

JOCELYN LABARO, REPRESENTED BY HER MOTHER, EVELYN LABARO, PETITIONER, VS. HONORABLE VINCENT EDEN C. PANAY AND ALFREDO AVIADOR, RESPONDENTS.

G.R. No. 129567. December 04, 1998

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

We are urged in this petition for certiorari and mandamus under Rule 65 of the 1997 Rules of Civil Procedure to set aside the 25 June 1997 Order of public respondent Judge Vincent Eden C. Panay of Branch 30 of the Regional Trial Court of Bayombong, Nueva Vizcaya, in Criminal Case No. 943 granting the petition for bail of accused Alfredo Aviador and fixing the bail at P200,000.

The antecedents are not disputed.

In the Amended Information[1] filed with the trial court, private respondent Alfredo Aviador (hereafter ALFREDO) was charged with the crime of rape, allegedly committed as follows:

That on or about 4:30 o'clock in the afternoon of April 21, 1996, at an uninhabited place, in the Municipality of Kayapa, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of Jocelyn Labaro while she was unconscious caused by the violence inflicted upon her by the said accused and by reason thereof she has become insane, to her own damage and prejudice.

The witnesses presented by the prosecution were herein petitioner Jocelyn Labaro (hereafter JOCELYN), the offended party; Dr. Antonio Labasan, the medico-legal officer who physically examined JOCELYN; Dr. Alice Anghad, the psychiatrist who conducted the psychiatric and mental examination on the rape victim.[2]

After these witnesses completed their testimony, Judge Panay, acting on ALFREDO's petition for bail filed earlier, issued on 25 June 1997 an Order[3] admitting ALFREDO to bail and fixing his bail bond at P200,000. The Order reads as follows:

All persons in custody shall be entitled to bail as a matter of right, except those charged with a capital offense when the evidence of guilt thereof is strong.

A capital offense, as the term is used in this Rule, is an offense which, under the law existing at the time of its commission and at the time of the application to be admitted to bail, may be punished with death (Sections 3 & 4, Rule 114, Rules of Court).

With the effectivity of Republic Act [No.] 7659, the death penalty is now imposed on certain heinous crimes, one of which is rape by reason or on the occasion of which, the victim has become insane, at present the instant offense with which the accused, Alfredo Aviador, is charged.

The accused in his petition for bail momentarily concentrates on the circumstance of insanity and not on the

alleged rape itself and attempts to go beyond mere demonstration of the weakness of the prosecution's evidence by strongly advancing the ground that the victim is not suffering from insanity by reason or on the occasion of the alleged rape.

As expected, the prosecution vehemently opposed this petition with its evidence adduced from the presentation of its witnesses, the victim herself, Jocelyn Labaro and Dr. Alice Anghad whose concentration of study and work is Psychiatry.

Due perhaps to the dearth of jurisprudence on its circumstance of insanity upgrading rape to the category of a heinous crime, the prosecution contents itself by saying, on the basis of Dr. Anghad's testimony of victim's suffering from some degree of psychosis as a result of the traumatic experience, that the law does not qualify whether said insanity is temporary or permanent.

It is again perhaps the prosecution's observation of the clearly mental and emotional normalcy of the victim during the several times when she testified that the prosecution concluded that that bit of psychosis could have been permanent without continued medication.

To the mind of the Court, it would take more than what the medical doctor-witness termed as psychosis for the alleged crime of rape by reason or on the occasion of which the victim suffered insanity, in order to earn the penalty of death.

The Court as of now, without pre-judging either the alleged crime of rape or the aggravating circumstance of insanity, overrules the opposition and grants the petition.

Premises considered, the accused Alfredo Aviador is admitted to bail for his provisional liberty in the amount of P200,000.00.

It is however directed that for the accused to avail of the bail bonds earlier posted which however were later on cancelled, the bondsmen who posted them must again voluntarily sign new forms constituting the same properties as bail bonds to avoid any technical defect that may have arisen due to their earlier cancellation.

A new Order for release on provisional liberty of the accused shall be issued upon completion of the requirements ordered by the Court.

SO ORDERED.

The next day, the prosecution filed a motion to reconsider^[4] the order.

In his Order^[5] of 2 June 1997, Judge Panay denied the motion for reconsideration. He insisted on his finding that Dr. Anghad's testimony regarding JOCELYN's insanity was unbelievable.

Forthwith, Assistant Provincial Prosecutor Edilberto H. Calip filed this petition alleging that the court, in determining whether the accused was entitled to bail, should have considered the evidence of the crime of rape itself and not merely the evidence of the aggravating circumstance of insanity. Since the accused is charged with a crime punishable by reclusion perpetua to death and the evidence of his guilt, which the prosecution established and which ALFREDO did not rebut, is strong he should not have been admitted to bail pursuant to Section 7, Rule 114 of the Rules on Criminal Procedure, as amended by this Court's Administrative Circular No. 12-94 dated 16 August 1994. The challenged order is, therefore, without basis in fact and in law and was issued with grave abuse of discretion.

We initially dismissed the petition for petitioner's failure to submit a verified statement of material dates to determine the timeliness of the filing of the petition.^[6] Petitioner moved for a reconsideration. Before acting thereon, we required the Office of the Solicitor General (OSG) to comment on the petition.

In its Comment, the OSG agrees with petitioner that Judge Panay committed grave abuse of discretion amounting to lack or excess of jurisdiction in admitting ALFREDO to bail; in disregarding Dr. Alice Anghad's testimony; and in stating, without any legal or medical support whatsoever, that psychosis is not the insanity contemplated by law which can aggravate the crime of rape and raise the penalty to death.[7] Besides, even assuming arguendo that JOCELYN did not suffer from any form of insanity as a result of the rape, her testimony on the crime of rape itself and on the culpability of ALFREDO is strong. Then, too, JOCELYN's testimony was corroborated by Dr. Labasan and was not rebutted by ALFREDO. The penalty for rape under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, is however, if by reason or on occasion of the rape the victim has become insane, the penalty shall be death. The OSG concludes that pursuant to Section 7 of Rule 114 of the Rules of Court, Judge Panay should not have granted ALFREDO's petition for bail. It then recommends that the motion for reconsideration be granted and the instant petition be given due course.

In our resolution of 13 March 1998, we granted the motion for reconsideration, reinstated the petition, and required the respondents to comment on the petition.

In his Reply to the Comment of the OSG, ALFREDO contends that the evidence of guilt is not strong both on simple rape and on rape on the occasion of which the victim has become insane. First, JOCELYN went with ALFREDO to view a movie in another municipality three days after she was allegedly raped; such act is contrary to human experience and human conduct. Second, Dr. Anghad was unsure of her finding of insanity.

Before we go any further, some procedural concerns must be addressed. We noticed that JOCELYN is the petitioner and is assisted by the Assistant Provincial Prosecutor. Since she filed the petition in her capacity as the private complainant, the latter cannot represent her. The Assistant Provincial Prosecutor might have honestly believed that the petition will necessarily benefit the plaintiff, the People of the Philippines, or is for all intents and purposes both for the public and the private prosecutors.

It must, however, be stressed that if the public prosecution is aggrieved by any order or ruling of the trial judge in a criminal case, the OSG, and not the prosecutor, must be the one to question the order or ruling before us.[8] The OSG is the law office of the Government authorized by law to represent the Government or the People of the Philippines before us and before the Court of Appeals in all criminal proceedings, or before any court, tribunal, body, or commission in any matter, action, or proceeding which, in the opinion of the Solicitor General, affects the welfare of the people as the ends of justice may require.[9]

Nevertheless, since the challenged order affects the interests of the State or the plaintiff People of the Philippines, we opted not to dismiss the petition on this technical ground. Instead, we required the OSG to comment on the petition, as we had done before in some cases.[10] In light of its Comment, we rule that the OSG has ratified and adopted as its own the instant petition for the People of the Philippines.

The petition is meritorious.

The crime of rape charged in the Amended Information was allegedly committed on 21 April 1996, or after the effectivity of R.A. No. 7659.[11] The penalty for rape under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, is reclusion perpetua; however, when by reason or on the occasion of the rape the victim has become insane, the penalty is death. In this case, the Amended Information alleges that by reason of the rape, the victim became insane. If thus proved, ALFREDO could be sentenced to suffer the death penalty.

Judge Panay admitted ALFREDO to bail, in his Order of 25 September 1997, on the ground that the prosecution's evidence failed to establish that JOCELYN became insane by reason of the rape. He never ruled that the evidence of the crime and of ALFREDO's culpability was not strong. Obviously, Judge Panay forgot that even if the special

aggravating circumstance of insanity was not duly proved, the un rebutted testimony of JOCELYN established a strong prima facie case for rape, the penalty for which is reclusion perpetua. Section 13 of Article III of the Constitution expressly provides that "[a]ll persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong shall, before conviction, be bailable by sufficient sureties, or released on recognizance as may be provided by law." Likewise, under Section 7, Rule 110 of the Rules of Court, as amended by this Court's Administrative Circular No. 12-94 dated 16 August 1994, no person charged with an offense punishable by death or reclusion perpetua or life imprisonment, when evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal prosecution.

Needless to state, Judge Panay grievously erred in admitting ALFREDO to bail solely on the ground that the death penalty could not be meted out to him because of insufficient proof of insanity.

The Order of 25 September 1997 suffered from another flaw. We have ruled time and again that in an order granting or denying bail in cases where the offense charged is punishable by reclusion perpetua or higher, the trial judge must make a summary of the evidence offered by the prosecution and formulate a conclusion as to whether the evidence of guilt of the accused is strong.[12] As indubitably shown in the aforequoted 25 June 1997 Order, Judge Panay did not. Neither did he in the order of 2 July 1997. He only tried to prove that JOCELYN had not become insane by reason of the rape. He did not declare that the rape itself was not committed or the evidence thereof was not strong. On the contrary, he was "impressed with [JOCELYN's] intelligence, calmness, spontaneity and articulateness." Indeed, as pointed out by the OSG, JOCELYN testified in a clear and straightforward manner on how she was raped by ALFREDO. Thus:

Q

Now do you know the accused in this case Alfredo Aviador?

A

Yes, sir.

Q

And why do you know the accused in this case?

A

Because they were friends with my father, Sir.

.....

Q

Now Madam witness on April 21, 1996 at around 4:30 in the afternoon, do you recall where were you?

A

Yes, sir.

.....

Q

Now on said date and time did you have an occasion to see or meet the accused?

A

I saw him, sir.

Q

And did he see you also?

A

He saw me standing, sir.

Q

And do you know what did he do when he saw you?

A

He stopped by me, sir.

Q

Do you mean to say, he [was] riding on a vehicle at that time?

A

There was, sir.

.....

Q

And do you know what kind of jeep?

A

Passenger jeep, sir.

Q

And when the accused stopped by you what did you do if any?

A

He forced me to ride on that vehicle, sir.

Q

And will you tell the court or will you please demonstrate how the accused forced you to ride on his jeep?

A

Come'n he said, I am going to Sta. Fe. Any way I will not pick up passengers anymore.

.....

Q

Now Miss Witness what did you do when the accused told you to board his vehicle?

A

I boarded on his jeep because I was eager to go home because it [was] already late in the afternoon, Sir.

Q

Now were there other passengers aboard the jeep when you boarded that jeep?

A

None, sir.

Q

Now along the way while the jeep [was] travelling do you recall if the accused picked up passengers to that effect?

A

No, sir.

.....

Q

Now, during that time you are travelling with the accused, do you recall if while proceeding to Kayapa you made a stop?

A

I inquire from him where we were proceeding, sir.

Q

And what was the reply of the accused?

A

He told me that we [were] going to see the mango, sir.

Q

And where [was] this mango that was claimed by the accused?

A

He told me that it [was] in Kayapa, sir.

Q

Were you able to reach that area in Kayapa?

A

At a mountainous area wherein there [was] no house.

Q

And what did you do there in the mountain where there [was] no house?

A

When I did not want to alight from the jeep he slapped my ears, and when I really [did] not want to alight from the jeep he pulled me and then he even boxed me.

Q

Now you said that he boxed you, where?

A

My stomach, sir.

Q

And what did you feel when the accused boxed you in your stomach?

A

I lost consciousness, sir.

Q

And when you awakened, what did you observe on yourself?

A

I felt pain over my body, sir.

Q

How about your dressing?

A

I was still putting my dress, sir.

Q

You mean to say, when you regained consciousness you were undressed?

A

Yes, sir.

Q

Miss witness, will you tell the Honorable Court what particular part of your body is aching at the time when you gained consciousness?

A

I feel pain on my vagina, sir.

Q

Now, when you felt that your private part, your vagina, [was] aching what did you do, if any?

A

I cried (witness crying), sir.

Q

Miss Labaro, you said also that you dressed up and after dressing up, what else did you do, if any?

A

I cried and cried and then he told me not to report the matter, sir.

Q

After this threat was made by the accused, what else did he do if any?

A

He told me that if I [would not] take notice of him, he [would] have me salvaged, sir.

.....

Q

Now Miss witness, what do you understand by the word salvage?

A

He [would] let somebody kill me, sir.[13]

Then too, Judge Panay's finding that JOCELYN and ALFREDO were caught by the latter's mother in a movie house has no basis in the transcript of the stenographic notes of her testimony.[14] What she only declared was that her parents discovered the rape incident when they saw her inside a movie house; thus:

COURT:

Q

When did the incident of this alleged 'Rape' happen?

A

April 21, sir.

Q

How did your parents come to know about this incident?

A

They saw me inside the movie house and they have me examined by a doctor.[15]

The claim that JOCELYN was with ALFREDO in the movie house appeared in a statement of Atty. Rupisan, counsel for ALFREDO; thus:

PROS. CALIP:

Q Now, when your parents came to know about this incident of rape done by Alfredo Aviador, what did your parents do, if any?

ATTY. RUPISAN:

No basis. The parents never came to know about the incident. What the witness's answer is that, the parents saw her and the accused inside the movie house. That is the answer. (Underscoring supplied for emphasis).

PROS. CALIP:

That is the answer during the question of the Honorable Court. They came to know.[16]

But the court clarified that the answer of JOCELYN was not that she was with ALFREDO in the movie house; thus:

COURT:

How? That was the answer. She never told the parents. They came to know only when they saw HER in a movie house and have her examined.[17] (Underscoring and upper case supplied for emphasis).

WHEREFORE, the instant petition is GRANTED. The challenged order of 25 June 1997, as well as that of 2 July 1997, of respondent Judge Vincent Eden C. Panay in Criminal Case No. 943 is SET ASIDE for having been issued with grave abuse of discretion. The bond filed for the provisional liberty of accused ALFREDO AVIADOR is cancelled, and his bondsmen are ordered to surrender him to the trial court within twenty (20) days from receipt of a copy of this decision. Should the bondsmen fail to surrender him within said period, the trial court shall confiscate the bond and shall thereafter issue a warrant for his arrest, proceed with the trial of the case, and render judgment thereon with purposeful dispatch.

Respondent Judge Vincent Eden C. Panay, or his successor, if any, shall submit a report within twenty (20) days from notice of this judgment on the compliance by the bondsmen, surrender of the accused, and the action against the bond, if any.

Costs against private respondent Alfredo Aviador.

SO ORDERED.

Bellosillo, Panganiban, and Quisumbing, JJ., concur.
Vitug, J., Please see separate opinion.

[1] Annex "A" of Petition, Rollo, 17.

[2] Rollo, 4.

[3] Annex "B" of Petition, Rollo, 18-19.

[4] Rollo, 36-39.

[5] Id., 40-43.

[6] Rollo, 31-32.

[7] Id., 67-68.

[8] Tan vs. Gallardo, 73 SCRA 306, 313 [1976].

[9] Section 35, Chapter 12, Title III, Book IV, Administrative Code of 1987 (Executive Order No. 292).

[10] People v. Montesa, Jr., 248 SCRA 641, 644-645 [1993], citing Republic v. Partisala, 118 SCRA 370 [1982]; City Fiscal of Tacloban v. Espina, 166 SCRA 614 [1988]; People v. Dacudao, 170 SCRA 489 [1989]; People v. Calo, 186 SCRA 620 [1990]; People v. Nano, 205 SCRA 155 [1992].

[11] Entitled An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes, which took effect on 31 December 1993 per People v. Simon, 234 SCRA 555, 569 [1994].

[12] People v. Casingal, 243 SCRA 37, 43 [1995]; Baylon v. Sison, 243 SCRA 284, 296 [1995]; Santos v. Ofilada, 245 SCRA 56, 63 [1995].

[13] TSN, 30 April, 1997, pp. 18-34; Rollo, 146-162.

[14] Annex "B" of private respondent's Reply to the Comment of the Office of the Solicitor General; Rollo, 129-190.

[15] TSN, 30 April 1997, 44; Rollo, 172.

[16] TSN, 30 April 1997, 45-46; Rollo, 173-174.

[17] TSN, 30 April 1997, 46; Rollo, 174.

DISSENTING OPINION

VITUG, J.:

The petition for certiorari and mandamus, assailing the 25th June 1997 order of Judge Vincent Eden C. Panay of the Regional Trial Court, Branch 30, of Bayombong, Nueva Vizcaya, was initially dismissed by this Court, in its resolution of 30 July 1997, due to the failure of petitioner to submit a verified statement of material dates to determine the timeliness of the filing of the petition. Counsel for petitioner forthwith moved for the reconsideration of the dismissal of the petition, admitted his failure, apologized for the oversight, and proceeded to supply the needed information. In its resolution of 13 May 1998, the Court, after considering the comment required from and filed by the Office of the Solicitor General ("OSG"), granted the motion for reconsideration, reinstated the petition and directed respondents to comment thereon.

It would appear that in an amended information, dated 19 August 1996, private respondent Alfredo Aviator was charged with rape, thus:

"That on or about 4:30 o'clock in the afternoon of April 21, 1996, at an uninhabited place, in the Municipality of Kayapa, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of Jocelyn Lavarro while she was unconscious caused by the violence inflicted upon her by the said accused and by reason thereof she has become insane, to her own damage and prejudice.

"CONTRARY TO LAW."[1]

The case, docketed Criminal Case No. 943-37, was originally raffled to Branch 37 but later assigned to the sala of respondent Judge who, against the opposition registered by the prosecution, issued the questioned order granting the petition for bail of the accused and setting the bail bond in the amount of P200,000.00. The order, in part, read:

"The Court as of now, without pre-judging either the alleged crime of rape or the aggravating circumstance of insanity, overrules the opposition and grants the petition.

"Premises considered, the accused Alfredo Aviator is admitted to bail for his provisional liberty in the amount of P200,000.00."[2]

The OSG, when required to comment on the petition, opined that the evidence of guilt of private respondent was strong considering not only the testimony of petitioner but also that of Dr. Antonio Labasan, the Medico Legal Officer, who confirmed a physical finding of rape, as well as that of Dr. Alice Anghad, a psychiatrist assigned at the Mental Health Department of Cagayan Valley Regional Hospital of Tuguegarao, Cagayan, who declared the victim to have developed "psychosis and classified insanity" following the incident. The OSG observed:

"The defense never presented any witness to rebut Dra. Anghad's testimony. It was the height of capriciousness, therefore, for public respondent to set aside Dra. Anghad's testimony and to state, without any legal or medical

support whatsoever, that psychosis is not the insanity contemplated by law which could aggravate the crime of rape and raise the penalty to death.

"Assuming, arguendo, that petitioner did not suffer from any form of insanity as a result of the rape, public respondent still gravely abused his discretion amounting to lack or excess of jurisdiction when he admitted private respondent to bail without considering the evidence presented by the prosecution on the crime of rape itself." [3]

In response, private respondent Aviador averred that despite the allegation by the prosecution that the rape had been committed on 21 April 1996, the mother of the complainant, strangely, was said to have found the supposed victim, Jocelyn Labaro, [4] then 16 years old, with respondent Aviador inside a theater two days later on 23 April 1996. He was initially charged with mere "Acts of Lasciviousness;" later, however, the accusation was upgraded to "Simple Rape." He asked for, and was granted, provisional liberty. Four months later, after Jocelyn was taken to and examined by Dr. Anghad, the information was again amended on the basis of a new averment that the victim supposedly had become insane.

In an indictment for a capital offense, the accused truly is not entitled to bail when the evidence of guilt is strong. [5] The burden of showing that such evidence of guilt is strong lies with the prosecution. It is the duty of the judge to hear the parties and to make an intelligent assessment of the evidence presented. [6] When the judge views the evidence of guilt in such a capital offense not to be strong, the grant of bail becomes a matter of sound discretion on his part. [7]

In petitions of the nature now before the Court, i.e., the extraordinary remedies of Certiorari and Mandamus under Rule 65, the question is not whether the trial judge has erred in the exercise of sound discretion but whether the judge has committed "grave abuse of discretion amounting to lack or excess of jurisdiction" in its decision or order such as by arbitrarily ignoring the evidence or completely acting on bias and whim. [8] Even assuming that the judge has erred in his judgment, so long as grave abuse of discretion is not evident in his action, the aforesaid exceptional remedies are unavailable. Abuse of discretion must be such capricious and whimsical exercise of judgment and must be so patent and gross as to amount to an evasion of positive duty, or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in a despotic manner by reason, for instance, of passion and hostility. [9]

I am not disposed to conclude, after closely reviewing the records, that the trial judge can be held guilty of grave abuse of discretion, amounting to lack or excess of jurisdiction, in granting bail to the accused. Although it would be precipitate, if not indeed wrong, to now rule on whether or not the victim has indeed been raped without going into the merits and thereby prejudging the case (the trial is yet to begin), two points have been raised by private respondent which, at this stage, could at least acquit the trial court from the charge, in my view, that he has utterly discarded the evidence given by the prosecution.

Firstly, private complainant was said to have been raped on 21 April 1996. Unaccountably, the complaint was filed only after the complainant's mother saw Jocelyn with private respondent on 23 April 1996, or two days later, inside a movie house. The trial court in granting the application of bail observed:

"The alleged rape happened at around 4:30 P.M. of April 21, 1996. Two days later, because of alleged force, threat and fear of the accused, she went to see a movie with him at around 2:30 P.M. of April 23, 1996 at a movie house in Solano, Nueva Vizcaya around 40 kilometers from Aritao, Nueva Vizcaya from where she was allegedly forcibly taken. They were caught inside the movie house by her mother. The following day, April 24, she with her mother, filed the Complaint." [10]

Secondly, the prosecution apparently gave too much emphasis on the opinion of Dr. Anghad that private

complainant had been found by her to be suffering from post-traumatic depression and psychosis characterized by "laughing inappropriately, silly affect (sic), with auditory hallucinations and evasive (sic) attitude." [11] When she testified on 27 May 1997, however, Dr. Anghad did not appear to have been sufficiently thorough in her examination of the victim; thus:

"Q How can you monitor the treatment?

"A Although she comes only 2x for consultation, her mother always get medicines from out patient Department in Tuguegarao, sir.

"Q When was that, the last time that you treated her before you came to this Court?

"A She came together with the mother to get the medicine last February and March, sir.

"Q So you did not observe the patient anymore except the giving of medicine to the mother?

"A Yes, sir.

"Q So, now you can conclude that she is still suffering from mild psychosis when you did not see or observe the patient?

"A That was according to the verbalization of the mother that the patient is walking toe and pro having unsleepness night and having fears even up to the present.

"Q So the last time that you saw the patient is that when she came to Tuguegarao on August 9, 1996?

"COURT:

"Q So it was the first and the last time that she came for examination on August 9, 1996? There was no more follow up check up or appearances of the patient before you nor a follow up personal examination on the patient by you? After August 9?

"A No more, sir.

"x x x x x x x x.

"Q How do you know that the patient is still suffering from such kind of illness the way you describe here in Court that patient when you did not see her anymore after the August 9, 1996 and you based only your assumption because the mother is getting medicines in your hospital at Tuguegarao?

"A We knew it from some mothers of the patients who goes in and out of the hospital getting medicines, one thing more the mother will not be risking to give the medicine to her psychotic daughter if she is not really suffering from such kind of mental disorder and she will not be risking her trip in going to Tuguegarao just to get the medicine if it is not really needed, sir.

"Q How do you know that the patient is really taking those medicines being taken by the mother from you?

"A I am confident that her mother is giving the complete medication, sir." [12]

The Court, it should perhaps be stressed once again, is not called upon in special civil actions of Certiorari, Prohibition and Mandamus under Rule 65 of the Rules of Court to look into the question of whether or not the court a quo has committed an error of judgment, such error, if at all, being correctible at the proper time by a petition for review but whether or not it is guilty of grave abuse of discretion amounting to lack or excess of jurisdiction in its assailed action. In drafting this dissenting opinion, I have seen it fit to avoid making any

disquisition or statement that would in any way signify my prejudgment in the main case; accordingly, my dissenting vote should not be so taken as also an expression of opinion that the case for the prosecution is necessarily weak.

WHEREFORE, I vote to DISMISS the petition.

[1] Rollo, p. 17.

[2] Rollo, p. 19.

[3] Rollo, pp. 67-68.

[4] Per the Information and the Statement in the dialect signed by the victim and her mother, their surname is Lavarro, not Labaro.

[5] Cardines vs. Rosete, 242 SCRA 557.

[6] See Concerned Citizens vs. Elma, 241 SCRA 84.

[7] Baylon vs. Sison, 243 SCRA 284.

[8] Del Mundo vs. Court of Appeals, 252 SCRA 425.

[9] Commission on Internal Revenue vs. Court of Appeals, 257 SCRA 200.

[10] Rollo, p. 41.

[11] Rollo, p. 25.

[12] Rollo, pp. 91-101.

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