Supreme Court E-Library

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. MTJ-00-1331. February 27, 2002]

MAYOR REYNOLAN T. SALES, *complainant*, *vs.* **JUDGE MELVYN U. CALVAN, Municipal Circuit Trial Court, Bangui, Ilocos Norte,** *respondent.*

SYNOPSIS

Complainant herein was the defendant in a criminal case filed before the MCTC, Bangui, Ilocos Norte. The respondent judge conducted the preliminary investigation and issued an order finding probable cause for charging complainant with murder. He concluded the preliminary investigation without complainant having submitted his counter-affidavit and that of his witnesses. Hence, a complaint for gross violation of the Code of Judicial Conduct and of the Rules of Court, and for knowingly rendering an unjust judgment or order, was filed by complainant against respondent judge. Complainant claimed that the respondent judge was relative of the deceased within the third degree of affinity, and thus also the deceased's wife who was the complaining witness in the criminal complaint. This caused the respondent judge to violate the Rules of Court and the Code of Judicial Conduct. Complainant further claimed that respondent judge denied him his right to due process by failing to follow the proper procedure concerning the conduct of preliminary investigation.

The Supreme Court found respondent judge guilty of gross violation of Rule 137, Sec. 1 of the Rules of Court, and also of

Supreme Court E-Library

Rule 2.03 of Canon 2 and Rule 3.12 of Canon 3 of the Code of Judicial Conduct. As recommended by the Office of the Court Administrator, a fine of ₱10,000.00 was imposed upon respondent Judge. According to the Court, the respondent could not deny being related to the deceased and by extension to the widow. Their relationship is within the third degree of affinity, hence, within the apparent ambit of the aforecited rule. Evidently, the disqualification applies even to the preliminary investigation stage where the judge would have to act on a set of facts presented to him and determine whether or not there is probable cause to charge an accused.

SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; JUDGES; DISQUALIFICATION; APPLIES EVEN TO PRELIMINARY INVESTIGATION STAGE OF THE CASE; APPLICATION IN CASE AT BAR.** — Taking into account the OCA report and after carefully considering the record of this administrative matter, we find that respondent has indeed violated Rule 137, Section 1 of the Rules of Court in conducting the preliminary investigation in Criminal Case No. 9448-P. The aforecited rule provides: SECTION 1. *Disqualification of judges.* — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, *or in which he is related to either party within the sixth degree of consanguinity or affinity*, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. x x x Respondent could not deny being closely related to the deceased Rafael Benemerito and by extension to the widow Thelma Benemerito, the complaining witness in Crim. Case No. 9448-P, considering that respondent's wife is their niece. Their relationship is within the third degree of affinity, hence within the apparent ambit of the aforecited rule. In *Re: Inhibition of Judge Eddie R. Rojas, RTC-Br. 39, Polomolok, South Cotabato*, we held: x x x According to *Black's Law Dictionary*, to "sit" in a case means

Supreme Court E-Library

"to hold court; to do any act of a judicial nature. To hold a session, as of a court, grand jury, legislative body, *etc.* To be formally organized and proceeding with the transaction of business." The prohibition is thus not limited to cases in which a judge *hears* the evidence of the parties but includes as well cases where he *acts* by resolving motions, issuing orders and the like. x x x Evidently, the disqualification applies even to the preliminary investigation stage where the judge would have to act on a set of facts presented to him and determine whether or not there is probable cause to charge an accused.

2. ID.; ID.; ID.; MANDATORY IN NATURE; RATIONALE. — In *Garcia v. De la Peña*, we explained the rationale for this disqualification: The rule on compulsory disqualification of a judge to hear a case where, as in the instant case, the respondent judge is related to either party within the sixth degree of consanguinity or affinity rests on the salutary principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity. The law conclusively presumes that a judge cannot objectively or impartially sit in such a case and, for that reason, prohibits him and strikes at his authority to hear and decide it, in the absence of written consent of all parties concerned. The purpose is to preserve the people's faith and confidence in the courts of justice. The disqualification is mandatory, and respondent has no option other than to inhibit himself from the criminal case. The appropriate step for respondent to take would have been to immediately desist from hearing the case, even at the preliminary investigation stage. His failure to do so is a glaring violation not only of the Rules of Court but also of the Code of Judicial Conduct, which mandates in Canon 3, Rule 3.12.

3. ID.; ID.; REQUIRED TO KEEP ABREAST OF DEVELOPMENTS IN LAW AND JURISPRUDENCE. — Respondent apparently misapprehended the current law on conducting what he kept on calling, a "preliminary examination" relative to the criminal complaint. Evidently, he was referring to the old rule where preliminary investigation consisted of two stages, preliminary examination and preliminary investigation proper. Thus, he asserts now that while he conducted the preliminary examination,

Supreme Court E-Library

he refrained from conducting the preliminary investigation proper and instead forwarded the records of the case to the Office of the Provincial Prosecutor. Now, it may be noted, the proceedings consist of only one stage and the pertinent rule is Rule 112, Section 3 of the Rules of Court. Respondent failed to follow said rule, per the findings of the Court of Appeals in CA-G.R. SP No. 54416 that we affirmed in G.R. No. 140823. Judicial competence requires that judges keep abreast of developments in law and jurisprudence. Otherwise, it might result in what appears to be gross ignorance of the law.

APPEARANCES OF COUNSEL

Raro Palomique Pagunuran Acosta & Villanueva for complainant.

D E C I S I O N

QUISUMBING, *J.*:

This is a complaint for gross violation of the Code of Judicial Conduct and of the Rules of Court, and for knowingly rendering an unjust judgment or order, filed by Reynolan T. Sales, then incumbent mayor of Pagudpud, Ilocos Norte, against Judge Melvyn U. Calvan, presiding judge of the Municipal Circuit Trial Court for Adams-Bangui-Dumalneg-Pagudpud, Ilocos Norte.

Complainant is the defendant in Criminal Case No. 9448-P[1] pending before the MCTC, Bangui, Ilocos Norte. Said case arose from a shooting incident that occurred on August 2, 1999 involving complainant and former Pagudpud mayor Rafael Benemerito, which resulted in the death of the latter. Complainant surrendered to police authorities and requested that he be brought to the PNP provincial headquarters in Laoag City.

A criminal complaint was filed against herein complainant, Mayor Sales, for purposes of preliminary investigation, before

[1] Complaint, Annex "A".

Supreme Court E-Library

the MCTC in Bangui the following day, August 3, 1999. That same day, respondent judge conducted the preliminary investigation and issued an order finding probable cause for charging complainant with murder.[2] Respondent also issued a warrant for complainant's arrest on the same day.[3] No bail was recommended for his provisional release. Complainant was promptly arrested and detained at the provincial jail in Laoag City.

Respondent concluded his preliminary investigation without complainant having submitted his counter-affidavit and that of his witnesses. On August 5, 1999, respondent issued a resolution finding that "there exists a *prima facie* case against the accused."[4] On August 6, 1999, the records of the preliminary investigation were transmitted to the Office of the Provincial Prosecutor for review.

Complainant now alleges that respondent violated the Rules of Court, specifically Rule 137, Section 1 thereof, when he took cognizance of Criminal Case No. 9448-P for preliminary investigation. Complainant claims that respondent's wife, Susana Benemerito-Calvan, is the niece of the deceased, Rafael Benemerito, because her father, Julio Benemerito is the brother of the deceased. Respondent is a relative of the deceased within the third degree of affinity, and thus also of the deceased's wife, Thelma Benemerito, who is the complaining witness in the criminal complaint. Complainant argues that under the aforecited rule, respondent is disqualified from taking cognizance of the murder case against him.

Complainant also points out that respondent violated the Code of Judicial Conduct, particularly Canon 2, Rule 2.03 and Canon 3, Rule 3.12, which provide as follows:

Rule 2.03. – A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige

---

[2] *Id.*, Annex "B".

[3] *Id.*, Annex "C".

[4] *Id.*, Annex "D".

Supreme Court E-Library

of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

xxx xxx xxx

Rule 3.12.- A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:

xxx xxx xxx

(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;

xxx xxx xxx

Further, complainant claims that respondent denied him his right to due process by failing to follow the proper procedure concerning the conduct of preliminary investigation. Complainant wonders how respondent could have arrived at the conclusion that probable cause exists for charging him (complainant) with murder, on the same day that the criminal complaint was filed. Complainant also assails respondent's order for his arrest, since at that time complainant was already in the custody of the PNP at the Ilocos Norte provincial headquarters.

Moreover, complainant avers that respondent did not give him notice to file his counter-affidavit, in violation of Rule 112, Section 3 of the Rules of Court. Instead, respondent hastily terminated the preliminary investigation and issued a resolution stating that there exists a *prima facie* case for murder against complainant. Respondent then forwarded the records of the preliminary investigation to the provincial prosecutor's office. This, according to complainant, constitutes knowingly rendering an unjust order.

In his comment, respondent judge admits being the nephew-in-law of the deceased, Rafael Benemerito. Thus, respondent admits that he is related by affinity to the victim, ex-Mayor Rafael Benemerito, and the complaining witness, Mrs. Thelma Benemerito, in Criminal Case No. 9448-P. Respondent being their nephew-in-law, their relationship is within the third civil

Supreme Court E-Library

degree of affinity. However, respondent contends that he committed no error in the conduct of the "preliminary examination"[5] of Criminal Case No. 9448-P. In support of his contention, he cites Rule 112, Section 6(b) of the Rules of Court which states that the judge conducting the preliminary investigation may issue a warrant of arrest if he is satisfied that probable cause exists and there is a need to place the accused under custody. He also cites the case of *Perez v. Suller,*[6] wherein this Court ruled that Judge Hilarion A. Suller did not commit an irregularity in issuing a warrant of arrest against the sons of Salvador Perez, the Mayor of San Manuel, Pangasinan, who were the accused in a criminal case wherein the private complainant was Judge Suller's nephew.

Respondent interprets the phrase "to sit in a case" in Rule 137, Section 1 to mean "to sit in judgment or to sit and decide."[7] According to him, the prohibition does not apply to "preliminary examination which is only the first phase of the preliminary investigation".[8] Nor does it apply, in his view, to the "preliminary investigation proper" which is not a judicial but an executive function. It is not a part of the criminal proceedings against an accused, states respondent. Again citing our ruling in *Perez,* he points out that he, nevertheless, refrained from conducting the "preliminary investigation proper" so that no injustice would be committed against the accused, herein complainant. Moreover, respondent avers that complainant could assail in the proper forum the proceedings he conducted, as in fact complainant filed a petition with the Court of Appeals regarding the conduct of the preliminary investigation and his arrest and detention. Finally, respondent denies that his actions were motivated by bias and partiality.

In a manifestation dated December 1, 1999, complainant informed this Court that the Court of Appeals, in CA-G.R. SP

---

[5] Comment, p. 1.

[6] A.M. No. MTJ-94-936, 249 SCRA 665, 670 (1995).

[7] Comment, p. 3.

[8] *Ibid.*

Supreme Court E-Library

No. 54416, ruled that the preliminary investigation conducted by respondent judge "[did] not conform to the constitutional, statutory, and ethical requirements, hence null and void."[9] Attached to the manifestation was a copy of said decision.[10]

For his part, respondent, in a supplemental comment dated December 15, 1999, reiterated that he followed the correct procedure in issuing the warrant for the arrest of the complainant.

In a report submitted to this Court by the Office of the Court Administrator on September 13, 2000, the OCA recommended that respondent be fined in the amount of ₱10,000 for conducting a preliminary investigation in the subject criminal case, though disqualified by the Rules of Court, and for failing to follow the proper procedure in the preliminary investigation of the criminal case against complainant. However, the OCA observed that while respondent judge indeed erred in issuing a warrant of arrest against complainant, there is no evidence to hold him liable for knowingly rendering an unjust order.

Taking into account the OCA report and after carefully considering the record of this administrative matter, we find that respondent has indeed violated Rule 137, Section 1 of the Rules of Court in conducting the preliminary investigation in Criminal Case No. 9448-P.

The aforecited rule provides:

SECTION 1. *Disqualification of judges.* — No judge or judicial officer shall sit in any case in which he, or his wife or child, is

---

[9] Manifestation, p. 2; CA Decision, p. 12.

[10] Complainant first filed a petition for *certiorari* and *habeas corpus* before the Court of Appeals. This was initially dismissed on August 30, 1999. While his motion for reconsideration was pending, complainant withdrew his petition for *certiorari,* leaving the petition for *habeas corpus.* The CA granted this petition and ordered the release of complainant on November 18, 1999. A petition for review on *certiorari* was then filed before this Court, docketed as G.R. No. 140823. In a resolution dated July 5, 2000, we denied said petition for petitioners' failure to show that a reversible error was committed by the CA. We denied the motion for reconsideration filed by the Office of the Solicitor General in a resolution dated October 3, 2000.

Supreme Court E-Library

pecuniarily interested as heir, legatee, creditor or otherwise, *or in which he is related to either party within the sixth degree of consanguinity or affinity*, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. (Italics supplied.)

x x x x x x x x x

Respondent could not deny being closely related to the deceased Rafael Benemerito and by extension to the widow Thelma Benemerito, the complaining witness in Crim. Case No. 9448-P, considering that respondent's wife is their niece. Their relationship is within the third degree of affinity, hence within the apparent ambit of the aforecited rule. However, respondent asserts that the rule on disqualification does not apply to preliminary investigation but only to cases where the judge is called upon to decide a case.

In *Re: Inhibition of Judge Eddie R. Rojas, RTC-Br. 39, Polomolok, South Cotabato,*[11] we held:

...According to *Black's Law Dictionary*, to "sit" in a case means "to hold court; to do any act of a judicial nature. To hold a session, as of a court, grand jury, legislative body, *etc.* To be formally organized and proceeding with the transaction of business." The prohibition is thus not limited to cases in which a judge *hears* the evidence of the parties but includes as well cases where he *acts* by resolving motions, issuing orders and the like x x x (Emphasis in the original.)

Evidently, the disqualification applies even to the preliminary investigation stage where the judge would have to act on a set of facts presented to him and determine whether or not there is probable cause to charge an accused.

---

[11] A.M. No. 98-6-185-RTC, 298 SCRA 306, 310 (1998).

Supreme Court E-Library

In *Garcia v. De la Peña,*[12] we explained the rationale for this disqualification:

> The rule on compulsory disqualification of a judge to hear a case where, as in the instant case, the respondent judge is related to either party within the sixth degree of consanguinity or affinity rests on the salutary principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity. The law conclusively presumes that a judge cannot objectively or impartially sit in such a case and, for that reason, prohibits him and strikes at his authority to hear and decide it, in the absence of written consent of all parties concerned. The purpose is to preserve the people's faith and confidence in the courts of justice.

The disqualification is mandatory,[13] and respondent has no option other than to inhibit himself from the criminal case. The appropriate step for respondent to take would have been to immediately desist from hearing the case, even at the preliminary investigation stage. His failure to do so is a glaring violation not only of the Rules of Court but also of the Code of Judicial Conduct, which mandates in Canon 3, Rule 3.12:

> Rule 3.12 — A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:
>
> x x x x x x x x x
>
> (d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;
>
> x x x x x x x x x

---

[12] A.M. No. MTJ-92-687, 229 SCRA 766, 773-774 (1994); See also *Perez v. Suller, supra,* note 6, at 672.

[13] *Villaluz v. Mijares,* A.M. No. RTJ-98-1402, 288 SCRA 594, 609 (1998); *Garcia v. De la Peña, supra,* note 12 at 773.

Supreme Court E-Library

Even in *Perez v. Suller,*[14] which respondent cites in support of his arguments, we ruled that respondent Judge Suller should have refrained from handling the preliminary investigation of the case involving his nephew, a relative by consanguinity within the sixth degree and thus covered by the prohibition in Rule 137 of the Rules of Court. We further held:

> While conducting preliminary investigation may not be construed strictly as "sitting in a case," the underlying reason behind disqualification under Rule 3.12 of the Code of Judicial Conduct and Section 1 of Rule 137 is the same.[15]

We have time and again reminded judges of their obligation to keep the image of the judiciary unsullied and worthy of the people's trust.[16] Respondent clearly failed to uphold this duty.

Anent the charge of knowingly rendering an unjust judgment or order, however, we find no evidence to support this charge. Complainant failed to prove that the orders issued by respondent judge in connection with the preliminary investigation of his case were patently contrary to law or were not supported by the evidence and made with deliberate intent to perpetrate an injustice.[17]

Instead, respondent apparently misapprehended the current law on conducting what he kept on calling, a "preliminary examination" relative to the criminal complaint. Evidently, he was referring to the old rule where preliminary investigation consisted of two stages, preliminary examination and preliminary investigation proper. Thus, he asserts now that while he conducted the preliminary examination, he refrained from conducting the preliminary investigation proper and instead

---

[14] *Supra,* note 6.

[15] *Perez v. Suller, supra,* note 6, at 671.

[16] *Garcia v. De la Peña, supra,* note 12, at 775.

[17] *Lumapas v. Tamin,* A.M. No. RTJ-99-1519, 334 SCRA 391, 396 (2000).

Supreme Court E-Library

forwarded the records of the case to the Office of the Provincial Prosecutor.

Now, it may be noted, the proceedings consist of only one stage and the pertinent rule is Rule 112, Section 3 of the Rules of Court. Respondent failed to follow said rule, per the findings of the Court of Appeals in CA-G.R. SP No. 54416 that we affirmed in G.R. No. 140823.[18]

Judicial competence requires that judges keep abreast of developments in law and jurisprudence. Otherwise, it might result in what appears to be gross ignorance of the law.[19]

The OCA recommends that we impose a fine of ₱10,000 upon respondent. Considering that gross violation of the Code of Judicial Conduct and the Rules of Court was proved to have been committed by him, we are in agreement regarding the imposition of said fine.

WHEREFORE, respondent Judge Melvyn U. Calvan, presiding judge of the Municipal Circuit Trial Court, Adams-Bangui-Dumalneg-Pagudpud, Ilocos Norte, is declared *GUILTY* of gross violation of Rule 137, Section 1 of the Rules of Court, and also of Rule 2.03 of Canon 2 and Rule 3.12 of Canon 3 of the Code of Judicial Conduct, and as recommended, a *FINE* of ₱10,000.00 is hereby imposed on him, with a warning that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.,* concur.

---

[18] *Calvan, et al. v. Court of Appeals,* G.R. No. 140823, 341 SCRA 806 (2000).

[19] *Cortes v. Agcaoili,* A.M. No. RTJ-98-1414, 294 SCRA 423, 458 (1998).