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[A.M. No. R-54-RTJ. June 19, 1985]

FRANCISCO FAGTANAC, *complainant, vs.* **HON. JUDGE ODON YRAD, JR., Presiding Judge, Regional Trial Court, 6th Judicial Region, Branch XV, Roxas City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; MALICIOUS DELAY IN THE ADMINISTRATION OF JUSTICE; ESSENCE THEREOF.**— The essence of such malefaction is malice. Mere delays sans malice does not bring a judge within the ambit of said penal provisions."

2. **ID.; ID.; ID.; MALICIOUS DELAY IN THE ADMINISTRATION OF JUSTICE, NOT A CASE OF.**— It is manifest that the respondent acted in good faith; he did not intend to prejudice the landowner but acted cautiously to protect what he perceived to be the rights of the adversaries.

RESOLUTION

ABAD SANTOS, *J.*:

Judge Odon Yrad, Jr. of the Regional Trial Court, Branch XV at Roxas City, is the respondent in this administrative case.

In Civil Case No. V-4338 of the then Court of First Instance of Capiz, entitled *Francisco Fagtanac vs. Jesus Balolo, et al.*, Judge Oscar Leviste rendered a decision dated February 18, 1982, with the following dispositive portion:

"WHEREFORE, in view of the above evidence and of the failure to contradict the same, the defendants being in default, it appears that they are obligated as stated in the above complaint, and that this Court orders them to pay to the petitioner, Francisco Fagtanac in behalf and for the estate of the late Silvina Fagtanac *Vda. de* Bellosillo,

Supreme Court E-Library

the amounts of palay first class numbering as listed above, or to pay their equivalent in legal tender at ₱50.00 per cavan, with interest until paid, at the legal rate, from the date of the filing of the complaint, February 19, 1980, and for each defendant to pay moral damages to Francisco Fagtanac in the amount of ₱500.00, and since no actual receipt of payment was presented as to attorney's fees, the amount prayed of ₱3,000.00 is reduced to ₱2,000.00."

Judge Leviste in an order dated October 18, 1982, directed execution of the judgment.

When the inferior courts were reorganized pursuant to Batas Pambansa Blg. 129 in January, 1983, Civil Case No. V-4338 was re-assigned to respondent Judge Yrad who reiterated execution of the judgment in an order dated March 15, 1983. However, on June 14, 1983, he issued another order which reads in part as follows:

"After taking into consideration the arguments of the motion and opposition, and taking into consideration the facts obtaining in the records of this case, this Court must take into consideration the following:

1. That this case is for collection of rentals filed by a supposed landowner against tillers of the soil and in accordance with Section 12 of Pres. Decree 946, this must be referred to the Ministry of Agrarian Reform;

2. That there is an allegation that defendants in this case are tenant-tillers cultivating rice and cornland which to the mind of this Court is within the coverage of operation land transfer. Had the Ministry of Agrarian Reform identified the tenant-tiller of the landholding as covered by operation land transfer and in accordance with Memorandum Circular No. 29, implementing Pres. Decree No. 27 and Pres. Decree 316, cases of this nature may be referred to the Ministry of Agrarian Reform at any stage of the proceedings even during the execution.

"IN VIEW OF ALL THE FOREGOING, the records of this case are hereby ordered referred to the Ministry of Agrarian Reform for certification whether the landholding in question is under operation land transfer, whether defendants in this case are identified as tenant-tillers and whether the case is proper for trial or not.

Supreme Court E-Library

"Pending the period of referral, the resolution of all incidents are hereby held in abeyance and in the meantime the records of this case are placed in archive without prejudice."

Because of Judge Yrad's order mentioned above, Francisco Fagtanac accused the former of violating Articles 206 and 207 of the Revised Penal Code; Fagtanac alleges that, "the said Interlocutory Order as issued is unjust and it was issued to unduly delay the administration of justice, by maliciously and unduly delaying the execution of a final and executory decision in Civil Case No. 4338 and the Order of Execution of the decision aforesaid."

Judge Yrad was asked to comment and after his comment was received, the case was referred to Justice Fidel Purisima of the Intermediate Appellate Court for investigation, report and recommendation.

The report of Justice Purisima is now before Us.

Article 206 of the Revised Penal Code stipulates that: "Any judge who shall knowingly render an unjust interlocutory order or decree shall suffer the penalty of *arresto mayor* in its minimum period and suspension; but if he shall have acted by reason of inexcusable negligence or ignorance and the interlocutory order or decree be manifestly unjust, the penalty shall be suspension." And Article 207 of the same code states that: "The penalty of *prision correccional* in its minimum period shall be imposed upon any judge guilty of malicious delay in the administration of justice."

According to Justice Purisima, "it cannot be said that respondent Judge knowingly or feloniously issued" the questioned order. And the investigator adds that, "So also, inexcusable negligence or ignorance cannot be imputed to the respondent Judge under the attendant circumstances." This takes care of Article 206.

As to Article 207, the investigator says: "With the evidence at hand, the accusation for malicious delay in the administration of justice, within the purview of Article 207 of the Revised Penal Code, cannot also be sustained. The essence of such malefaction is malice. Mere delay sans malice does not bring a

Supreme Court E-Library

judge within the ambit of said penal provision."

The exoneration of the respondent judge notwithstanding, the investigator makes the following observation and recommendation: "But even as respondent Judge should be absolved of the present charge, for want of enough substantiation, he has to be reminded of his duty to apply the law as interpreted by the Supreme Court and not to dispose a case in accordance with his personal views and inclination."

The respondent judge justified the issuance of the questioned order thus:

"The undersigned, before his assignment to his present position, was a CAR Judge, that is why he is aware of the effect of non-referral of cases filed by alleged landowners. The effect of the execution of the decision of which complainant seeks to be executed may oust the tillers of the soil and since there is no referral, the execution of the said decision is very doubtful.

> "Referrals shall be made at any stage of the proceedings in accordance with Memorandum Circular No. 29, which states:
>
> 'With respect to agrarian or civil cases submitted for decision or pending execution: — Before decision is rendered or before execution of decision where such decision or execution would result in the ejectment of the actual tiller of the tenant-farmer in order to determine whether the defendant has become a beneficiary or a recipient of a Land Transfer Certificate pursuant to Presidential Decree No. 27 (Memo Circular No. 29 MAR Series of 1973).'

"The undersigned, in compliance with the above circular and without the intention of delaying the proceedings, as alleged by the complainant, ordered the referral of this case. It is the honest opinion of the undersigned that before the Court issues the order of execution, the Court must seek the aid of other agencies of the government."

We are not disposed to accept the recommendation that the respondent judge should be admonished. True it is that in a number of cases this Court has held that after trial the court's determination of the relationship between the contending parties is final and conclusive for while the referral to the Ministry of

Supreme Court E-Library

Agrarian Reform is mandatory before trial, after trial the court's finding is definitive. Nonetheless it is manifest that the respondent acted in good faith; he did not intend to prejudice the landowner but acted cautiously to protect what he perceived to be the rights of the adversaries.

WHEREFORE, the charges against the respondent are hereby dismissed.

SO ORDERED.

Fernando, *C.J.*, *Teehankee*, *Makasiar*, *Concepcion Jr.*, *Melencio-Herrera*, *Plana*, *Relova*, *Gutierrez*, *Jr.*, *De la Fuente*, *Cuevas*, and *Alampay*, *JJ.*, concur.

Aquino and *Escolin*, *JJ.*, took no part.

SECOND DIVISION

[G.R. No. L-38012. June 19, 1985]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO BASELOY *alias* Tonying,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WITNESSES; TESTIMONY; NOT REHEARSED.—** Cipriano's testimony was not rehearsed. His version was not parroted. The crucial point is that he was present when Abrencio was killed. Although he did not see the actual shooting, he at least heard the gun report and he saw the killer immediately after he had fired at the victim.

2. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; NIGHTIME; WHEN ABSORBED IN TREACHERY.—** Appellant's counsel argues that the trial court erred in not holding that treachery absorbed nighttime. No such error was