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SECOND DIVISION

[A.M. No. RTJ-99-1472. September 20, 2001]

SPOUSES HERMINIO and MILA DIZON and SPOUSES NOEL and LILIA ZAMORA, *complainants, vs.* **HON. DEMETRIO D. CALIMAG, Presiding Judge, Regional Trial Court, Santiago City, Branch 35,** *respondent.*

SYNOPSIS

In Criminal Case Nos. 2565-66, Noel Zamora and Herminio Dizon were charged with illegal possession of firearms. In Criminal Case No. 2581, they were charged with grave threats. When respondent RTC judge denied accused their right to bail and their motion to dismiss Criminal Case Nos. 2565-66, maintaining that the RTC has jurisdiction over the same, this complaint for grave misconduct and/or gross ignorance of the law was filed.

Respondent judge was found guilty of gross ignorance of the law. In Criminal Case No. 2581, respondent maintained that the charge of grave threat to commit murder is punishable by *reclusion perpetua* and, therefore, not bailable. This is not so. The penalty imposable for murder is *reclusion perpetua* to death; the penalty imposable for the threat to commit murder is that next lower in degree which is *reclusion temporal.* Hence, the offense charged is bailable. In Criminal Case Nos. 2565-66, the imposable penalty for the crime of illegal possession of firearms is only *prision correccional* in its maximum period. The same is within the jurisdiction of the MTC. Hence, respondent should have dismissed the cases without prejudice to their being filed with the proper MTC. Respondent judge was fined the amount of ₱2,000.00.

SYLLABUS

1. **ADMINISTRATIVE LAW; JUDGES; GROSS IGNORANCE OF THE LAW; PRESENT WHEN JUDGE MAINTAINED THAT THREAT TO COMMIT MURDER IS PUNISHABLE BY *RECLUSION PERPETUA* AND THE SAME IS NON-BAILABLE.**— A reading of the indictment in Criminal Case No. 2581 clearly shows that the crime, which the accused allegedly threatened to commit was the killing "by means of fire and

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explosion the said James Pua Ku and his family." Respondent correctly ruled that the threat made was murder. However, the law which respondent judge relied upon clearly provides that the penalty to be imposed is the "penalty next lower in degree than that prescribed by law for the crime he threatened to commit." Since under R.A. No. 7659, the penalty for murder is *reclusion perpetua* to death, the imposable penalty for the grave threat in Criminal Case No. 2581 should be *reclusion temporal*, the penalty next lower in degree. Therefore, the offense charged is bailable. To say that threat to commit murder is punishable by *reclusion perpetua* would mean that the imposable penalty has not been lowered a degree. This is contrary to the clear provisions of the Revised Penal Code. Respondent judge further compounded his error when he concluded that since the crime of grave threats is non-bailable, it follows that there can also be no bail for the charges of illegal possession of firearms. It should also be noted that the three cases are separate and distinct from each other. More significantly, the argument that since the offense of grave threats is non-bailable, *ergo* the illegal possession of firearms is also non-bailable cannot be made to apply to cases involving violations of P.D. No. 1866, as amended by R.A. No. 8294.

2. **ID.; ID.; ID.; PRESENT WHEN JUDGE MAINTAINED THAT RTC HAS JURISDICTION OVER AN OFFENSE COGNIZABLE BY THE MTC.**— Respondent should have been alerted and cautioned by the motion to quash the informations for want of jurisdiction filed by accused in Criminal Cases Nos. 2565-66. He would have known then that the RTC had no jurisdiction over Criminal Cases Nos. 2565-66 since the imposable penalty for violation of P.D. No. 1866, as amended by R.A. No. 8294, is only *prision correccional* in its maximum period or from four (4) years, two (2) months, and one (1) day to six (6) years and a fine of P15,000.00. Under Section 32 (2) of B.P. Blg. 129, as amended by R.A. No. 7691, it is the Municipal Trial Court which exercises "exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of the fine and regardless of other imposable accessory or other penalties." Respondent judge should have dismissed the cases for want of jurisdiction, without prejudice to their being filed with the proper MTC. The question of jurisdiction is so basic and elementary that a judge's ignorance of it is simply inexcusable.

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3. ID.; ID.; ID.; VIOLATED BY JUDGE'S FAILURE TO FOLLOW BASIC LEGAL LAWS AND RULES.— As a trial judge, respondent is the visible representation of law and justice. Under Canon 1.01 of the Code of Judicial Conduct, he is expected to be "the embodiment of competence, integrity, and independence." Judges are expected to keep abreast of developments in law and jurisprudence. Respondent is thereby expected to have more than a cursory knowledge of the law on graduation of penalties, the rules on bail, and the law governing the jurisdiction of his court. Judicial competence requires no less. His failure to observe the aforementioned basic laws and rules is not only inexcusable, but renders him susceptible to administrative sanction for gross ignorance of the law and incompetence. Failure to follow basic legal commands embodied in the law and the rules constitutes gross ignorance of the law from which no one may be excused, not even a judge.

R E S O L U T I O N

QUISUMBING, *J.*:

In a sworn complaint dated July 27, 1998, complainants Mila Dizon and Lilia Zamora charged Judge Demetrio D. Calimag of the Regional Trial Court of Santiago City, Branch 35 with grave misconduct and/or gross ignorance of the law relative to Criminal Cases Nos. 2565-66, both for illegal possession of firearms, as well as Criminal Case No. 2581 for grave threats.

Complainants allege that they are the respective wives of Herminio Dizon and Noel Zamora. They aver that on May 15, 1998, an information for violation of P.D. No. 1866, as amended by R.A. No. 8294, docketed as Criminal Case No. 2565, was filed against Noel "Boyet" Zamora. On the same date, Herminio "Hermie" Dizon was charged with the same offense in Criminal Case No. 2566. Both accused were committed to the Isabela Provincial Jail in Ilagan, Isabela.

On May 27, 1998, another information, docketed as Criminal Case No. 2581, was filed against Herminio and Noel, indicting them for grave threats.

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All three cases were raffled off to the RTC of Santiago City, Branch 35. Respondent judge then issued a warrant of arrest in Criminal Case No. 2581 and ruled the offense unbailable.

Herminio and Noel filed a petition for bail in all three cases. Their petition was heard on June 9, 1998 and was denied by respondent judge in his order dated June 25, 1998.[1]

Both accused filed a motion to quash the informations in Criminal Cases Nos. 2565-66 on the ground that the RTC did not have jurisdiction over the offense charged. They likewise moved for reconsideration of the order denying them bail.

On July 24, 1998, respondent judge denied all the foregoing motions.[2]

On August 18, 1998, complainants filed a petition for *habeas corpus*, docketed as CA-G.R. SP No. 48673, with the Court of Appeals.

On August 26, 1998, the appellate court granted the petition, thus:

> WHEREFORE, the petition is GRANTED, and the accused Noel "Boyet" Zamora and Herminio "Hermie" Dizon *y* Pascual, accused in Crim. Case No. 2581, are ordered RELEASED from custody upon their posting a bail bond in the amount of ₱40,000.00 each.
>
> Crim. Cases No. 2565 and No. 2566 are DISMISSED, without prejudice to their being filed with the proper Municipal Trial Court.
>
> SO ORDERED.[3]

Complainants now contend that the denial by respondent judge of their motion to quash and petition for bail are not only illegal, whimsical, and arbitrary but constitute gross misconduct and gross ignorance of the law since the RTC has no jurisdiction over the offenses charged in Criminal Cases Nos. 35-2565 to 66. Moreover, all three criminal cases are bailable.

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[1] *Rollo*, pp. 9-13.

[2] *Id.* at 22-24.

[3] *Id.* at 50.

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In his comment of March 15, 1999, respondent judge argues that the administrative charges were only filed by disgruntled litigants to harass and intimidate him. He points out that prior to the filing of this complaint, complainants also filed a complaint against him for arbitrary detention with the Provincial Prosecutor's Office in Ilagan, Isabela and with the Office of the Ombudsman. Both were dismissed.

Respondent submits that complainants' allegation that he dilly-dallied in resolving the motion to quash the information and the petition for bail is baseless as both incidents were decided within the mandatory 30-day period. Nor was the denial of the motion to quash and petition for bail made for some ulterior motive or some other consideration as complainants allege. Respondent judge contends that his ruling on said incidents was made on legal grounds and points out that in all three cases, the prosecutor had recommended no bail for the accused. Moreover, as a judicial officer, he had to exercise his sound discretion based on the evidence presented and the applicable laws. Thus, even assuming, for the sake of argument, that he committed an error in resolving the said incidents, it was done in good faith.

In its evaluation and recommendation report dated July 7, 1999,[4] the Office of the Court Administrator found that the challenged orders of respondent judge were void *ab initio* for having been issued without jurisdiction. Respondent likewise exhibited lack of legal knowledge, particularly in the application of the Indeterminate Sentence Law and the duration and graduation of penalties. The OCA recommends that respondent be fined ₱2,000.00 for gross ignorance of the law.

The record shows that respondent judge acknowledged that illegal possession of firearms is punishable by *prision correccional* maximum[5] and a fine of not less than ₱35,000.00, hence, making

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[4] *Id.* at 59-65.

[5] REV. PEN. CODE. Art. 27 provides: "The duration of the penalties of *prision correccional*, suspension, and *destierro* shall be from six months and one day to six years, except when suspension is imposed as an accessory penalty, in which case, its duration shall be that of the principal penalty."

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the offense bailable. However, he cited the charge for grave threats as a deterrent to the admission of the accused to bail, thus:

...Grave Threat under Article 282 of the Revised Penal Code provides that: "any person who shall threaten another with the infliction upon the person, honor or property of the latter or his family of any wrong amounting to a crime, shall suffer:

1. The penalty next lower in degree than that prescribed by law for the crime he threatened to commit, if the offender shall have made the threat demanding money or imposing any other condition, even though not unlawful, and said offender shall not have attained his purpose, the penalty lower by two degrees shall be imposed. If the threat be made in writing or through a middleman the penalty shall be imposed in its maximum period.
2. The penalty of *arresto mayor* and a fine (not) exceeding 500 pesos, if the threat shall not have been made subject to the condition.

Clearly the threat made by the accused is Murder punishable under Article 248 of the Revised Penal Code, as amended by R.A. No. 7689,[6] because the use of fire or explosive which is the means of killing the victim is punishable by *reclusion perpetua*, then such would be (the) applicable penalty to be imposed in Grave Threat.

The proviso 'that no other crime was committed' is a condition which will increase the penalty (for) violation of P.D. 1866 and is considered as an aggravating circumstance. If the penalty increase(s), automatically the bail also increases. Since the crime of Grave Threat which was committed prior to the commission of P.D. 1866 (sic), punishable by *reclusion perpetua*, a non-bailable offense it carries also (sic) that these two (2) cases are non-bailable too."[7]

We note with approval the finding of the Court of Appeals in CA-G.R. SP No. 48673 that such "ratiocination betrays a lack of understanding of the rule on graduation of penalties and a misapprehension of the facts alleged in the three indictments."[8]

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[6] Should be R.A. No. 7659.

[7] *Rollo*, pp. 34-35.

[8] *Id.* at 48.

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A reading of the indictment in Criminal Case No. 2581 clearly shows that the crime, which the accused allegedly threatened to commit was the killing "by means of fire and explosion the said James Pua Ku and his family." Respondent correctly ruled that the threat made was murder. However, the law which respondent judge relied upon clearly provides that the penalty to be imposed is the "penalty next lower in degree than that prescribed by law for the crime he threatened to commit." Since under R.A. No. 7659, the penalty for murder is *reclusion perpetua* to death, the imposable penalty for the grave threat in Criminal Case No. 2581 should be *reclusion temporal*, the penalty next lower in degree. Therefore, the offense charged is bailable. To say that threat to commit murder is punishable by *reclusion perpetua* would mean that the imposable penalty has not been lowered a degree. This is contrary to the clear provisions of the Revised Penal Code.

Respondent judge further compounded his error when he concluded that since the crime of grave threats is non-bailable, it follows that there can also be no bail for the charges of illegal possession of firearms. It should also be noted that the three cases are separate and distinct from each other. More significantly, the argument that since the offense of grave threats is non-bailable, *ergo* the illegal possession of firearms is also non-bailable cannot be made to apply to cases involving violations of P.D. No. 1866, as amended by R.A. No. 8294.

Moreover, respondent should have been alerted and cautioned by the motion to quash the informations for want of jurisdiction filed by accused in Criminal Cases Nos. 2565-66. He would have known then that the RTC had no jurisdiction over Criminal Cases Nos. 2565-66 since the imposable penalty for violation of P.D. No. 1866, as amended by R.A. No. 8294, is only *prision correccional* in its maximum period or from four (4) years, two (2) months, and one (1) day to six (6) years and a fine of ₱15,000.00. Under Section 32 (2) of B.P. Blg. 129, as amended by R.A. No. 7691, it is the Municipal Trial Court which exercises "exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of the fine and regardless of other imposable accessory or other penalties." Respondent judge should have dismissed the

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cases for want of jurisdiction, without prejudice to their being filed with the proper MTC. The question of jurisdiction is so basic and elementary that a judge's ignorance of it is simply inexcusable.[9]

All the foregoing clearly and categorically shows gross ignorance of the law on the part of respondent judge. As a trial judge, respondent is the visible representation of law and justice. Under Canon 1.01 of the Code of Judicial Conduct, he is expected to be "the embodiment of competence, integrity, and independence." Judges are expected to keep abreast of developments in law and jurisprudence. Respondent is thereby expected to have more than a cursory knowledge of the law on graduation of penalties, the rules on bail, and the law governing the jurisdiction of his court. Judicial competence requires no less. His failure to observe the aforementioned basic laws and rules is not only inexcusable, but renders him susceptible to administrative sanction for gross ignorance of the law and incompetence. Failure to follow basic legal commands embodied in the law and the rules constitutes gross ignorance of the law from which no one may be excused, not even a judge.[10]

As earlier noted, the OCA recommended that respondent be fined ₱2,000.00 for gross ignorance of the law, with a stern warning that a repetition of the same or similar act will be dealt with more severely. We find the recommendation appropriate.

WHEREFORE, premises considered, respondent Judge Demetrio D. Calimag, Regional Trial Court of Santiago City, Branch 35 is hereby found liable for gross ignorance of the law, and is hereby *ORDERED* to pay a *FINE* of *TWO THOUSAND PESOS* (₱2,000.00) and *STERNLY WARNED* that a repetition of the same or similar offense shall be dealt with more severely. Let a copy of this Resolution be attached to the record of Judge Demetrio D. Calimag.

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[9] *Dumo v. Perez,* 322 SCRA 545, 557 (2000).

[10] *De Austria v. Beltran,* 313 SCRA 443, 452 (1999), citing *Ualat v. Ramos,* 265 SCRA 345, 358 (1996).

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SO ORDERED.

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

FIRST DIVISION

[G. R. No. 116938. September 20, 2001]

LEONILA GARCIA-RUEDA, *petitioner, vs.* **REMEDIOS A. AMOR,* RAUL R. ARNAU, ABELARDO L. APORTADERA, JR., FRANCISCO A. VILLA,** all of the Office of the Ombudsman, and LEONCIA R. DIMAGIBA, Assistant City Prosecutor, Manila,** *respondents.*

SYNOPSIS

Petitioner's husband died the same day he underwent an operation at the Santo Tomas University Hospital. Upon recommendation of the NBI, who conducted an autopsy on the cadaver, petitioner filed criminal charges against the surgeon Dr. Antonio, Jr. and the anesthesiologist, Dr. Balatbat-Reyes for reckless imprudence resulting in homicide. Assistant City Prosecutor Dimagiba, however, recommended the filing of information against Dr. Antonio, Jr. only, and the dismissal of the complaint against Dr. Balatbat-Reyes. Petitioner posited that the dismissal of the case against Dr. Balatbat-Reyes, despite overwhelming evidence on her criminal liability, is a violation of RA No. 3019, Sec.3(e). Thus, petitioner filed a complaint with the Office of the Ombudsman against Prosecutor Dimagiba. When the same was denied due course, this petition was lodged with the Court.

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* Transferred to the Philippine National Oil Company, *Rollo*, p. 646.

** Now retired.