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The Judgment

**WHEREFORE,** the Court *GRANTS* the petition. The Court *ANNULS* and *DECLARES VOID* the decision dated April 24, 2000 of the trial court in Election Protest Case No. V-14-98.

The temporary restraining order we issued on May 8, 2000, is made permanent.

Let Election Protest Case No. V-14-98 be remanded to the trial court for decision within a non-extendible period of fifteen (15) days from notice of this decision. The judge shall report to this Court on the decision rendered within five (5) days from rendition submitting a copy thereof to the Office of the Clerk of Court *en banc.*

This decision is immediately executory.

No costs.

**SO ORDERED.**

*Davide, Jr., C.J., Bellosillo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago,* and *De Leon, Jr., JJ.*, concur.

*Melo, J.,* in the result.

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**SECOND DIVISION**

[A.M. No. MTJ-00-1248. December 1, 2000]

**FABIANA J. PADUA,** *complainant, vs.* **JUDGE EUFEMIO R. MOLINA, MUNICIPAL TRIAL COURT, BRANCH II, SAN FERNANDO, LA UNION,** *respondent.*

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## SYNOPSIS

Before us is the administrative complaint filed by Fabiana J. Padua charging Judge Eufemio R. Molina, Presiding Judge of Branch II of the Municipal Trial Court (MTC) of San Fernando, La Union, with gross ignorance of the law and grave abuse of discretion in connection with the preliminary investigation which he conducted in Criminal Case No. 31693, entitled "*People of the Philippines v. Julio F. Padua.*" Complainant is the wife of Julio F. Padua who is the accused in said criminal case, and mother of the victim, Bartholomew J. Padua. In her sworn letter-complaint dated August 20, 1997, complainant claimed that respondent judge erred grievously in his disposition of the case; that the order of respondent judge granting the motion to dismiss was issued with utmost partiality and without setting it for hearing; and that respondent judge did not even issue a resolution regarding the preliminary examination held on August 5, 1997 although she lengthily testified thereat, thus lending credence to her suspicion that the dismissal of the case as well as the subsequent release of the accused was a foregone conclusion. Complainant also stated that from what she understood, parricide is a heinous crime and a non-bailable offense. As such, complainant asked why respondent judge ordered the dismissal of the complaint and the release of the accused. She pointed out that the accused was released on August 15, 1997 although the case was hastily endorsed to the Office of the Provincial Prosecutor on August 18, 1997 without the transcript of stenographic notes of her testimony given during the August 5, 1997 preliminary examination. The Office of the Court Administrator (OCA) found that the respondent Judge disregarded the laws and rules governing preliminary investigation which gave undue benefit to the accused and caused prejudice to the herein complainant, making him liable for gross ignorance of the law and grave abuse of discretion.

The Court agreed with the findings of the OCA. While respondent judge cannot be faulted for believing that Mercedita Opamil-Padua was the legal wife of the victim as the documentary evidence before him seemed to have pointed to this, his dismissal of the criminal complaint against the accused was nonetheless erroneous. Parricide is a public crime. It is an offense not only against one's closest of kin but also against the State. Necessarily,

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an affidavit of desistance by the alleged widow of the victim, or for that matter, any of his other heirs, will not extinguish the criminal liability of the accused. Desistance is not one of the accepted modes of extinguishing criminal liability. If at all, such desistance will have the effect of voluntarily releasing the accused from the civil liability arising therefrom. However, in his disposition of Criminal Case No. 31693, respondent judge failed to observe an elementary rule of law, rendering him administratively liable for gross ignorance of the law. Respondent Judge was fined the sum of ₱2,000.00.

## SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; DESISTANCE IS NOT ONE OF THE ACCEPTED MODES OF EXTINGUISHING CRIMINAL LIABILITY.**— While respondent judge cannot be faulted for believing that Mercedita Opamil-Padua was the legal wife of the victim as the documentary evidence before him seemed to have pointed to this, his dismissal of the criminal complaint against the accused was nonetheless erroneous. Parricide is a public crime. It is an offense not only against one's closest of kin but also against the State. Necessarily, an affidavit of desistance by the alleged widow of the victim, or for that matter, any of his other heirs, will not extinguish the criminal liability of the accused. Desistance is not one of the accepted modes of extinguishing criminal liability. If at all, such desistance will have the effect of "voluntarily releasing" the accused from the civil liability arising therefrom. This is a fundamental legal principle which all judges should be conversant with. However, in his disposition of Criminal Case No. 31693, respondent judge failed to observe an elementary rule of law, rendering him administratively liable for gross ignorance of the law.

2. **ID.; ID.; MUNICIPAL TRIAL JUDGE CONDUCTING A PRELIMINARY INVESTIGATION IS REQUIRED TO FORWARD TO THE PROVINCIAL FISCAL THE ENTIRE RECORDS OF THE CASE.**— The Court also stresses that, as pointed out by the OCA, the documents to be forwarded to the provincial or city prosecutor, as enumerated in Section 5, Rule 112 of the Rules, is not exclusive. It is clear from said section that a municipal trial court judge tasked with conducting

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a preliminary investigation is required to forward to the provincial or city fiscal the *entire records* of the case, which includes the transcript of stenographic notes taken during the preliminary examination, including that of the testimony of any witnesses who testified therein. Hence, respondent judge cannot refuse and should not have refused to transmit to the Office of the Provincial Prosecutor the transcript of stenographic notes taken during his preliminary examination of the complainant in this case.

## D E C I S I O N

**DE LEON, JR., *J.*:**

Before us is the administrative complaint filed by Fabiana J. Padua, charging Judge Eufemio R. Molina, Presiding Judge of Branch II of the Municipal Trial Court (MTC) of San Fernando, La Union, with gross ignorance of the law and grave abuse of discretion in connection with the preliminary investigation which he conducted in Criminal Case No. 31693, entitled *"People of the Philippines v. Julio F. Padua."* Complainant is the wife of Julio F. Padua who is the accused in said criminal case, and mother of the victim, Bartholomew J. Padua.

In the afternoon of June 9, 1997, the accused shot the victim during an altercation. The victim died as a result thereof. On June 10, 1997, Senior Police Officer IV Herminio C. Barnachea, as the chief investigator of the case, filed a criminal complaint for parricide against the accused. The complaint was raffled to the sala of respondent judge for preliminary investigation. In his Order dated June 18, 1997, respondent judge directed the accused to submit his counter-affidavit, the affidavits of his witnesses and other supporting documents within ten (10) days from receipt of said Order.

On June 23, 1997, a certain Mercedita Opamil-Padua, claiming to be the widow of the victim, submitted an Affidavit of Desistance, stating, among others, that:

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x x x [A]fter careful and due consideration of the facts and circumstances of the incident, I came to the conclusion that my father-in-law, Julio F. Padua, is not fully to be blamed for the death of my husband, BARTOLOMEW J. PADUA;

x x x [I]n order to maintain peace and harmony in the family, I hereby manifest my desistance in the prosecution of Criminal Case No. 31693 for Parricide against the accused father-in-law, Julio F. Padua, and therefore request that the complaint [be] dismissed.[1]

Attached to the Affidavit of Desistance was the marriage contract dated January 11, 1988 of Mercedita Opamil-Padua and the victim.

On July 24, 1997, on the basis of the said Affidavit of Desistance, the accused, Julio F. Padua, filed a motion to dismiss the criminal complaint and prayed for his immediate release from detention. Respondent judge granted the motion of the accused "in view of the desistance of the widow, who under the law is the offended party and the primary forced heir of the deceased."[2] Respondent judge also ordered that the records of the case be forwarded to the Office of the Provincial Prosecutor for appropriate action.

In her sworn letter-complaint dated August 20, 1997, complainant claims that respondent judge erred grievously in his disposition of the case; that the order of respondent judge granting the motion to dismiss was issued with utmost partiality and without setting it for hearing; and that respondent judge did not even issue a resolution regarding the preliminary examination held on August 5, 1997 although she lengthily testified thereat, thus lending credence to her suspicion that the dismissal of the case as well as the subsequent release of the accused was a foregone conclusion.

Complainant also states that, from what she understands, parricide is a heinous crime and a non-bailable offense. As such, complainant asks why respondent judge ordered the

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[1] Annex "C" of the Answer.

[2] Annex "D" of the Answer.

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dismissal of the complaint and the release of the accused. She points out that the accused was released on August 15, 1997 although the case was hastily endorsed to the Office of Provincial Prosecutor on August 18, 1997 without the transcript of stenographic notes of her testimony given during the August 5, 1997[3] preliminary examination.

Complainant maintains that if there is anybody who can pardon the accused, it should neither be Mercedita Opamil-Padua nor the respondent judge, who allegedly manipulated the dismissal of the complaint, but the complainant, as mother of the victim, or Rufina Ochavillo-Padua, who is the legal wife of the victim. Complainant claims that respondent judge knew that Mercedita Opamil-Padua was not the legal wife of the victim, and that Rufina Ochavilla-Padua was even present during the August 5, 1997 preliminary examination.

Complainant likewise stated that she was not surprised that the case was assigned to respondent judge because since 1969 the accused has been proudly mentioning to the complainant that respondent judge was a close friend who has been helping him facilitate the dismissal of cases before his sala; and that she was also informed by reliable sources that respondent judge frequently visited the accused while he was in jail. However, no one was brave enough to testify on this matter.

Respondent judge denies the allegations of complainant. He avers that he followed the rules of procedure in the conduct of the preliminary investigation and thus, no gross ignorance of the law can be imputed to him; and that he did not set the motion to dismiss for hearing because the scope of a preliminary investigation is inquisitorial and not a trial on the merits where the fiscal or prosecutor is entitled to be heard. Besides, the Office of the Provincial Prosecutor, according to him, has the power to review, disregard or overrule his order of dismissal. Respondent claims that with the dismissal of the case, a resolution

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[3] Complainant erroneously stated this date as "August 15, 1997" in the fifth paragraph, page 1 of her letter-complaint.

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on the preliminary examination of the complainant as a prosecution witness became moot and academic.

Respondent judge further contends that no grave abuse of discretion could be attributed to him, in dismissing the criminal complaint because it was based on the Affidavit of Desistance of Mercedita Opamil-Padua. However, during the preliminary investigation no proof of any alleged marriage between Rufina Ochavilla-Padua and the victim submitted. Consequently, at the time of dismissal of the complaint by respondent judge, the documentary evidence on record pointed to Mercedita Opamil-Padua as the alleged legal wife of the deceased. He attached persuasive value to the Affidavit of Desistance because Mercedita, as the alleged surviving spouse or widow, is the offended party and the primary forced heir of the victim.

Respondent judge adds that complainant must be informed that evidence taken during the preliminary examination has no place in the record of the case; that under Section 5, Rule 112 of the Revised Rules of Criminal Procedure the transcript of stenographic notes of her testimony during the preliminary examination is not one of the papers or documents to be transmitted by the investigating judge to the provincial prosecutor; and that Section 8 of the same Rule 112 even provides that the record of the preliminary investigation, whether conducted by a judge or fiscal, shall not form part of the record of the case in the Regional Trial Court.

Respondent judge further denies that he personally knew the accused as they do not come from the same place; that the accused lives in Catbangen, San Fernando, La Union while he (respondent judge) resides in Poblacion, Bacnotan, La Union, which is about 30 kilometers from San Fernando; and that neither is the accused a friend of her nor did he visit the accused in jail during the period of his detention.

After evaluating the records of this case, the Office of the Court Administrator (OCA) reports that:

> The arguments of the respondent are not persuasive. The complaint was for parricide which is a public offense. Even though there was

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an affidavit of desistance filed by the alleged wife of the victim, respondent judge cannot just [dismiss] the case on that basis because, at most, only the civil liability will be extinguished by such desistance but not the criminal liability.

In *U.S. v. Leaño, et al.* (6 Phil. 368) this Court ruled that "a public criminal action which has for its object the prosecution and punishment of the offender is not extinguished by any compromise as to the civil liability, for the reason that it is to the social and public interest that every crime should be punished, and even where the offended party has expressly waived indemnification, it is the duty of the public prosecutor to bring the criminal proceedings for the punishment of the guilty.

Moreover, probable cause is determined on the basis of the testimony of the eyewitness who is the complainant herein. The fact that said complainant likewise executed an affidavit of desistance when the subject was pending before the Office of the Provincial Prosecutor is of no moment because it does not erase or cure the mistake committed by respondent judge.

Anent the issue that the transcript of stenographic notes of complainant's testimony during the preliminary examination was not transmitted to the provincial prosecutor, because, according to respondent Judge, such document is not one of those papers or documents mentioned to be transmitted as provided by Section 5, Rule 112 of the revised Rules of Criminal Procedure, we find the argument of respondent Judge to be untenable. Such Section 5 of said Rule 112 provides that:

> "Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, stating briefly the findings of facts and the law supporting his action, together with the *entire records* of the case, which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and cancellation of the bail bond, if the resolution is for the dismissal of the complaint."

The above-mentioned enumeration of documents required to be transmitted is apparently not exclusive.

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Respondent Judge disregarded the laws and rules governing preliminary investigation which gave undue benefit to the accused and caused prejudice to the herein complainant, making him liable for gross ignorance of the law and grave abuse of discretion.

The OCA recommends that respondent judge be fined ₱10,000.00 with a warning that a repetition of the same or similar offense shall be dealt with more severely.

We agree with the findings of the OCA.

While respondent judge cannot be faulted for believing that Mercedita Opamil-Padua was the legal wife of the victim as the documentary evidence before him seemed to have pointed to this, his dismissal of the criminal complaint against the accused was nonetheless erroneous. Parricide is a public crime. It is an offense not only against one's closest of kin but also against the State. Necessarily, an affidavit of desistance by the alleged widow of the victim, or for that matter, any of his other heirs, will not extinguish the criminal liability of the accused. Desistance is not one of the accepted modes of extinguishing criminal liability. If at all, such desistance will have the effect of "voluntarily releasing" the accused from the civil liability arising therefrom.[4] This is a fundamental legal principle which all judges should be conversant with. However, in his disposition of Criminal Case No. 31693, respondent judge failed to observe an elementary rule of law, rendering him administratively liable for gross ignorance of the law.[5]

The Court also stresses that, as pointed out by the OCA, the documents to be forwarded to the provincial or city prosecutor, as enumerated in Section 5, Rule 112 of the Rules, is not exclusive. It is clear from said section that a municipal trial court judge tasked with conducting a preliminary investigation is required to forward to the provincial or city fiscal the *entire records* of the case, which includes the transcript of stenographic notes taken during the preliminary examination, including that

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[4] *Bautista v. Court of Appeals,* 288 SCRA 171, 179 (1998).

[5] *Almeron v. Sardido,* 281 SCRA 415, 421 (1997).

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of the testimony of any witnesses who testified therein. Hence, respondent judge cannot refuse and should not have refused to transmit to the Office of the Provincial Prosecutor the transcript of stenographic notes taken during his preliminary examination of the complainant in this case.

This Court has often impressed upon judges that as mandated by the Code of Judicial Conduct, they owe it to the public and the legal profession to know the very law they are supposed to apply to a given controversy. They are called upon to exhibit more than just a cursory acquaintance with the statutes and procedural rules. There will be great faith in the administration of justice if the party litigants believe that the occupants of the bench cannot justly be accused of apparent deficiency in their grasp of legal principles.[6]

As for the penalty to be imposed upon respondent judge, the Court finds that the amount of TWO THOUSAND PESOS (₱2,000.00) is appropriate and conformably with the penalty imposed in the case of *Duyawon vs. Judge Maximino A. Badilla.*[7]

**WHEREFORE,** this court finds respondent judge EUFEMIO R. MOLINA *GUILTY* of gross ignorance of the law, and he is hereby fined the sum of TWO THOUSAND PESOS (₱2,000.00) with *WARNING* that a repetition of the same or similar acts in the future shall be dealt with more severely.

**SO ORDERED.**

*Bellosillo, Mendoza, Quisumbing,* and *Buena, JJ.,* concur.

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[6] *Supena v. De la Rosa,* 267 SCRA 1, 15 (1997).

[7] A.M.-MTJ-00-1309, 6 September 2000.