Supreme Court E-Library

committed the separate crimes of rape and murder but since there was no complaint for rape, he was convicted of murder only. Same holding in *People vs. Dahino*, L-2067, February 26, 1951, 88 Phil. 789.

The foregoing cases might have prompted the lawmaking body to enact Republic Acts Nos. 2632 and 4111, which define the special complex crime of rape with homicide, a capital offense.

FIRST DIVISION

[A.M. No. 340-MJ. April 30, 1979]

ANTONIO CUTARAN, *complainant, vs.* **MUNICIPAL JUDGE SOLOMON VILLANUEVA, Ambaguio, Nueva Vizcaya,** *respondent.*

SYLLABUS

ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE COMPLAINT; UNSIGNED COMPLAINT CANNOT BE GIVEN DUE COURSE; RATIONALE. — The *Supreme Court will not give due course to an unverified* complaint where the charge is a mere conjecture, surmise or inference. Administrative complaints are accusatorial in nature and cannot be based on mere suspicion, surmise or inference. They should be subscribed and sworn to and accompanied by *such evidence as will evince respondent's culpability and thus* bring him within the supervisory power of the Supreme Court. The complainant has the burden of proof and such proof must be solid, clear and convincing to compel the exercise of disciplinary power over the person indicted.

Supreme Court E-Library

RESOLUTION

GUERRERO, *J.*:

In an unsigned complaint dated September 30, 1972, Antonio Cutaran of Bayombong, Nueva Vizcaya, charged Judge Solomon Villanueva of the Municipal Court of Ambaguio, Nueva Vizcaya, with being "always absent from (his) official station and yet received full salary every month." The complaint also included as respondents several other municipal judges, a fiscal and a BIR provincial officer charging them likewise with other alleged irregularities.

In his comment of January 3, 1973, respondent Judge Villanueva denied the accusation. He categorically stated that the complainant is nowhere to be found in Bayombong, Nueva Vizcaya. According to him, even the postal employees of Bayombong tried hard to locate the complainant because there are three (3) letters of the Department of Justice addressed to him which are still undelivered. He also explained that complainant, in connection with the charge of "absenteeism" might be referring to the time when he was detailed for three months with the Court of First Instance of Nueva Vizcaya, Branch II, or during the rainy season when the mountain trails are impassable due to mountain slides and he had to hold office at a Sub-Office established at barrio Masok with the concurrence of other municipal officials. Respondent concluded that his service record and communications with the Department of Justice will bear out his travails and hardships.

We cannot give due course to this unverified complaint. It must be stressed that administrative complaints are accusatorial in nature, hence, they should be subscribed and sworn to and accompanied by such testimonial and/or documentary evidence as will evince respondent's culpability and thus bring him within the supervisory power of this Tribunal. It appears that the charge is a mere conjecture, surmise or inference. Administrative charges against judge cannot be based on mere suspicion, surmise or inference. The complainant has the burden of proof and such

Supreme Court E-Library

proof must be solid, clear and convincing to compel the exercise of disciplinary power over the person indicted.

Moreover, the comment of respondent Judge is satisfactory.

WHEREFORE, this administrative complaint against Municipal Judge Solomon Villanueva is dismissed for lack of merit.

SO ORDERED.

Teehankee (Chairman), Fernandez and *De Castro, JJ.*, concur.

Makasiar and *Melencio-Herrera, JJ.*, concurs in the result.

SECOND DIVISION

[A.M. No. 1574-MJ. April 30, 1979]

ARTEMIO ESPAYOS, *complainant, vs.* **ADELARDO G. LEE, as Municipal Judge of Magallanes, Sorsogon,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE CHARGE; WHEN MUNICIPAL JUDGES SUBJECT TO DISCIPLINARY ACTION.** — A municipal judge may be disciplined if he is not performing his duties properly, or if complaints are made which, if true, would indicate that he is unfit for the office.

2. **ID.; ID.; ID.; COMPLAINANT'S DESISTANCE NOT AN OBSTACLE.** — Complainant's desistance is not an obstacle to the taking of disciplinary action against the respondent if the latter's answer to the charges reveals that he has not performed his duties properly.