

FIRST DIVISION

[[A.M. No. MTJ-96-1075, November 27, 2000]

**PILAR VDA. DELA PEÑA, COMPLAINANT, VS. HON. JUDGE
TIBURCIO V. EMPAYNADO, JR., RESPONDENT.**

R E S O L U T I O N

KAPUNAN, J.:

In her verified complaint filed before the Office of the Court Administrator, Pilar Garcia Vda. de Dela Peña charged Judge Tiburcio V. Empaynado, Jr. of the Municipal Trial Court of Jaen, Nueva Ecija, with gross ignorance of the law.

The verified complaint, written entirely in Filipino, alleges as follows:

1. Na ako ang biyuda ni Leoncio dela Peña na binaril at napatay ni Emmanuel Leabres doon sa San Pablo, Jaen, Nueva Ecija;
2. Na nais kong ipagharap ng kasong administratibo si Hukom Tiburcio V. Empaynado, Jr. ng Jaen Municipal Trial Court, Jaen, Nueva Ecija bunga ng KAWALANG ALAM SA BATAS (Gross Ignorance) at malisyosong pagtangga na ilipat sa Provincial Jail ang akusadong si EMMANUEL LEABRES;
3. Na si Emmanuel Leabres ay nahulihan ng isang paltik at walang licensiyang baril na kalibre .38, may markang Smith & Wesson at Serial No. 155 kasama ang apat na bala at dalawang basyo ng kalibre .38 noong Hunyo 15, 1995 sa San Pablo, Jaen, Nueva Ecija. Ginamit ni Emmanuel Leabres ang naturang baril sa pagpatay sa aking asawa na si Leoncio dela Peña. Kalakip nito bilang Annex "A" ang sipi ng Criminal Complaint sa Kasong Kriminal Bilang 30 (95) na may titulong People of the Philippines versus Emmanuel Leabres;
4. Na sa kabila na ang parusa sa illegal possession of firearm and ammunitions ay kamatayan kung ginamit sa pagpatay ang walang licensiyang baril (paragraph 2 Sec. 1 of Presidential Decree No. 1866) kusa at may masamang loob na itinakda ni Hukom Tiburcio V. Empaynado ang piyansa ni Emmanuel Leabres sa bailbond na P50,000.00. Kalakip nito bilang Annex "B" ang Order ni Hukom Empaynado na may petsang Hulyo 5, 1995;
5. Na pinayagan pang babaan ni Hukom Tiburcio V. Empaynado mula sa P50,000.00 hanggang P40,000.00 ang piyansa para sa pansamantalang paglaya ni Emmanuel Leabres, kalakip nito bilang "Annex C" ang Motion To Reduce Bail Bond na walang petsa na isiginawa ni Emmanuel Leabres na pinagbigyan naman ni Hukom Tiburcio V. Empaynado;
6. Na sa kabila ng mahigpit na kahilingan namin na ilipat mula sa Jaen,

Municipal Jail na binibigyan ng special treatment si Emmanuel Leabres tungo sa Nueva Ecija Provincial Jail, Cabanatuan City ay malisyosong tumanggi si Hukom Empaynado na ilipat si Leabres hanggang ngayon (Hulyo 26, 1995), gayong natapos na niya ang preliminary investigations sa Illegal Possession of Firearm noong Hulyo 5, 1995 at Homicide noong Hulyo 10, 1995. Kalakip nito bilang Annex "D" ang Order ni Hukom Empaynado sa kasong Kriminal Bilang 33 (95).^[1]

Complainant's husband, Leoncio Dela Peña, died from a gunshot wound allegedly inflicted by Emmanuel Leabres. Two criminal complaints were filed against the accused in connection with the said incident. Criminal Case No. 33(95) for Homicide and Criminal Case No. 30(95) for Violation of Presidential Decree No. 1866 (Illegal Possession of Firearms). Respondent judge forwarded the criminal complaint in Criminal Case No. 33(95) to the assistant provincial prosecutor for the conduct of preliminary investigation.

The present complaint of Mrs. Dela Peña stemmed from the acts of Judge Empaynado (respondent judge) in connection with the preliminary investigation in Criminal Case No. 30(95). According to Mrs. Dela Peña, respondent judge acted in gross ignorance of the law when, despite the fact that the penalty of death is imposable for the crime of illegal possession of firearm where the firearm was used in killing a person, he (respondent judge) allowed the accused in that case to be provisionally released on bail of P50,000.00. Moreover, upon the motion of the accused, respondent judge reduced the bail to P40,000.00. Mrs. Dela Peña further alleges that respondent judge maliciously denied the request to transfer the accused from the municipal jail of Jaen, where he is being given special treatment, to the provincial jail.

Upon the instance of the Deputy Court Administrator Bernardo P. Abesamis, respondent judge filed his comment on the verified complaint. The essential points of the comment, which was likewise written in Filipino, are as follows:

1. The charge that he maliciously denied the request to transfer the accused from the Municipal to the Provincial Jail is belied by the Order, dated 21 July 1995, where he expressly directed the Clerk of Court to "make arrangement with the Chief of Police of Jaen, Nueva Ecija, for the immediate transfer to the Provincial Jail at Cabanatuan City of the accused;"
2. The complaint filed against the accused in Criminal Case No. 30(95) is only for simple Illegal Possession of Firearm which is punishable by *reclusion temporal* in its maximum period to *reclusion perpetua*, not death as claimed by complainant.
3. Accused cannot be held liable for illegal possession in its aggravated form, i.e., homicide or murder committed with the use of an illegally possessed firearm, which entail the penalty of death, because the complaint filed against him did not specifically allege the fact of killing with the use of the illegally possessed firearm;
4. The bail was reduced from P50,000.00 to P40,000.00 after taking into consideration the fact that simple illegal possession of firearm is a