

## THIRD DIVISION

**[ A.M. No. RTJ-04-1856 (Formerly OCA IPI No. 03-1750-RTJ), September 30, 2004 ]**

**LORETO JOAQUIN, PETITIONER, VS. JUDGE FE ALBANO MADRID,  
PRESIDING JUDGE, REGIONAL TRIAL COURT SECOND JUDICIAL  
REGION BRANCH 21, SANTIAGO CITY, RESPONDENT.**

### DECISION

**CARPIO MORALES, J.:**

On complaint of Loreto Joaquin,<sup>[1]</sup> Judge Fe Albano Madrid, Presiding Judge of the Regional Trial Court (RTC) of Santiago City, Branch 21, is administratively charged of Gross Misconduct arising from her issuance of orders in Criminal Case No. 3946, *People v. Engr. Loreto Joaquin*, for Homicide, of which complainant is the accused.

### THE FACTS

An Information for Homicide,<sup>[2]</sup> following an inquest, was filed on July 19, 2002 by the Santiago City Prosecutor against complainant at the RTC of Santiago City where it was docketed as Criminal Case No. 3946. The victim being a minor, the case was raffled to Branch 21, of which respondent is the Presiding Judge.

Upon the filing of the Information, complainant at once posted a bailbond which was approved by respondent, on account of which she, by Order of July 19, 2002, ordered his release.

The case was set for arraignment on August 5, 2002 which was reset to September 18, 2002 and then to October 21, 2002.

The scheduled arraignment on October 21, 2002 did not push through, complainant's counsel having filed a Motion to Reset arraignment. The private prosecutor also moved for a deferment of the arraignment in light of a pending Motion for Reinvestigation before the Office of the City Prosecutor in order to upgrade the charge from Homicide to Murder. On even date, the attention of respondent having been invited by the prosecution that an unlicensed firearm was used in the killing of the victim, she, on "review of the information," found out that indeed complainant was charged with the killing of a minor with the use of an unlicensed firearm, hence, she believed the crime to be non-bailable. Respondent thereupon issued an Order<sup>[3]</sup> for the detention of complainant "during the pendency of the case" and reset the pre-trial and arraignment of the case to November 26, 2002.

The following day or on October 22, 2002, respondent left for Baguio City to attend a 2-day seminar. On even date, at about 10:00 a.m., complainant filed a "Motion for the Release of Accused,"<sup>[4]</sup> with notice that said motion be heard at 2:00

p.m. of the same day. Since respondent had left for Baguio City, the motion was referred to the pairing judge, Judge Anastacio D. Anghad, for resolution. Also on even date, Judge Anghad issued an Order<sup>[5]</sup> granting complainant's "Motion for the Release of Accused" upon the following evaluation:

There is no question that the charge filed against the accused is Homicide, which is a bailable offense. Indeed, the accused posted his bail and was approved by the Court. The accused was given temporary liberty.

A perusal of the arguments raised by the accused, thru counsel, convinced this Court that the accused should not have been detained. With due respect to the position taken by the Executive Judge, this Pairing Judge is of the considered view that until and after the charge of Homicide is amended, or a new charge of Murder is filed by the prosecution, the official Information of Homicide so filed by the prosecution dated July 19, 2002, should remain as the proper Information. For obvious reasons, this Court defers to the wide discretion of the prosecution in the filing of charges against suspects. Unless tainted with abuse of discretion or judgment, the Court, normally cannot interfere into the terrain of the prosecution.

Besides, there was an urgent motion to reset and defer the arraignment of the accused filed by the Private Prosecutor, Atty. Nicasio Bautista III, and this fact was noted by the Court when it issued the October 21, 2002 Order. This should have been a caution for the Court that the private prosecutor is also in accord with the resolution of the City Prosecution regarding the filing of Homicide. Declaring the offense charged to be non-bailable, the accused should have been given his day in court to rebut and traverse what the prosecution, thru Private Prosecutor, orally manifested on October 21, 2002.

Finding the urgent motion filed by the accused, thru counsel Atty. Pedro R. Perez, Jr., to be justified and in order, and with due respect to the Order of Detention issued by the Honorable Executive Judge Fe Albano Madrid, this Pairing Judge finds that there is basis in ordering the release of the accused from further detention. This order shall take effect immediately upon receipt of this Order considering that on record his bail of ₱40,000.00 has not been increased revoked or disapproved.

If by this order of release it takes the ire of the Honorable Fe Albano Madrid, then so be it but this judge would not harbor any ill feeling or personal grudge. This judge did it, based from his conscience and based from legal grounds. (Underscoring supplied)

On respondent's return from the seminar in Baguio City and apprised of the grant by Judge Anghad of the "Motion for the Release of Accused" in her absence, she issued on October 29, 2002 an order setting aside the order of Judge Anghad which granted complainant's "Motion for the Release of Accused" and setting to November 5, 2002 the hearing of said motion, along with the Motion to Inhibit her which was also filed.

After the November 5, 2002 hearing of complainant's motions, respondent denied the "Motion for the Release of Accused" in this wise, by Order of even date:<sup>[6]</sup>

Indeed the accused is charged with homicide but it is also alleged in the body of the information that he killed Andrew Ancheta a 16-year old minor with an unlicensed firearm. The accused conceded that the use of an unlicensed firearm is an aggravating circumstance in homicide but insists that there is no change in the penalty.

Republic Act 8294 which took effect on July 6, 1997 provides that if homicide or murder is committed with the use of an unlicensed firearm, such use shall be considered as an special aggravating circumstance. With the enactment of Republic Act 8294 which amended P.D. 1866 the use of an unlicensed forearm is no longer distinct and separate offense but a special aggravating circumstance such that penalty for homicide or murder with the use of an unlicensed firearm was increased from reclusion temporal to reclusion perpetua to death. (Underscoring supplied)

Respondent denied too the Motion to Inhibit her.

Complainant's wife thereupon filed on November 19, 2002 a Petition for Habeas Corpus<sup>[7]</sup> at the Court of Appeals (CA), docketed as SP Proc. No. 73901.

### **THE COMPLAINT**

On May 6, 2003, complainant filed the present administrative complaint for "gross misconduct constituting violations of the Code of Judicial Conduct" arising from

"[t]he violation of the constitutional and legal rights of the Complainant by the Respondent Judge, taken together with the palpable mistakes in the application of fundamental legal principles, utter disregard of the rights of the Petitioner, showing bias, partiality, and abuse of authority, and the errors in the appreciation and interpretation of laws and jurisprudence."

In the meantime, the CA, which issued a writ of Habeas Corpus,<sup>[8]</sup> granted complainant's petition by Decision of June 25, 2003,<sup>[9]</sup> it holding that since complainant was not charged with a capital offense or one which, under the law at the time of its commission and at the time of application for bail, is punishable by *reclusion perpetua* and the evidence of guilt is strong, bail was a matter of right.

### **RESPONDENT'S COMMENT**

In her Comment, respondent admits having ordered the detention of complainant during his scheduled arraignment on October 21, 2002 as she does admit having issued the Order of November 5, 2003.

Inviting attention to the Information filed against complainant, denominated as Homicide,<sup>[10]</sup> which reads:

That on or about the 3<sup>rd</sup> day of July 2002 in the City of Santiago (Isabela), Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously, and with intent to kill Andrew Ancheta a sixteen-year old minor, assault, attack and wound the said Andrew Ancheta with an unlicensed firearm thereby inflicting upon him a gunshot wound on his face which directly caused the death of the said Andrew Ancheta (Underscoring supplied),<sup>[11]</sup>

respondent explains: Since the victim was a minor, the case was immediately sent by the Officer-in-Charge Clerk of Court to her sala which is the designated Family Court in RTC Santiago City. On noting that the information alleged that the accused-herein complainant did "assault, attack and wound" the minor victim with the use of an unlicensed firearm, she wondered why the designation of crime was Homicide in light of her belief that the killing was qualified by abuse of superior strength. Respondent amplifies:

In its Resolution the prosecution did not find the presence of treachery. I did not even think of questioning this but treachery is not only the qualifying circumstance to elevate homicide to murder. Certainly there are others such as abuse of superior strength (Article 248, No. 1, Revised Penal Code). When the prosecution made a finding that the accused did "assault, attack and wound" the minor victim with the use of unlicensed firearm **does it not mean that there was abuse of superior strength**. Can it not be said that the assault and attack of a child with the use of a gun is inherently murder notwithstanding that the prosecution refuse[d] to call it as such. Ordinarily there is no need to assault and attack a child with the use of a firearm. Harsh words or the fist is enough to cow and chastise a child and he could not fight back.

The judge wondered. What will prevail? The name given to the crime or the allegations of the information on how the crime was committed. **It has been held many times that it is the allegations of the information that controls** (sic).

To best illustrate what happens sometimes. An information for child abuse is filed wherein it is alleged that the accused whipped a child which caused injury to him. What really is the crime charged? Is it slight physical injuries or child abuse. It is my humble opinion that the crime is only slight physical injuries because the element of prejudice to the child's development is not alleged in the information. Can the judge allow the accused his liberty on recognizance considering that slight physical injuries is a light offense or exact the recommended bailbond of P20,000.00 or more because the penalty for child abuse is prison mayor minimum (Sect. 10, R.A. 7610)? For whatever action the judge takes, can he be administratively charged with gross misconduct?

To illustrate another situation. An information for acts of lasciviousness was filed alleging that the accused inserted his penis into the mouth of the child. What is the crime? Is it acts of lasciviousness or rape under R.A. 8353? How about an information itself states that the taking of the property was through force ad intimidation? What is the crime? Is it