[ADMINISTRATIVE ORDER NO. 29, December 08, 1966]

REMOVING DISTRICT JUDGE TEOFILO B. BUSLON OF THE COURT OF FIRST INSTANCE OF SURIGAO DEL NORTE

This is an administrative case brought before the Supreme Court by Mrs. Catalina Vda. de Carlon against the Honorable Teofilo B. Buslon, District Judge of the Court of First Instance of Surigao del Norte, for serious misconduct and inefficiency. By order of the Court, the charges were formally investigated by the Honorable Antonio G. Lucero of the Court of Appeals. The investigator and the High Court found the following facts supported by the evidence of record:

Under an administrative order dated February 17, 1964, of the Secretary of Justice, respondent was authorized, as vacation judge, to hold sessions, besides his own court, in the Court of First Instance of Agusan during April 1964 for the purpose of trying all kinds of cases and to enter judgments therein. Pending in the Agusan court at that time was a murder case (Criminal Case No. 2260) initiated on September 12, 1960, by the Chief of Police of Cabadbaran, Agusan, against Rustico Alburo for the fatal shooting of Julio Carlon on September 11, 1960, inside the latter's billiard hall. By various maneuvers, first regarding reduction of bail, then by seeking to have the fiscal compelled to amend the information from murder to homicide, and appealing the denial of his motion by the Court of First Instance to the Court of Appeals and the Supreme Court, albeit unsuccessfully, accused Alburo had managed to delay the trial of his case for three years. He was finally arraigned on November 14, 1963, and the trial was set for December 17, 1963. The fiscal discovered that in the meantime his listed witnesses had departed from their former residences and could no longer be served with subpoenas as attested by PC returns.

The Provincial Fiscal and the private prosecutor had to proceed with the trial before the District Judge of Agusan (Hon. Montano Ortiz) by presenting witnesses not originally listed in the information filed on February 22, 1961. Those who finally testified for the State were Apostolada Palarca and Pablo Segura, who both asserted in court having seen the accused shoot Julio Carlon to death with a pistol in the billiard hall of the deceased around 10 P.M. of September 11, 1960. Dr. Manuel Ajero, the third state witness, testified having seen the accused in the billiard hall a few minutes before he heard the gunshots, and having subsequently examined the cadaver of the victim in his clinic, performed the autopsy, together with the health officer. The widow (complainant herein) was the last witness for the prosecution, and was presented to testify as to the damages caused by the crime.

The four witnesses for the prosecution were heard by District Judge Ortiz and the prosecution rested its case on March 3, 1964. On March 5, 1964, defense counsel, on petition, was granted 10 days (up to March 15, 1964) within which to file a written demurrer to the evidence, with the private prosecutor being, in turn, granted a similar period (up to March 25, 1964) to answer it. However, on March 23, 1964,

defense counsel waived the right to demur to the prosecution evidence and asked the Clerk of Court to set the reception of the evidence for the defense for April 3, 6, 7 and 8, 1964. Evidently, this was done with the knowledge that by that time Judge Ortiz would be on vacation and respondent would be acting as vacation judge as directed by the Secretary of Justice. The Clerk of Court of Agusan, instead of transmitting the request of defense counsel to Judge Ortiz, wrote the Clerk of Court of Surigao to find out whether the continuation of the hearing of the criminal case against Alburo could be inserted in the vacation judge's calendar and asked for the specific dates when respondent would hold court in Agusan. The Surigao Clerk of Court replied on March 31, 1964, that "Judge Teofilo B. Buslon requested me to inform that he is going there to try the murder case on April 7 and 8" (Exh. C).

The Clerk of Court of Agusan accordingly issued notices of trial of the cases set for hearing on April 7 and 8, 1964, particularly Criminal Case No. 2260 against Rustico Alburo. While defense counsel were duly notified, no notice was apparently served on the office of the Provincial Fiscal, for no receipt by that office appears of record, contrary to established practice. Notice was served on the office of the private prosecutor on April 6, 1964, which was received by his clerk who noted on the original that "Attorney W. B. Rosales [private prosecutor] is in Manila for one (1) week" and would probably be back the following week. Respondent was delayed in his arrival, and the case against Alburo was called in the morning of April 8, 1964, but neither the Provincial Fiscal nor the private prosecutor was present. Attorney Amado Bajarias, special counsel in the fiscal's office, vainly sought a continuance, calling attention to the lack of notice and to the fact that he was in court himself for another case, because of the absence of the private prosecutor and the Provincial Fiscal who was in Manila on official business and who had handled the case personally. Respondent judge insisted, and special counsel was forced to represent the prosecution against his will when the hearing was reset for the afternoon of the same day.

At the resumption of the trial the defense presented three witnesses but the accused did not take the stand. The first defense witness was Eugenio Segura, father of prosecution witness Paulo Segura. He testified that at the time of the occurrence, his son Paulo was in his house at Barrio Bayabas, Cabadbaran, Agusan, some eight kilometers from the poblacion. Plainly the tendency of this testimony is that Paulo could not have witnessed the shooting of the deceased.

The second defense witness was Clemente Ranoco, a laborer from Cabadbaran, who testified that in the afternoon of the occurrence he was requested by prosecution witness Apostolada Palarca to bring her things to the truck bound for Butuan City (about 25 kilometers from Cabadbaran) where she was studying. His only explanation why she had asked him to do so was that "because they are close friends."

The last defense witness, Placido Autor, had been originally listed as a prosecution witness but had disappeared when the trial judge (Ortiz) started the trial only to appear before respondent judge and testify for the defense, to corroborate Clemente Ranoco that the latter helped Apostolada bring her baggage. He testified that although he was still at the billiard table when he heard the explosion he did not know who was shot — a plain perversion of the truth, since the deceased fell near the billiard table where witness was scoring. His untruthfulness is manifest from a comparison with his own affidavit (Exh. 6).

On April 15, 1964, respondent judge promulgated a decision acquitting accused Alburo on the following considerations:

> "Now, therefore, the probative value of the evidence given by two witnesses (Paulo Segura and Apostolada Palarca) has been adversely affected as follows: Firstly, the testimony given by Apostolada Palarca has thus been weakened in the beginning by the move of the Fiscal to postpone because he could not contact his witnesses. Secondly, the testimony of Paulo has also been discredited by the testimony of his own father, Eugenio Segura. Thirdly, the testimonies of both Paulo Segura and Apostolada Palarca have been further discredited by the testimony of Placido Autor. On top of all these, neither one of the said two witnesses who testified on having seen the shooting is listed as witnesses of the government either in the complaint of the Chief of Police before the Justice of the Peace Court of Cabadbaran, in the information filed by the Fiscal in the same Court of Cabadbaran, or in the information filed by the Fiscal in this Court.
> "Although it is not absolutely necessary that all witnesses who can prove the case against an accused should be listed at the foot of the information, yet the move of the Fiscal in trying to secure another postponement on the ground that his witnesses have not been found, indicated that the said two witnesses, Paulo Segura and Apostolada Palarca, would not have been presented if the other witnesses listed in the information had come to court.
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> "Apostolada Palarca confessed on the witness stand that she fully sympathized with her sister, the surviving widow of Julio Carlon and was naturally interested that she should win the case. Paulo Segura admitted that Mrs. Carlon was his aunt. Hence the deceased Julio Carlo was his uncle by affinity.
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> "The admission of relationship and personal interest by the said two witnesses, Paulo Segura and Apostolada Palarca, when considered against the testimonies of Clemente Ranoco and Placido Autor who had no personal interest to serve in this case and the testimony of Eugenio Segura, who, altho he was a relative by affinity of Julio Carlon, nevertheless, took the witness stand to belie the assertions of his son Paulo, and when considered further against the fact that the names of said witnesses do not appear in the list of the prosecution — all these render the testimonies of the said two witnesses unworthy of belief. All the foregoing facts perforce lead the Court to the conclusion that the said two witnesses, Paulo Segura and Apostolada Palarca, were not present when Julio Carlon was shot and killed and so they did not see who killed him in that fateful night of September 11, 1960."

The Supreme Court observed that even before leaving for Agusan respondent judge admittedly caused the Clerk of Court of Surigao del Norte to instruct the Clerk of Court of Agusan that respondent was "going there to try the murder case on April 7 and 8." The murder case referred to could be none other than that against Alburo. The court calendar prepared for April 8, 1964, also listed for trial a homicide case (People vs. Celso, Sr., Criminal Case No. 2046) which, to judge by its number, was