exact words of "use of superior strength" was not used?[12] (Underscoring and emphasis supplied)

OCA's MEMORANDUM-RECOMMENDATION

After respondent's filing of her Comment-Answer, the Office of the Court Administrator (OCA), by Memorandum of April 12, 2004,[13] extenuates respondent from liability for grave misconduct. It holds respondent liable, however, for gross ignorance of the law because it is basic that a person not charged with a capital offense or with an offense punishable by reclusion perpetua is entitled to bail as a matter of right, citing *Arcilla v. Palaypayon* (364 SCRA 469) which involved the premature issuance by a municipal trial judge during preliminary investigation of a warrant of arrest without affording the accused his right to controvert the evidence presented against him, thereby violating his constitutionally protected right to due process.

The OCA thus recommends that respondent be meted a FINE of P10,000.00 and sternly warned that repetition of the same or similar act shall be dealt with more severely.

In a Manifestation[14] received on August 20, 2004, respondent, complying with this Court's Resolution of May 31, 2004[15] directing the redocketing of the complaint as a regular administrative matter and requiring the parties to manifest whether they are submitting the case on the basis of the pleadings/records already filed and submitted, answered in the affirmative and proffered what she calls "extraneous details . . . to better explain her position," to wit:

x x x

- After a preliminary investigation was conducted by the Office of the City Prosecutor, an information was filed on July 19, 2003 against the complainant only. His companion who he said was a confidential agent of the NBI was exonerated based on the complainant's counteraffidavit. On that same day that the information was filed the complainant posted his bailbond which the respondent approved in the course of her routine work.

- After the release of the complainant from detention, there was a feeling of outrage in the community and the release of the accused became an issue as it seems that everyone wants to know why the complainant was released. This prompted the respondent to review the records of the case. It was then that the respondent realized that the information was coached in ambiguity. It seemed that there was an effort made to enable the accused to post bail.

x x x

- I just felt that I could not condone much less contribute to an injustice. In our seminars as judges of Family Courts we were always prodded to be more vigilant, active and innovative in the protection of the rights of children. I guess I found a chance to heed such proddings.

- I issued my questioned order for the detention of the accused. I wanted to force the issue with the prosecution for them to state whether the circumstance of abuse of superior strength was present or not considering their express finding that there was assault committed by the accused complainant and his NBI companion (who they exonerated) when they shot the minor victim with their unlicensed firearm.

x x x

Respondent supposes that the paramount question now in the minds of the Honorable Supreme Court is why did not I mention the issue of abuse of superior strength in my questioned order. It was because there was a motion for reconsideration filed by the complainants with the Office of the Prosecutor. I did not think it wise then to give any ideas to any of the parties. All I wanted was to force the issue with the prosecutor.

As respondent said in the beginning the above narration of events are extenuous matters. But perhaps in a way they might explain why I sincerely and humbly believe that I did not abuse my discretion. I only tried to balance the scales of justice. It might prove to be disadvantageous to me. I only beg for understanding. (Underscoring supplied)

THIS COURT'S FINDING

The Revised Penal Code provision on Murder reads:

Art. 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death, if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or means or persons to insure or afford impunity.
- In consideration of a price, reward or promise.
- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
- With evident premeditation.
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Underscoring and italics supplied)

As said Art. 248 of the Revised Penal Code provides, the killing of another shall be guilty of murder when committed with any of the therein enumerated attendant circumstances, one of which is taking advantage of superior strength.

It has been the consistent ruling of this Court that what is controlling are the actual recital of facts in the body of the information and not the caption or preamble of the information.[16]

As gathered from the earlier quoted November 5, 2002 Order of respondent, she ordered the detention of complainant, his being out on bail notwithstanding, she being of the opinion that the information, albeit denominated as one for Homicide, alleged the fatal assault of a minor child with the use of an unlicensed firearm, hence, to her belief, is punishable by reclusion perpetua to death.

Respondent was to later explain in her August 18, 2003 Comment-Answer to the Complaint that the allegation in

the information that the killing of the minor child was with the use of an unlicensed firearm “shows that [the offense committed] is murder, even if the exact words ‘use of superior strength’ [as a qualifying aggravating circumstance] w[ere] not used.”

In fine, at the time respondent ordered complainant’s detention on October 21, 2002, she was of the opinion that the allegation in the information that an unlicensed firearm was used in assaulting the minor victim called for the imposition of an increased penalty of reclusion perpetua, which opinion is of course erroneous. For the use of an unlicensed firearm in the commission of Homicide (or Murder), being a special aggravating circumstance, merely calls for the application of the penalty – reclusion temporal in the case of Homicide – in its maximum period.[17]

At the time she gave her Comment-Answer to the Complaint, she explained that the allegation in the information contemplated the use of superior strength to qualify the killing to murder, which explanation could be tenable and puts her in good light.

To warrant a finding of gross ignorance of the law, it has been repeatedly held that the error must be “so gross and patent as to produce an inference or bad faith.” For to hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that he erred, would be intolerable.

From the allegations of the information against complainant and the facts and circumstances surrounding respondent’s issuance of and justification for her order for complainant’s detention despite his earlier posting of bailbond, this Court is not inclined to infer that respondent acted maliciously or in bad faith, or with patent abuse of authority or in sheer ignorance of the law.

It bears noting that after the information against complainant was filed on July 19, 2002, complainant readily posted a bailbond and respondent just as readily approved it and ordered his release on even date. It was only three months later or during the scheduled arraignment on October 21, 2002, when her attention was called by the prosecution about the use of an unlicensed firearm in the killing, and after her review of the information, that she believed that the crime for which the accused was charged was non-bailable.

This Court does not thus find respondent liable for grave misconduct or ignorance of the law.

WHEREFORE, the administrative complaint against respondent, Judge Fe Albano Madrid, is hereby DISMISSED.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Rollo at 1-10.

[2] Id. at 11-12.

[3] Id. at 19-21.

[4] Id. at 15-18.

[5] Id. at 19-21.

[6] Id. at 24-26.

[7] Id. at 27-35.

[8] Id. at 39-40.

[9] Id. at 50-56.

[10] Vide Note 2.

[11] Rollo at 73-74.

[12] Id. at 74-75.

[13] Id. at 90-92.

[14] Id. at 94-97.

[15] Id. at 93.

[16] *People v. Alagon*, 325 SCRA 296 (2000).

[17] Art. 64. The Revised Penal Code.

Rules for the application of penalties which contain three periods.

x x x

(3) When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.

x x x

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