

EN BANC

[A.M. No. MTJ-06-1619, January 23, 2006]

JESUSA ODONEL GENIL, COMPLAINANT, VS. JUDGE ROGACIANO Y. RIVERA, MUNICIPAL TRIAL COURT, STA. CATALINA, NEGROS ORIENTAL, RESPONDENT.

DECISION

CARPIO MORALES, J.:

Judge Rogaciano Y. Rivera (respondent) of the Municipal Trial Court (MTC) of Sta. Catalina, Negros Oriental is the subject of two letter-complaints ^[1] filed on September 11, 2003 before the Office of the Chief Justice by Jesusa Odonel Genil (complainant), barangay captain of Amio, Sta. Catalina, Negros Oriental.

The events which spawned the filing of the complaint against respondent are related by complainant as follows:

On May 30, 2003, one of complainant's constituents, Nancy Silfaban (Nancy), filed before the MTC of Sta. Catalina, Negros Oriental two criminal complaints against Roderick Sales, one for rape and the other for forcible abduction with rape, docketed as Criminal Case Nos. 3791 and 3792, respectively. On even date, Nancy also filed a criminal complaint against Janice Sales for violation of Republic Act 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, docketed as Criminal Case No. 3793.

Respondent conducted a preliminary investigation of Criminal Case Nos. 3791 and 3792 two and a half months later or on August 13, 2003 after the accused was ordered to submit his counter-affidavit, which preliminary investigation was made in open court.

During the above-said preliminary investigation, Nancy, a minor, was called to the witness stand and, in the course of her testimony subjected to humiliation as all those present, including respondent, the counsel for the defense Atty. Arturo Erames, and SPO4 Herminigildo Ortiz Cadungog (SPO4 Cadungog) of the Philippine National Police (PNP) who acted as prosecutor, were laughing. ^[2]

Respecting Criminal Case No. 3793 against Janice Sales, respondent had yet to act on it. ^[3]

Apprehensive that respondent would dismiss the cases which Nancy filed, ^[4] complainant requested this Court for a change of venue.

The letter-complaints were eventually referred for investigation to Judge Orlando C. Velasco of Branch 63 of the Regional Trial Court of Bayawan City who directed respondent to file his Comment thereon and to require the public prosecutor and the

counsel of Roderick Sales to also submit their respective comments.

Complying with Judge Velasco's directive, respondent, by Comment [5] dated October 9, 2003, explained that preliminary investigation on the complaints filed by Nancy were not immediately conducted as the evidence was "weak" and "unbelievable," it being "manifestly inconsistent with, and repugnant to, the natural course of things." [6]

Respecting the conduct of preliminary investigation in open court on August 13, 2003, respondent claimed that not only did Nancy not request otherwise; she, albeit a minor, "looks energetic, psychologically mature and somewhat aggressive who answers questions quickly," and there was nothing in her affidavit or testimony which warranted the exclusion of the public from the proceedings. And respondent disclaimed the occurrence of any laughing incident during the preliminary investigation, he adding that "all were eager to observe the proceedings." [7]

On complainant's request for change of venue, respondent suggested that the cases be forwarded to the Office of the Provincial Prosecutor of Negros Oriental, Dumaguete City, and unless otherwise directed, he would proceed to resolve the cases. [8]

In his Comment, [9] SPO4 Cadungog claimed that he is not learned in the law which could explain complainant's dissatisfaction with his performance when he acted as prosecutor during the preliminary investigation of the complaints which Nancy filed. And he too denied that there was laughing during the preliminary investigation. [10]

Defense counsel Atty. Eramas, by his Comment, [11] also disclaimed that there was laughing during the preliminary investigation. He advanced though that the relatives of the accused in the first two criminal cases "may have been pleased" with Nancy's testimonies which tended to support the defense claim that the accused and Nancy were sweethearts. On complainant's request for transfer of venue of the criminal cases, he interposed no objection. [12]

In his Investigation Report [13] dated October 16, 2003, Judge Velasco noted that Nancy was subjected to "unhampered ridicule, embarrassment and humiliation" during the preliminary investigation, and respondent even "ordered her to turn clockwise to the delight of every one present." [14]

Regarding the status of Criminal Case Nos. 3791 and 3792, Judge Velasco reported that they had remained unresolved by respondent, while Criminal Case No. 3793 had yet to be acted upon. [15]

By letter [16] dated August 13, 2004, respondent, in compliance with two telegrams [17] dated January 23, 2004 and July 19, 2004 of the Office of the Court Administrator (OCA) directing him to report the status of the cases, informed that they had been resolved and were ready for transmittal to the Office of the Provincial Prosecutor of Negros Oriental, Dumaguete City for further disposition.

By Report [18] of February 14, 2005, the OCA recommends that the administrative

case against respondent be docketed as a regular administrative matter and that he be fined in the amount of P21,000 for gross ignorance of the law, with warning that a repetition of the same or similar act would be dealt with more severely, in light of the following observations:

xxx [Respondent] took no action on Criminal Case No. 3793 from the date of its filing on 30 May 2003 until 09 October 2003 and offered no explanation for its delay before him. He conducted the preliminary investigation in Criminal Case Nos. 3791 and 3792 only on 13 August 2003, but he has not yet submitted his resolutions thereon to the Provincial Prosecutor. Assuming he had already resolved the cases on 13 August 2004, still there was undue delay. xxx

Respondent judge displayed blatant insensitivity to the child victim. He allowed the defense counsel to cross-examine the child witness and her mother which caused them extreme humiliation and embarrassment. xxx Parties cannot be subjected to direct examination or cross-examination. Questions or issues that may arise during the investigation should be addressed to the investigating judge who should propound the same to the party concerned. Noteworthy is that the Rule on Examination of a Child Witness (A.M. No. 004-07-SC 21 November 2000) does not permit a defense counsel to even approach a child who is testifying if it appears that the child is fearful of or intimidated by the counsel. xxx Neither does the Rule require a manifestation from the child or her mother to exclude the public from the hearing. The court may *motu proprio* exclude the public from the courtroom to protect the right to privacy of the child; if requiring the child to testify in open court would cause psychological harm to him; if it would hinder the ascertainment of truth or result in his inability to effectively communicate due to embarrassment, fear or timidity; and if the evidence to be produced is of such character as to be offensive to decency or public morals. ^[19] (Emphasis and underscoring supplied)

By Resolution ^[20] of March 16, 2005, this Court noted the February 14, 2005 OCA Report and required the parties to manifest within 20 days whether they were submitting the case on the basis of the pleadings/records already filed and submitted.

Respondent has manifested, by Compliance ^[21] submitted on June 3, 2005, that he is submitting the case for resolution. Appended to the Compliance was the December 28, 2004 Resolution ^[22] of Assistant Prosecutor Gloria Cynthia P. Icao of the Provincial Prosecution Office of Negros Oriental, bearing the approval of the Provincial Prosecutor in I.S. Case No. 2004-544 which affirmed and adopted the Resolution of the MTC of Sta. Catalina, Negros Oriental dismissing Criminal Case No. 3793 (*People v. Janice Sales*) for lack of merit.

This Court noted respondent's Compliance by Resolution ^[23] of July 6, 2005, as it did note complainant's failure to comply with the March 16, 2005 Resolution, by Resolution ^[24] of August 10, 2005.

Section 3(b), Rule 112 of the Rules on Criminal Procedure provides that within ten

(10) days after the filing of a criminal complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent to which a copy of the complaint and supporting affidavits and documents should be attached.

Section 3(e) and (f) of the same Rule provide:

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but **without the right to examine or cross-examine.** They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) **Within ten (10) days after the investigation,** the investigating officer shall **determine** whether or not there is sufficient ground to hold the respondent for trial. (Emphasis and underscoring Supplied)

Moreover, Section 5 of still the same Rule provides:

SEC. 5. *Resolution of investigating judge and its review.* – **Within ten (10) days after the preliminary investigation,** the investigating judge **shall transmit the resolution of the case to the provincial or city prosecutor,** or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction, for appropriate action. The resolution shall state the findings of facts and the law supporting his action, together with the record of the case which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order for his release; (d) the transcripts of the proceedings during the preliminary investigation; and (e) the order of cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

xxx (Emphasis and underscoring supplied)

On top of the above-quoted provision of Sec. 3(e) of Rule 112 that the parties in a preliminary investigation have no right to examine or cross-examine, the Rule on Examination of a Child Witness ^[25] provides that the court shall exercise control over the questioning of children so as to facilitate the ascertainment of the truth and ensure that questions are stated in a form appropriate to their developmental level and protect them from harassment or undue embarrassment. ^[26]

The same Rule on Execution of a Child Witness provides that when a child testifies, the court may, *motu proprio*, order the exclusion from the courtroom of all persons who do not have a direct interest in the case. In issuing such order, the court is to consider, *inter alia*, the developmental level of the child, the nature of the crime, and the nature of his testimony regarding the crime. It may also exclude the public from the courtroom if the evidence to be produced is of such character as to be