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SECOND DIVISION

[A.M. No. 1644-MJ. February 22, 1978]

ERLINDA MADERABLE and JOCELYN MADERABLE-ABELLO, *complainants*, *vs.* **HON. SALVADOR CASTELLANO, Judge of the Municipal Court of Maasin, Iloilo**, *respondent*.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; DUTIES; VIOLATED IN CASE OF NEGLECT TO ACT ON A CRIMINAL COMPLAINT FOR 7 YEARS AFTER ISSUING THE WARRANT OF ARREST.** — A municipal judge, who, after conducting the first stage of the preliminary investigation and issuing the warrant for the arrest of the accused in a criminal complaint for murder, neglects to take further action on the complaint for 7 years, remiss in the performance of his judicial functioning.

2. **ID.; ID.; ADMINISTRATIVE CHARGE; SHALL BE DISMISSED IF A JUDGE RETIRED FROM THE BENCH.** — An administrative complaint filed against a municipal judge for his negligence in taking action on a criminal complaint for 7 years is dismissed, because respondent has already retired from the Bench after serving the Government for thirty years; the missing records have already been found and the accused therein arrested and detained; and the evidence shows that the loss or misplacement of the records was not caused by malice or bad faith of respondent.

RESOLUTION

CONCEPCION JR., *J.*:

In their sworn letter, dated May 17, 1977, Erlinda Maderable and her daughter, Jocelyn Maderable-Abello, implored the Chief Justice to order the Judge of the Municipal Court of Maasin, Iloilo, to locate, produce and open to public scrutiny the court records of the murder of Salvador Maderable; to direct said judge to decide the said case, and, if justified by the evidence, to file the murder charge against Roberta Maghopoy *alias*

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"Berta" and Celiong Mates; and to order the military authorities to investigate why the said Roberta Maghopoy is still free and enjoying the protection of influential persons instead of being placed inside the jail. According to them, the late Salvador Maderable, Barrio Captain of Barrio Dagami, Maasin, Iloilo, and husband of Erlinda Maderable, was shot and killed at about 3:00 o'clock in the afternoon of November 24, 1969 in Barrio Abat of the same town, and as a result thereof, a criminal complaint for murder was filed against Roberta Maghopoy *alias* "Berta" and Celiong Mates with the Municipal Court of Maasin, Iloilo, on February 19, 1970 and docketed therein as Criminal Case No. 25; that the Judge of the Municipal Court immediately started the preliminary investigation of the case, but, after Jocelyn Maderable-Abello had testified, nothing more happened, the records of the case in the Maasin Municipal Court are missing and no action had been taken thereon ever since; and that, in the meanwhile, the accused Roberta Maghopoy is free and living in the household and enjoying the protective mantle of ex-Mayor Benigno Malaga, Jr. of Maasin, Iloilo.[1]

The letter was referred to the respondent Judge Salvador R. Castellano of the Municipal Court of Maasin, Iloilo for comment,[2] and he replied that a preliminary examination had been conducted in the case, the corresponding criminal complaint was immediately filed against the alleged perpetrators of the murder of the late Salvador Maderable, and the corresponding warrant of arrest issued, but, for unknown reasons the said order of arrest was not returned formally in court so that the case was unnoticed and hence, the accused remained at large.[3]

Subsequently, on August 2, 1977, the respondent judge informed the Court that the records of Criminal Case No. 25 have been found and the accused Edilberto (not Roberta) Maghopoy arrested and detained in the Municipal Jail of Maasin, Iloilo; and that the second stage of the preliminary investigation

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[1] *Rollo*, p. 1.

[2] *Id.*, p. 3.

[3] *Id.*, p. 4.

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had already been scheduled for hearing by the acting judge of the Municipal Court of Maasin, Iloilo, who replaced him since his retirement from the service.[4]

From the established facts, there can be no doubt that Judge Salvador R. Castellano of the Municipal Court of Maasin, Iloilo, was remiss in the performance of his judicial functions when he neglected to take further action on Criminal Case No. 25 from February 19, 1970, when he issued the warrant for the arrest of the accused. The alleged loss of the *expediente* of the case and the claim that the warrant of arrest was not formally returned to the court can hardly justify the respondent's inaction since the records of Criminal Case No. 25 were inside the steel cabinet of the office of the Municipal Court all the time.[5] Had respondent judge been more diligent in the performance of his duties, he would have taken notice of this case and acted on it much earlier.

Considering, however, that the respondent judge is no longer in the Judiciary, having retired from the Bench since last August 31, 1976 after serving the Government for more than thirty (30) years; that the missing records have already been found and the accused therein arrested and detained, to the apparent satisfaction of the widow and daughter of the late Salvador Maderable; and that the evidence shows that the loss or misplacement of the records of the case was not caused by malice or bad faith of the respondent judge, but by his carelessness and negligence, We feel that there is no further need to call the respondent judge to the Bar to answer for his negligence.

WHEREFORE, the instant case should be, as it is hereby, DISMISSED.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Aquino, and *Santos, JJ.*, concur.

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[4] *Id.*, p. 10.

[5] *Id.*, p. 17.