

## SECOND DIVISION

**[ A.M. NO. RTJ-04-1879 (FORMERLY OCA IPI NO. 04-1934-RTJ), January 17, 2005 ]**

**SPO4 EDUARDO ALONZO, COMPLAINANT, VS. JUDGE CRISANTO C. CONCEPCION, PRESIDING JUDGE, REGIONAL TRIAL COURT OF MALOLOS CITY, BRANCH 12, PROVINCE OF BULACAN, RESPONDENT.**

### RESOLUTION

**PUNO, J.:**

The zeal to uphold justice, albeit an admirable and desirable trait, must never be allowed to blind judges to the limits of judicial power or to obscure the boundaries set by the law.

The facts are as follows:

On May 10, 2003, in the municipality of Paombong, Bulacan, a wedding party was being celebrated behind the house of the newly-married couple. At the party and drinking together at the same table were SPO4 Eduardo Alonzo (SPO4 Alonzo), Jun Rances (Rances), Zoilo Salamat (Salamat) and Rey Santos (Santos). While waiting to be seated, Pedrito Alonzo (Pedrito) was introduced by SPO4 Alonzo to Rances as his nephew and as the son of ex-Captain Alonzo. SPO4 Alonzo then introduced him to Salamat. Pedrito and his companions took their seats and started drinking at the table across SPO4 Alonzo's table. After some time, Pedrito stood up to urinate at the back of the house. Santos passed a bag to Salamat, and they followed Pedrito. Rances likewise followed them. A shot rang out. Salamat was seen placing a gun inside the bag as he hurriedly left. The wedding guests ran after Salamat. They saw him and Rances board a vehicle being driven by Santos. Pedrito's uncle, Jose Alonzo, sought the help of SPO4 Alonzo to chase the culprits. He refused and even disavowed any knowledge as to their identity.

Jose Alonzo filed a complaint for murder against Salamat, Rances, Santos, SPO4 Alonzo and a certain Isidro Atienza. A preliminary investigation<sup>[1]</sup> was conducted by the Assistant Provincial Prosecutor where Jose Alonzo and his four witnesses testified. Upon review of the records of the case by the 3rd Assistant Provincial Prosecutor, it was recommended that Salamat be charged with murder as principal, and Santos and Rances as accessories. With regard to SPO4 Alonzo and Isidro Atienza, the prosecutor found that no sufficient evidence was adduced to establish their conspiracy with Salamat.<sup>[2]</sup> Thereafter, under the direction of the Officer-in-Charge,<sup>[3]</sup> an Information<sup>[4]</sup> was prepared, charging Salamat as principal, and Rances and Santos as accessories, for the murder of Pedrito. No bail was recommended. The case was docketed as Criminal Case No. 4767-M-2003 with Branch 12 of the Regional Trial Court of Malolos City, Bulacan, under presiding judge

Crisanto C. Concepcion. On December 17, 2003, Judge Concepcion issued an Order,<sup>[5]</sup> where he stated:

The assassination of the victim has all the color of a planned liquidation. Zoilo Salamat, not known in that place, appears to be a hired killer with Rey Santos as the supplier of the death gun. SPO4 Alonzo appears to be the brain or mastermind, pointing Pedrito to the assassin as the target of the planned killing. Jun Rances appears to be the back-up of Salamat in executing and gunslaying. A conspiracy clearly appears among them with the common design to kill the victim. Their respective actions were concerted to attest to that. Jun Rances and Rey Santos are not merely accessories-after-the[-] fact, but as principals themselves who should be charged as such along with gunman Zoilo Salamat and mastermind SPO4 Eduardo Alonzo. This is very apparent from the facts on record as borned [*sic*] out by the statements of witnesses given to the police.

WHEREFORE, in the interest of justice that should be given the victim in this case and prosecute all the persons against whom probable cause exists as principals in this case of murder, the Office of the Provincial Prosecutor of Bulacan is hereby directed to amend the information, so as to include all the aforementioned persons as accused in this case, all as principals, within five (5) days from notice hereof.<sup>[6]</sup>

On January 5, 2004, SPO4 Alonzo filed his Motion for Reconsideration<sup>[7]</sup> to the Order, on the ground that the court had no authority to review and reverse the resolution of the Office of the Provincial Prosecutor or to find probable cause against a respondent for the purpose of amending the Information. SPO4 Alonzo averred that the prosecutor's resolution can only be reviewed by the Department of Justice, by the Court of Appeals or by the Supreme Court, when a case for *certiorari* is filed.

On January 12, 2004, SPO4 Alonzo filed an Urgent Motion for Inhibition [*sic*],<sup>[8]</sup> alleging that by issuing the aforementioned Order, Judge Concepcion has shown his prejudice against him and bias in favor of private complainant Jose Alonzo. He prayed that the case be re-raffled to another judge.

On January 13, 2004, Judge Concepcion issued an Order<sup>[9]</sup> denying the Motion for Reconsideration and the Motion for Inhibition. Judge Concepcion stated that SPO4 Alonzo had no personality to file the said motions as he was not an accused in that case. Respondent held that only the Office of the Provincial Prosecutor could question the first Order.

On January 16, 2004, SPO4 Alonzo filed a verified affidavit-complaint<sup>[10]</sup> against Judge Concepcion for rendering the December 17, 2003 Order. Complainant averred that respondent "x x x clearly acted without any authority of law as the same clearly violated Section 2, Article III of the 1987 constitution [*sic*] and Section 6, Rule 112 of the Revised Rules of Criminal Procedure which only authorizes him to determine if probable cause exist [*sic*] against those accused impleaded in the information before issuing a warrant of arrest against them." He accused respondent judge of: a) gross ignorance of the law; b) violation of Section 2, Article 3 of the 1987 Constitution;<sup>[11]</sup> c) abuse of authority under Section 6, Rule 112 of the Rules of Court;<sup>[12]</sup> d) knowingly rendering an unjust order; e) conduct

unbecoming of a judge; and f) oppression and partiality.<sup>[13]</sup>

On February 26, 2004, respondent received the First Indorsement<sup>[14]</sup> from the Office of the Court Administrator (OCA), requiring him to file his comment to the complaint within ten days from receipt thereof. On March 4, 2004, respondent filed his Comment.<sup>[15]</sup> Respondent attached copies of the sworn statements of the prosecution witnesses.<sup>[16]</sup> He claimed that while evaluating the records of the case, his curiosity was piqued as to why no bail was recommended for the three accused. He noticed that the five witnesses<sup>[17]</sup> who testified during the preliminary investigation had consistent accounts of the incidents leading to the death of Pedrito. From these accounts, respondent concluded that SPO4 Alonzo and all the accused conspired to kill Pedrito, thus the Office of the Provincial Prosecutor erred when it merely charged Salamat as principal, and Rances and Santos as accessories, while complainant was exonerated. Respondent averred that “[c]ourts speak thru order issuances [sic].”<sup>[18]</sup> Hence, on December 17, 2003, he issued the Order, directing the Office of the Provincial Prosecutor to amend the Information to include complainant, Rances and Santos as principal participants in the murder of Pedrito. Respondent stressed that he bade the prosecution to amend the Information “xxx without any sanction even hinted, should it fail to do so.”<sup>[19]</sup> After respondent issued the Order, the prosecution stood pat on its position that there was no compelling reason to disturb its original resolution or to amend the Information.

The OCA recommended that the complaint be dismissed on the ground that the Order and the acts complained of were done by respondent in his judicial capacity and were not actuated by bad faith, dishonesty or similar motive. In addition, the proper remedy of the aggrieved party is to file a special civil action for *certiorari* under Rule 65 of the Rules of Court, and not an administrative complaint.

The Court cannot follow the recommendation of the OCA. Respondent clearly erred when he rendered the assailed Order. The rules set the proper procedure<sup>[20]</sup> for the investigation of complaints and designate the prosecutor to conduct the preliminary investigation.<sup>[21]</sup> The function of a preliminary investigation is to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.<sup>[22]</sup> It is through the conduct of a preliminary investigation that the prosecutor determines the existence of a *prima facie* case that would warrant the prosecution of a case. As a rule, courts cannot interfere with the prosecutor's discretion and control of the criminal prosecution.<sup>[23]</sup> The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecution by private persons.<sup>[24]</sup> However, while prosecuting officers have the authority to prosecute persons shown to be guilty of a crime,<sup>[25]</sup> they have equally the legal duty not to prosecute when after an investigation, the evidence adduced is not sufficient to establish a *prima facie* case.<sup>[26]</sup> Judges should not unduly interfere with the exercise of the power to prosecute on the part of fiscals.

It is not a sufficient excuse for respondent to aver that he did not impose any sanction for non-compliance with his Order. In itself, his Order does violence to the principle of separation of powers enshrined in our Constitution. In a clash of views between the judge who did not investigate and the prosecutor who did, or between

the fiscal and the offended party or the accused, that of the prosecutor's should normally prevail.<sup>[27]</sup> Thus, we held in **People vs. Pineda**,<sup>[28]</sup> viz.:

x x x A prosecuting attorney, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion. This is not to discount the possibility of the commission of abuses on the part of the prosecutor. But we must have to recognize that a prosecuting attorney should not be unduly compelled to work against his conviction. In case of doubt, we should give him the benefit thereof. A contrary rule may result in our courts being unnecessarily swamped with unmeritorious cases. Worse still, a criminal suspect's right to due process — the sporting idea of fair play — may be transgressed. x x x

The impact of respondent Judge's orders is that his judgment is to be substituted for that of the prosecutor's on the matter of what crime is to be filed in court. The question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information he lodges in court must have to be supported by facts brought about by an inquiry made by him. It stands to reason then to say that in a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the Fiscal's should normally prevail. In this regard, he cannot ordinarily be subject to dictation. We are not to be understood as saying that criminal prosecution may not be blocked in exceptional cases. A relief in equity "may be availed of to stop a purported enforcement of a criminal law where it is necessary (a) for the orderly administration of justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection to constitutional rights; and (e) in proper cases, because the statute relied upon is unconstitutional or was "held invalid."

We understand respondent's zeal in trying to uphold the ends of justice. However, respondent overlooked the fact that there is a remedy where a prosecutor errs in not charging a person in an Information. The recourse is to appeal to the Secretary of Justice.<sup>[29]</sup> By ordering the prosecutor to include complainant, Rances and Santos as principals in the Information, respondent arrogated unto himself the executive power of supervision and control over public prosecutors. His conduct is not only unbecoming of a judge; more importantly, it transgresses our Constitution.

Yet, this is not all. Respondent judge also erred when he issued warrants of arrest for Rances and Santos without bail. As the Information has not yet been amended charging these two accused as principals to the crime of murder, they are still entitled, as mere accessories, to bail under Rule 114, Section 4 of the Revised Rules of Criminal Procedure.<sup>[30]</sup> The Court notes with approval that respondent corrected this error by allowing Rances and Santos, with the recommendation of the prosecution, to post bail.

For lack of evidence, respondent is exonerated of the other charges brought against him.