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any dilatory manuever calculated to defeat and frustrate the ends of justice, fair play and the prompt implementation of final and executory judgments.

WHEREFORE, petition is DISMISSED. Costs charged to Counsel Atty. FERNANDO V. DOMINGO who should reimburse the same to his clients, petitioners herein. Let a copy of this Resolution be furnished each petitioner.

Barredo (Chairman), Antonio, Aquino, and *Concepcion Jr., JJ.*, concur.

Abad Santos, J., concurs. I would charge double costs to counsel and make him report to US that he has paid the same to the petitioners.

SECOND DIVISION

[A.M. No. 1431-MJ. July 16, 1979]

ANA F. RETUYA, *complainant, vs.* **MUNICIPAL JUDGE PAULO A. EQUIPILAG of Maasin, Leyte,** *respondent.*

SYLLABUS

LEGAL AND JUDICIAL ETHICS; JUDGES; MUST BE PRUDENT AND CIRCUMSPECT IN THE DISCHARGE OF THEIR DUTIES; CASE AT BAR.— But he is admonished to be more prudent and circumspect in the discharge of his duties so as to obviate the suspicion that, for an ulterior motive, he is in cahoots with the offended party in a criminal case for the purpose of using the strong arm of the law against the accused in an oppressive and vindictive manner.

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DECISION

AQUIÑO, *J.*:

Ana F. Retuya, a widow with four minor children, filed a claim for workmen's compensation against Eastern Shipping Lines, Inc., the employer of her husband who died in 1968. In a decision dated December 4, 1970 the Workmen's Compensation Unit at Tacloban City awarded to Ana the sum of ₱8,792.10 consisting of (a) ₱6,000 as compensation benefits, (b) ₱2,292.10 for medical and hospitalization expenses, (c) ₱200 as burial expenses and (d) *₱300 as attorney's fees of Atty. Iñego Gorduiz* (Case No. 9728).

The employer appealed. During the pendency of the appeal, the employer proposed to compromise the claim by paying ₱4,396.05 or only one-half of the total award. Ana accepted the proposal and directed that the amount be remitted to Fiscal Mamerto Daclan through the Philippine National Bank's branch at Maasin, Southern Leyte.

The employer paid the reduced award on November 16, 1972. Ana sent to the employer the receipt and release signed by her with a covering letter dated December 19, 1972 wherein she explained that her lawyer, Gorduiz, did not sign the joint motion to dismiss the claim because he wanted twenty percent of the award as his attorney's fees. She was willing to give him ten percent.

After she had cashed the check for ₱4,396.05, she was not able to contact Gorduiz and pay his fee. Then, unexpectedly, in February, 1973, she was served with a warrant of arrest issued in Criminal Case No. R-2362 of the municipal court of Maasin. To avoid detention, she had to post bail in the sum of one thousand pesos.

It turned out that on January 12, 1973 Atty. Gorduiz executed an affidavit stating that Ana had misappropriated his attorney's fees amounting to three hundred pesos and that he had demanded payment of the amount from her but she refused to make payment and, instead, she went to Cebu and stayed there for a long time.

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On the basis of that affidavit, the acting chief of police filed against Ana a complaint for estafa in the municipal court of Maasin. After posting bail, she filed a motion to quash wherein she explained that she did not pay the fees of Atty. Gorduiz because he was demanding one-third of the award; that when she did not accede to his demand, he lowered his claim to eight hundred pesos, and that she bargained for six hundred fifty pesos but he refused to accept that amount. Ana averred that the estafa case was filed just to harass her.

Judge Paulo A. Equipilag denied the motion to quash. He granted the motion of Atty. Gorduiz requiring Ana to produce a copy of the decision awarding her workmen's compensation for her husband's death.

The estafa case was not tried. Atty. Erasmo M. Diola, as lawyer of Ana, offered to Atty. Gorduiz the sum of five hundred pesos as settlement of the case. The offer was accepted.

On November 22, 1973, the acting chief of police filed a motion to dismiss the case on the basis of the affidavit of Atty. Gorduiz executed on that date stating that the prosecution witnesses had allegedly become hostile and that he was no longer interested in further prosecuting the case. Also, on that same day, Judge Equipilag dismissed the case.

In spite of the dismissal of the estafa case, Ana F. Retuya felt aggrieved by the proceedings therein. In a complaint dated July 24, 1974 but filed in this Court on October 30, 1974, she asked for the disbarment or suspension of Atty. Gorduiz and Judge Equipilag. The disbarment case against Gorduiz was referred to the Solicitor General. It is still pending (Administrative Case No. 1388).

The case against Judge Equipilag was investigated by the Judge of the Court of First Instance of Southern Leyte.

Complainant Retuya in support of her complaint testified that for more than three times at the hearing in the estafa case respondent judge, with a contemptuous mien or harsh demeanor and in a loud and thunderous voice, asked her in a sardonic tone in the presence of Atty. Gorduiz: "Are you going to pay or not?"

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She further testified that to settle the estafa case she paid three hundred fifty pesos to the clerk of Atty. Diola on November 15, 1973 (Exh. M) and the balance of one hundred fifty pesos was delivered by her in the municipal court to Atty. Diola on November 22, 1973 (when the case was dismissed) in the presence of respondent judge and that after the delivery Atty. Diola entered the chamber of respondent judge (14, 20-21, tsn, June 26, 1975).

Ana F. Retuya testified that on August 5, 1973 she and a police sergeant wanted to deliver the five hundred pesos to respondent judge but the latter said that he would accept the amount as a custodian without any receipt since he had no form for the official receipt (23-24 tsn.).

Respondent judge in his testimony denied Ana's imputation that during the scheduled hearings of the estafa case, he sarcastically shouted at her and asked her whether she was going to pay the fees of Atty. Gorduiz. The judge said that if it were true that he shouted at Ana, then her counsel would have objected to his conduct. No such objection was interposed.

He recalled that on one occasion, when Ana F. Retuya wanted to deposit with his clerk of court the fees of Atty. Gorduiz, he advised his clerk of court not to accept the deposit because he had no authority to do so and he had no form for the official receipt evidencing the deposit.

Respondent judge denied that he was present when Ana allegedly gave five hundred pesos to Atty. Diola. He denied that he and Atty. Diola entered his chamber after the latter had received the sum of five hundred pesos from her.

Disciplinary action may be taken against a municipal judge if he has not been performing his duties properly or if he is unfit for the office (Sec. 97, Judiciary Law). The question is whether respondent judge's handling of the estafa case constituted malfeasance or misfeasance in office.

We find that there is no conclusive evidence that he committed any venality or grave dereliction of duty in the disposition of the estafa case.

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However, some credence may be given to the gripe of Ana F. Retuya that she did not receive gentle treatment from respondent judge when, in an abrasive, if not coercive manner, he seemingly pressured her to settle the claim of Atty. Gorduiz.

A judge is expected to practice courtesy and civility and to avoid impropriety and the appearance of impropriety (Pars. 4, 10 and 31, Canons of Judicial Ethics, Administrative Order No. 162, 42 O. G. 1803).

It is possible that respondent judge, by reason of a natural and congenital tendency or due to tension, habitually talks in a loud voice and does not have a diplomatic manner. The complainant, if of a sensitive nature, might have felt that she was being bullied when the respondent repeatedly asked her to compromise the case.

With respect to respondents giving due course to the complaint for estafa, it may be observed that he followed the procedure for the preliminary examination indicated in Section 87 of the Judiciary Law. The respondent was not obligated to notify the accused, Ana F. Retuya, that she was charged with estafa.

However, considering the small amount involved and the fact, well-known to the bench and bar, that the offended parties in estafa cases usually use the court as a collection agency, the respondent could have subpoenaed the accused and ascertained whether the filing of the complaint was due merely to a misunderstanding or whether she could pay the amount due to her lawyer, Gorduiz. He should not have been precipitate in issuing the warrant of arrest. As it turned out, the respondent did not insist on trying the case but, according to Ana's version, persisted in pressing her to make a settlement.

There is no justification for suspending the respondent or for imposing upon him any administrative penalty. But he is admonished to be more prudent and circumspect in the discharge of his duties so as to obviate the suspicion that, for an ulterior motive, he is in cahoots with the offended party in a criminal case for the purpose of using the strong arm of the law against the accused in an oppressive and vindictive manner. A copy of this decision should be attached to respondent's personal record.

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Barredo (Chairman), Antonio, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

EN BANC

[G.R. No. L-30101. July 16, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUANCHO CORACHEA Y RAMOS,** *defendant-appellant.*

SYLLABUS

1. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; INHERENT IN ROBBERY.**— In robbery, evident premeditation is not considered as an aggravating circumstance because the same is inherent in the crime.

2. **ID.; ID.; ID.; IN ROBBERY WITH HOMICIDE, EVIDENT PREMEDITATION TO KILL MUST BE PROVED TO BE CONSIDERED AS AGGRAVATING.**— In the crime of robbery with homicide, there should be evident premeditation to kill, besides stealing, in order that it can be considered as an aggravating circumstance.

3. **ID.; ID.; ID.; REQUISITES.**— Requisites of evident premeditation: (a) the time when the accused determined to kill and rob the victim; (b) the act showing that he had clung to his determination; and (c) a sufficient interval of time between the determination and the execution that would have afforded him full opportunity for meditation and reflection and allowed his conscience to overcome the resolution of his will had he wanted to hearken to its warnings.

4. **ID.; ID.; NOCTURNITY; WHEN NOT APPRECIATED.**— But nothing in said statement shows that the accused had purposely sought nighttime to commit the offense. Not having been purposely sought in the commission of the crime, this aggravating circumstance should not have been taken into account. It has been consistently ruled by this Court that nighttime *per se* is not an aggravating circumstance.