415 Phil. 230

# EN BANC

# [ A.M. RTJ No. 89-403, August 15, 2001 ]

## MOLINTO D. PAGAYAO, COMPLAINANT, VS. FAUSTO H. IMBING, PRESIDING JUDGE, REGIONAL TRIAL COURT OF ZAMBOANGA DEL SUR, BRANCH XVIII, PAGADIAN CITY, RESPONDENT.

## R E S O L U T I O N

**KAPUNAN, J.:**

This is an administrative complaint filed by Molinto Pagayao, the private complainant in Criminal Case No. 5763, entitled: "*People of the Philippines v. Martin Villanueva*" charging Presiding Judge Fausto Imbing, RTC, Branch 18, Pagadian City, with (a) grave abuse of authority; and (b) gross ignorance of the law, committed as follows:

(1) that on September 4, 1989, it was agreed in open court that the promulgation of judgment in Criminal Case No. 5763 would be made the following week but respondent judge, in violation of said agreement promulgated the judgment on September 6, 1989, thus depriving the complainant the opportunity to be present;
(2) that on September 4, 1989 or before the promulgation of judgment on September 6, 1989, respondent judge already issued an order giving due course to the accused's application for probation and another order granting temporary liberty to the accused;
(3) that respondent judge appreciated the mitigating circumstance of voluntary surrender even if no evidence was offered to prove it;
(4) that respondent judge, likewise, appreciated the mitigating circumstance of voluntary plea of guilty despite the fact that the accused changed his plea of not guilty to a plea of guilty only after the prosecution had presented two witnesses;
(5) that in view of the wrongful appreciation of mitigating circumstances, respondent judge imposed a penalty which allowed the accused to apply for probation;
(6) that a motion for reconsideration was filed calling the attention of respondent judge to correct the mistake but said motion was denied.[1]

In his Comment,[2] respondent judge maintained that he did not err in crediting the two mitigating circumstances to the accused and in sentencing him to only 4 years, 2 months, and 1 day to 6 years. Anent the charge of abuse of authority, he explained that there was no agreement between him and the private offended party that judgment shall be promulgated a week after September 4, 1989 and in her presence. What is actually mandatory is the presence of the accused. The error in the dates of the Orders he issued on September 6, 1989 granting the accused's application for probation and for temporary liberty was committed by his clerk who inadvertently dated them September 4, 1989. An affidavit of Cesar Quiamco, Staff Assistant II, acknowledging the mistake, was attached by the respondent judge. He further stated that the complaint filed against him was orchestrated by Prosecutor

Pedro Jamero with the purpose of harassing him.

The case was referred for investigation, report and recommendation to Justice Godardo A. Jacinto of the Court of Appeals.[3] In a letter dated January 25, 1991, complainant requested that hearing of the case be conducted in Pagadian City, instead of Manila due to financial constraints.[4] Thus, Executive Judge Franklin A. Villegas, RTC, Branch 19, Pagadian City, Zamboanga del Sur was tasked to receive the evidence of the complainant.[5]

Pursuant to the Court's resolution, the Investigating Justice submitted his report and made the following findings:

C. Findings:

> Respondent's suspicion that the complaint was orchestrated by the provincial prosecutor appears to be justified. In the whole length and breadth of her testimony, Molinto Pagayao never complained about the mitigating circumstances that were credited to the accused and the penalty that was meted out to him. She likewise did not protest over the date of the orders issued by respondent which respectively gave due course to the application for probation and authorized the release of the accused on recognizance to Ms. Lolit Ybanez-Pacana. While she expressed displeasure about her failure to attend the promulgation of judgment for lack of notice, complainant was more concerned with the release of the accused even before she was paid the amount of P30,000.00 that was awarded to her as civil liability. Evidently, had complainant been paid the aforesaid civil liability, she would not have filed the herein complaint against respondent. Apparently, she was not properly advised by the prosecutor on the mechanics of enforcing the civil aspect of the judgment. Incidentally, the Probation Act (PD 768, as amended) does not require prior payment by the accused of the civil liability awarded in the judgment before the trial court may act on his application for probation or authorize his release on recognizance to the custody of a responsible member of the community (Sec. 7).
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> With respect to the two orders dated September 4, 1989, (Annexes 6 & 7, Complaint) which seem to have been issued before the promulgation of judgment on September 6, 1989, these were satisfactorily explained by witness Cesar Quiamco who acknowledged his mistake in that regard. According to Quiamco, he was the one who prepared the application for probation upon request of the accused, including the two orders which he later submitted to respondent who casually signed them. Quiamco testified that he prepared the application and the two orders on September 6, 1989 after the judgment was promulgated, but through inadvertence he put the date as September 4, 1989. In the absence of any evidence to the contrary, there is no reason to discredit Quiamco's testimony which was substantially corroborated by respondent and Mrs. Trinidad Varquez.
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> In the context of the foregoing discussion, this Investigator finds that the

first charge of grave abuse of authority which, as pointed out earlier, did not really emanate from complainant has not been substantiated.

Like the first count, the charge of gross ignorance of the law appears to have been leveled against respondent not by complainant herself but by the prosecutor who assisted her in the preparation of the complaint. Nevertheless, it is still important to dwell on its merit if only to emphasize on respondent judge that he did commit certain errors which tended to favor the accused and enabled the latter to avail of the benefits of probation to which he was not entitled.

As adverted to earlier, respondent judge took into account over the objection of the public prosecutor the mitigating circumstances of plea of guilty and voluntary surrender. Evidently, respondent erred in appreciating the first.

The plea of guilty was made by the accused only after the prosecution had presented two witnesses. Paragraph 7, Article 13 of the Revised Penal Code explicitly requires that in order to mitigate liability, the plea of guilty must be entered prior to the presentation of the People's evidence. Construing this provision, the Supreme Court has consistently ruled that a plea of guilty made after the prosecution has presented some evidence is not mitigating (People v. Lungbos, 162 SCRA 383, 388; People v. Verano, Jr., 163 SCRA 614, 621). In Lambino (103 Phil. 504), where the accused changed his plea after the prosecution's first witness had finished his direct testimony, his new plea of guilty was not considered to mitigate his culpability. The reason for this is that a plea of guilty given after the prosecution has started its evidence is not spontaneous or made with a sincere desire to repent but merely speculative and is most likely made on the belief that the trial will result in his conviction (People v. De la Cruz, 63 Phil 874).

On voluntary surrender, a respondent explained in his judgment why it should be considered to mitigate the liability of the accused. This is found in paragraph 2 thereof which reads:

> The records appears (sic) that the accused was in jail when the warrant of arrest was issued on joint affidavit of Demetrio Villanueva and Teodorico Ybanez. The accused has made a confession inside the jail of Labangon, Zamboanga del Sur that he was the one who killed Apil Pagayao and the warrant of arrest which was signed on March 25, 1988. It shows that the warrant of arrest was issued after the accused was already detained in jail (Exh A, Complaint)
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> Similarly, in his Comment respondent has stated:
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> x x x As shown in the affidavit of prosecution witness, Demetrio Villanueva (Annex 2, 2-a), he stated "It was Martin Villanueva who killed Apil Pagayao because after the policeman and army soldier arrived, he came out when there

> was already light." (Annex 2-a-1): "And after the policeman and an army soldier arrived, we together with Martin Villanueva were brought to the Police Station for investigation. And on March 20, 1988, while Martin Villanueva was inside the jail, he admitted that he was the one who killed Apil Pagayao." (Annex 2-b). (Exh 5).

It is obvious that respondent based his finding on the joint affidavit of prosecution witnesses Demetrio Villanueva and Teodorico Ybanez, in which they stated that upon the arrival of a policeman and a soldier, the accused "came out when there was light." In other words, the accused was not actually arrested by the authorities but he gave himself up to them as soon as they arrived. Thereafter, according to the same affidavit, the accused went with the law enforcers to the police station. In People v. Dayrit (L-14388, May 20, 1960), where the offender fled to and hid in a hotel, but later presented himself to a policeman who had followed him there, the mitigating circumstance of voluntary surrender was credited in his favor. The benefit of this circumstance was similarly given to one who, after committing the offense and having the opportunity to escape, voluntarily waited for agents of the authorities to whom he gave himself up (People v. Parana, 64 Phil 331). Hence, contrary to the allegation in the complaint, respondent correctly considered voluntary surrender as a mitigating circumstance on the basis of the joint affidavit of prosecution witnesses in support of the information, which joint affidavit is binding on the prosecution itself.

In conclusion, the herein investigator finds that respondent erred in appreciating two mitigating circumstance in favor of the accused, which resulted in the imposition of a much lighter penalty on the accused, with only one mitigating circumstance to his credit, the accused should have been sentenced to an indeterminate penalty, the minimum of which would be within the range of prision mayor in its minimum period (6 years and 1 day to 8 years) and the maximum, within the range of reclusion temporal also in its minimum period (12 years and 1 day to 14 years and 8 months).

Significantly, even conceding that the accused was entitled to two mitigating circumstances, as urged by respondent, the minimum of the imposable penalty would still be within the range of prision correccional in its medium period or from 2 years, 4 months and 1 day to 4 years and 2 months, and the maximum of which would be within the range of prision mayor in its medium period or from 8 years and 1 day to 10 years. Needless to state, respondent's improvidence in the computation of the penalty resulted in the grant of probation to the accused who was not entitled to its benefits under the law.

## D. Recommendation

There is no evidence on record to show that the respondent acted in bad faith or with malice in issuing the orders and the judgment complained of. In all probability, he simply committed an error of law without the