Supreme Court E-Library

In passing, it may be noted that complainant's mother admitted at the hearing in the lower court on February 21, 1977 that Evelyn was then living with her common-law husband, Ely Rosales.

The accused pleaded the defense that Evelyn was a prostitute. He declared that he had sexual intercourse with her in March, 1974 and that he paid her twenty pesos. It is not necessary to assess the veracity of that defense. We are satisfied that the prosecution's evidence has not established the commission of rape in this case.

WHEREFORE, the lower court's judgment is reversed and defendant-appellant Cueto is acquitted. Costs *de officio.*

SO ORDERED.

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

Concepcion Jr., J., took no part.

SECOND DIVISION

[A.M. No. 244-MJ. August 31, 1978]

HILARION MANGARON, *complainant, vs.* **JUAN L. BAGANO,** *respondent.*

SYLLABUS

1. LEGAL AND JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE CHARGES; WHEN MAY BE DISMISSED. — Where charges against a municipal judge are not substantiated, or where the complainant manifests lack of interest in the prosecution thereof, the complaint shall be dismissed.

Supreme Court E-Library

2. ID.; ID.; IGNORANCE OF THE LAW; NOT COMMITTED WHEN PREMATURE EXECUTION OF JUDGMENT WAS DONE IN GOOD FAITH. — Where a municipal judge had been of the impression that the order of the Court of First Instance dismissing the accused's appeal had already become final and executory, and thus erred, in good faith, in implementing said order before its finality by ordering the arrest of the accused, which error was induced by the premature remand of the records by the clerk of court of the Court of First Instance whence it came, said municipal judge may not be held administratively liable for ignorance of the law.

3. ID.; ID.; NOT LIABLE FOR DELAY DUE TO CIRCUMSTANCES BEYOND HIS CONTROL. — Where the records show that the respondent judge issued, without delay, the order of release of the accused after receipt of the order of the Court of First Instance setting aside its previous order dismissing the accused's appeal, and that the delay, if any, in the service of the order of release was attributable to the police officer who served the same and not to respondent judge, it was held that the judge should not be blamed for such delay the same being due to circumstances beyond his control.

R E S O L U T I O N

SANTOS, *J.*:

In a sworn complaint dated April 8, 1969, Hilarion Mangaron charged Municipal Judge Juan L. Bagano of Pilar, Cebu with — (1) ignorance of the law and judicial procedures; (2) ignorance of the law and ineptitude in the performance of his duties; (3) oppression; (4) serious irregularities.

The complaint[1] alleged, among others:

COUNT I

IGNORANCE OF THE LAW AND
JUDICIAL PROCEDURES

[1] *Rollo*, pp. 4-8.

Supreme Court E-Library

That Judge JUAN L. BAGANO, Municipal Judge of the municipality of Pilar, province of Cebu, the Respondent herein, is ignorant about judicial writs and processes as not to be able to distinguish an Order of Dismissal from an Order of Execution of Judgment and is further ignorant as to when judicial orders become final and by reason of such ignorance the undersigned was ARBITRARILY DETAINED for NINETEEN (19) days, from December 14, 1968, through Christmas, to January 2, 1969.

The circumstances of the commission/omission are as follows:

That on December 4, 1968, the Honorable Court of First In stance of Cebu, Branch X of the 14th Judicial District, issued an Order (which later was set aside as shown hereunder) dismissing the appeal of the undersigned Complainant from a conviction for Illegal Possession of Firearm rendered by the Municipal Court of Pilar, Cebu, presided by the Respondent herein.

The Respondent, by reason of his ignorance of the law and procedure did not allow Fifteen (15) days from the service of the Order to the Complainant to lapse so that the Order may become final. On December 14, 1968, simultaneous with the arrest and service of the said Order, the Complainant was then and there forcibly lodged in jail despite his vehement objection and impassioned pleas to be given a chance to contact his lawyer or seek remedies and reliefs from the surprise. The Respondent because of his ignorance mistook the said Order as a direct command to him to immediately execute the sentence appealed from and which he rendered.

These precipitate acts of the Respondent was a result of his blinding prejudice and malice towards the complainant.

COUNT II

IGNORANCE OF THE LAW AND INEPTITUDE
IN THE PERFORMANCE OF HIS DUTIES

That Respondent Judge JUAN L. BAGANO, by reason of ignorance and ineptitude in the performance of his duties has illegally prolonged the arbitrary incarceration of the Complainant in the Cebu Provincial Jail at Cebu City.

The circumstances of his ignorance and ineptitude are as follows:

That on December 23, 1968, Judge JUAN L. BAGANO, Respondent herein, issued an Order for the release of the undersigned in response

Supreme Court E-Library

of an Order of the Court of First Instance above-mentioned setting aside the Order of Dismissal of the appeal.

But the Respondent, conforming further his ignorance of the law and procedure did not serve said Order of Release to any party — neither to the Provincial Warden of the Cebu Provincial Jail where the Complainant was transferred for confinement, nor to the undersigned or his lawyer.

The Complainant has knowledge of the Order of the Honorable Court of First Instance dated December 18, 1968, setting aside its Order of dismissal of the appeal and when the prolonged incarceration became unbearable, on the initiative of the undersigned's counsel on January 1, 1969, he requested the Docket Clerk of Branch X of the Court of First Instance of Cebu, to see the records of the case. The Order for the release of the undersigned was attached to the 'expediente,' unserved.

The Docket Clerk of the Court of First Instance above-mentioned brought a true copy of said Order to the Provincial Warden and only then was the undersigned Complainant released January 2, 1969.

COUNT III

OPPRESSION

That during the pendency of the complaint for illegal possession of firearms Respondent Judge JUAN L. BAGANO, campaigned among Complainant's bondsmen to withdraw from bailing the Complainant by scaring them that Complainant was planning to escape, thus resulting in the accused being detained every now and then.

That whenever the Complainant herein was detained by the withdrawal of some of the bondsmen, some men bringing the name of the Municipal Judge, Respondent herein, pressuring the Complainant to confess to the crime, that the Respondent would give the undersigned a light penalty.

That during the arbitrary detention above-mentioned as the Complainant herein has repeatedly manifested his determination to seek remedies and justice wherever this may be found the Respondent personally called the undersigned to his Office and pressured him into submitting to the penalty he (Respondent) imposed upon the complainant.

Supreme Court E-Library

That at every turn the Respondent, without reasonable cause, severely scold and upbraid the Complainant.

COUNT IV

SERIOUS IRREGULARITIES

That while Complainant was arbitrarily detained in connection with the incident referred to in Count I hereof, the Complainant was commanded to undertake works personally and privately beneficial to the Respondent, particularly cutting the big caimito tree for the post of his shed, personally overseeing the Complainant with arms akimbo.

By 1st Indorsement dated July 16, 1969 per Justice Felix Q. Antonio, then Undersecretary of Justice, the above complaint was referred by the Department of Justice to the Executive Judge of the Court of First Instance, Cebu City, for investigation, report and recommendation.[2] By 2nd Indorsement dated August 16, 1969, respondent judge was furnished a copy of the administrative complaint and required to answer within ten (10) days from receipt thereof. Respondent filed his answer[3] October 31, 1969.

Re the first count, respondent alleged that the order of the Court of First Instance of Cebu, Branch X dated December 4, 1968, dismissing complainant's appeal and ordering the execution of the judgment against him was received by the Chief of Police of Pilar, Cebu, on December 10, 1968; that after he was informed by the Chief of Police of such order he waited for the records of the case to arrive; that when complainant appear on December 14, 1968 he informed him of the order; and that he executed the same in good faith.

Respondent also denied the second count. He explained that he received the order of the Court of First Instance of Cebu dated December 21, 1968 in the evening of December 22; that he issued the order of release on December 23 following and

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[2] *Rollo*, p. 1.

[3] *Rollo*, pp. 10-30.

Supreme Court E-Library

copy of the same was given to Patrolman Antonio Maaghop to be delivered to the Provincial Warden of the Cebu Provincial Jail together with the records of the case to be delivered to the Clerk of Court of Branch X, CFI-Cebu; that if there was any delay in the service of his order, the delay was not attributable to him. To substantiate his claim, respondent attached to his Answer xerox copies of the certificate of appearance of Patrolman Maaghop issued by the Deputy Sheriff of the Court of First Instance of Cebu, Branch X and of the receipt of the records and the order of release signed by the Clerk of Court of branch X, CFI-Cebu.

Anent the third count respondent denied having compelled, induced, coerced, intimidated or influenced complainant's bondsmen to withdraw their bonds. He further denied having pressured complainant into submitting to the penalty he imposed and/or having severely scolded and upbraided him.

With respect to the fourth count, respondent likewise denied having ordered the complainant to undertake works personally and privately beneficial to him.

The hearing of the case was originally set for June 23, 1970 but upon motion of respondent, it was reset for July 30 and 31, 1970, morning and afternoon. On the day of the hearing, however, only the respondent appeared in view of which the investigating judge issued the following order, to wit:

"O R D E R[4]

When called today for hearing, only the respondent appeared. Neither the complainant nor his counsel appeared despite the fact that notice was sent to them, as shown by registry return card attached to the record, the date of delivery being June 15, 1970.

For lack of interest, this case is recommended to the Department of Justice, Manila, for dismissal, and the Clerk of Court is directed to immediately send thereto the *expediente* of this case.

SO ORDERED.

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[4] *Rollo*, p. 60.

Supreme Court E-Library

Given in open Court this 30th day of July, 1970, at the City of Cebu, Philippines.

(SGD) FRANCISCO S. TANTUICO, JR.
Judge"

In a letter-transmittal dated January 23, 1973, the instant case was referred to this Court by the Department of Justice pursuant to Sections 6 and 7 of Article X of the New Constitution.[5]

At the outset it must be noted that neither the complainant nor his counsel appeared at the hearing of the case before the investigating judge despite due notice. Neither did he do anything about the order of the investigating judge in which he recommended to the Department of Justice the dismissal of the case against respondent. It is obvious then that complainant failed to substantiate his charges. This attitude of the complainant manifests his lack of interest to prosecute his charges against the respondent.

It is well-settled that where charges are not substantiated the same shall be dismissed.[6] Likewise, it has been held that a complaint may be dismissed where complainant manifests lack of interest in the prosecution of the charges.[7] Necessarily then, the third and fourth charges must be dismissed, for lack of evidence.

Re the charge of ignorance of the law and judicial procedures, — which may prosper even where, as in this case, complainant failed to adduce evidence — the issue is whether or not respondent erred in executing his judgment convicting the complainant in compliance with the order of the Court of First of Instance which dismissed complainant's appeal which order; hereunder quoted, to wit:

"ORDER

When this case was called for hearing today, the accused did not answer but the bondsmen were duly notified for this hearing.

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[5] *Rollo*, p. 62.

[6] *Salcedo vs. Alfeche, Jr.*, Adm. Matter No. 267-MJ. June 30, 1975, 64 SCRA 552.

Supreme Court E-Library

This being an appealed case, the non appearance of the accused during the scheduled date of trial indicates that he is no longer interested in the prosecution of his appeal.

In view hereof, this appeal is hereby dismissed and the records of the case is hereby returned to the Municipal Court of Pilar, Cebu for the execution of judgment.

Let copy of this Order he sent personally to the accused for his information and guidance.

SO ORDERED.

Given in open court this 4th day of December 1968, at Danao City, Philippines.

(SGD.) JOSE R. RAMOLETE
J u d g e"

There is no question that the aforequoted order has not yet become final when respondent — in compliance therewith — executed his judgment convicting the complainant for illegal possession of firearm. To be sure, said order of the Court of First Instance (CFI) was later set aside upon complainant's motion for reconsideration in an order dated December 21, 1968. It does not follow, however, that respondent may now be held administratively liable for ignorance of the law. For, he must have been of the impression that the order of the CFI dismissing complainant's appeal had already become final and executory in view of its tenor, coupled with the letter of transmittal of the clerk of court and the actual remand of the records of the case. Respondent thus erred in implementing the CFI order before its finality — in good faith. In fact, his error was induced by the premature remand of the records by the clerk of the Court of First Instance from whence it came. And, upon receipt of the order reconsidering the foregoing, respondent ordered the release of complainant.

The charge of ineptitude is belied by the documentary evidence presented by respondent. The records show that respondent issued the order of release after receipt of the order of the CFI setting aside its previous order dismissing complainant's appeal, without delay. The delay, if any, in the service of the

Supreme Court E-Library

order of release was attributable to Pat. Antonio Maaghop, not to respondent. The ruling of this Court in *San Pablo vs. Salvador*[8] may well be applied in the instant case by analogy. It was there held that a judge should not be blamed for delay in the disposition of a case where the same is due to circumstances beyond his control.

In view of all the foregoing, let this case against respondent Judge Juan L. Bagano be, as it is hereby, DISMISSED, and let this dismissal be entered into his official record.

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

EN BANC

[A.M. No. 884-CFI. August 31, 1978]

BAYANI VASQUEZ, *complainant, vs.* **JUDGE SEVERO MALVAR,** *respondent.*

SYLLABUS

1. LEGAL AND JUDICIAL ETHICS; JUDGES; CONDUCT OF JUDGES; EXPLAINED. — Judges should be not only men of the highest integrity but they should also at all times conduct themselves in such a manner as to be above suspicion. A trial judge should always keep himself abreast of the latest laws, rulings and jurisprudence.

2. ID.; ID.; GROSS MISCONDUCT; WHEN COMMITTED. — It is gross misconduct for a trial judge to go out of his way and to give verbal orders to the bank personnel to allow withdrawals from the savings account of the decedent, despite the absence

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[8] Adm. Matter No. 749-CFI, September 5, 1975, 66 SCRA 534.