SECOND DIVISION

[A.M. No. RTJ-03-1753 (Formerly OCA IPI No. 03-1652-RTJ), February 05, 2004]

CAPISTRANO OBEDENCIO, JR., COMPLAINANT, VS. JUDGE JOAQUIN M. MURILLO, PRESIDING JUDGE, RTC, BRANCH 26, MEDINA, MISAMIS ORIENTAL, RESPONDENT.

R E S O L U T I O N

QUISUMBING, J.:

In a letter-complaint,[1] complainant Capistrano Obedencio, Jr., charged respondent Judge Joaquin M. Murillo, Presiding Judge of the Regional Trial Court of Medina, Misamis Oriental, Branch 26, of unjustly dismissing Criminal Case No. 1401-M (2000) for rape, entitled "*People v. Dexter Z. Acenas.*"

Complainant averred that on May 3, 2000, he and his wife assisted their 14-year-old daughter, Licel Acenas Obedencio, in filing with the Office of the Provincial Prosecutor, Hall of Justice in Cagayan de Oro City, a criminal complaint for rape allegedly committed upon her when she was 11 years old by her uncle, Dexter Z. Acenas. After the preliminary investigation, which the accused did not attend, the case was filed in respondent judge's sala.[2]

On May 25, 2001, following Licel's abduction from their house,[3] complainant sought to secure from the court a copy of the warrant of arrest issued against the accused. To his great surprise, respondent judge told him that the case had been dismissed three days earlier on May 22, 2001.[4] According to respondent judge, Licel Obedencio had come to court, accompanied by her maternal grandparents and Asst. Provincial Prosecutor Emmanuel Hallazgo. There she was presented to affirm her affidavit of desistance.[5]

Complainant claims that the dismissal was marred by serious irregularities. He specifically lamented the absence of any subpoena or notice of hearing from the court to him, his wife, or their counsel. He believes that since Prosecutor Hallazgo, Licel's maternal grandparents, and the accused are relatives, this fact contributed to the unjust dismissal of the case.[6]

In his comment,[7] respondent judge stated that he heard Criminal Case No. 1401-M (2000) on May 22, 2001, upon the request of Prosecutor Hallazgo who was prosecuting the case. During the hearing, Prosecutor Hallazgo presented an affidavit of desistance executed by Licel. Then, Licel took the witness stand and was asked on matters contained in her affidavit. She recanted the allegations in her affidavit-complaint and denied having been molested by her uncle, Dexter. She explained that her mother forced her to file the rape charge because of family inheritance problems. Respondent judge asserts that, with the filing of the affidavit

of desistance, the court had no other recourse but to dismiss the case.[8]

The Office of the Court Administrator (OCA), through Deputy Court Administrator Christopher O. Lock, found respondent judge liable for ignorance of the law for unjustly dismissing Criminal Case No. 1401-M (2000). OCA recommended that respondent judge be reprimanded with warning that a repetition of the same or similar offense would be dealt with more severely.[9]

This Court agrees with the findings of the OCA, but not with the recommended penalty.

Article 220(6)[10] of the Family Code gives to complainant and his wife the right and duty to represent Licel in all matters affecting her interest. Thus, they were entitled to be notified and to attend every hearing on the case. As a judge, respondent is duty-bound to acquaint himself with the cases pending before him.[11] He should have known that Licel filed the criminal complaint with the assistance of her parents, who are her natural guardians.[12] It was incumbent upon respondent judge to inquire into the reason behind their nonappearance before the court instead of simply relying on the bare explanation of the defense counsel that he and his client could not find Licel's parents.[13] Respondent judge ought to remember that the accused, Dexter Acenas, is the maternal uncle of the victim. That Licel came to court with her maternal grandparents, and not her parents, on the day she was examined to affirm her affidavit of desistance, should have alerted respondent judge to be more circumspect. Being still a minor, Licel cannot fully comprehend for herself the impact and legal consequence of the affidavit of desistance. Given her tender age, the probability is that Licel succumbed to illicit influence and undue pressure on her to desist from pursuing her complaint.

Licel was only 14 years old, definitely a minor, on May 22, 2001, when she was presented before respondent's sala to affirm the execution of her affidavit of desistance. This being the case, said affidavit should have been executed with the concurrence of her parents. Licel could not validly give consent to an affidavit of desistance, for a minor is incompetent to execute such an instrument. Yet, notwithstanding the absence of her parents' conformity to the affidavit of desistance and lack of notice to them or their lawyer of the scheduled hearing, respondent judge dismissed the criminal case. Truly, he should have exercised more prudence and caution instead of perfunctorily dismissing the case, considering the nature and gravity of the offense charged.

At the very least, herein respondent should have appointed a guardian *ad litem* for Licel, to protect her welfare and interest, instead of hastily dismissing the rape case. The Rule on Examination of a Child Witness,[14] which took effect on December 15, 2000, governs the examination of child witnesses who are victims of, accused of, or witnesses to a crime. In the absence or incapacity of the parents to be the guardian, Section 5 (a)[15] of said rule provides that the court may appoint a guardian *ad litem* to promote the best interests of the child. This rule was already in effect when respondent judge dismissed the rape case on May 22, 2001.

Respondent is reminded that a judge is the visible representation of the law and, more important, of justice.[16] A judge owes it to the public to be knowledgeable,