

## **FIRST DIVISION**

**[ A.M. No. RTJ-96-1349, April 18, 1997 ]**

**SPOUSES JOSE AND TRINIDAD BACAR, COMPLAINANTS,  
VS. JUDGE SALVADOR P. DE GUZMAN, JR., RESPONDENT.**

### **D E C I S I O N**

**PADILLA, J.:**

In this petition by way of complaint, dated 11 April 1994, petitioner-spouses Jose and Trinidad Bacar pray for the dismissal from the service of respondent Judge Salvador P. de Guzman, Jr., presiding judge of the Regional Trial Court of Makati, Branch 142, on the grounds of: 1) gross ignorance of the law, and; 2) rendering an unjust judgment in Criminal Cases Nos. 89-1360 and 89-2878 for homicide and attempted homicide respectively, both entitled "People of the Philippines v. Gerardo Fortaleza Marcial".

The antecedent facts are as follows:

On 30 March 1989, an information for homicide (for the death of one Maximo Bacar, son of herein petitioner-spouses) was filed by 2nd Assistant Fiscal Domingo A. Israel against Gerardo Fortaleza Marcial before the Regional Trial Court of Makati, Branch 142, docketed as Criminal Case No. 89-1360.

On 7 June 1989, another information (this time for attempted homicide committed against one Edgar Mabuyo) was filed by the aforesaid Fiscal Israel against the same Gerardo Fortaleza Marcial before the same court, docketed as Criminal Case No. 89-2878.

On 13 May 1992, after trial on the merits, a Joint Judgment in Criminal Cases Nos. 89-1360 and 89-2878 was rendered by respondent judge, finding the accused Gerardo Marcial guilty beyond reasonable doubt of the crimes charged. The dispositive part of the decision reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Gerardo Marcial guilty beyond reasonable doubt of the crime of Homicide in Criminal Case No. 89-1360 and of the offense of Slight Physical Injuries in Criminal Case No. 89-2878. No modifying circumstances having attended the commission of said crimes, the accused is hereby sentenced to an indeterminate penalty of from eight (8) years and one (1) day of prision mayor to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal with respect to Criminal Case No. 89-1360 and to suffer imprisonment of thirty (30) days of arresto menor as regards Criminal Case No. 89-2878.

The accused is further ordered to indemnify the heirs of the victim Maximo Bacar in the amount of P50,000.00 as moral damages and to pay the amount of P33,572.00

as actual damages and costs of suit.

SO ORDERED.

Makati, Metro Manila, May 13, 1992."

On 13 August 1992, the accused, Gerardo Marcial, filed a motion for reconsideration of the joint judgment, alleging among others, that the court erred in imposing the penalties without considering at least two (2) mitigating circumstances, namely: sufficient provocation or threat on the part of the offended party which immediately preceded the act, and; that the accused had no intention to commit so grave a wrong as that committed.

On 28 October 1992, herein petitioners filed an opposition to said motion. However, on 13 November 1992, the lower court granted the motion for reconsideration filed by the accused. After reassessing the facts of the case on the basis of said motion, respondent judge took into account the mitigating circumstances of want of intent to commit so grave a wrong and sufficient provocation which immediately preceded the act and accordingly, reduced the penalty in Criminal Case No. 89-1360 to six (6) years of prision mayor, while retaining the penalty in Criminal Case No. 89-2878, i.e., imprisonment of thirty (30) days of arresto menor.

The lower court justified its order thus:

"It appearing upon a re-examination of the evidence on record that the encounter between the group of the accused Gerardo Marcial and that of the victims Maximo Bacar and Edgar Mabuyo precipitated a 'free for all fight', that in such a melee, confusion broke loose and was expected to ensue as a matter of course; that the participation in the melee of each of the members of the respective groups of the victims and the accused was unexpected and unpremeditated; that the victim Edgar Mabuyo admitted that prior to the incident, there was heckling which came from him directed to the group of the accused Gerardo Marcial and that it was he who started it out, that accused Gerardo Marcial confined himself to giving a single thrust with an icepick on the right arm of Edgar Mabuyo and at the back of Maximo Bacar from which it can be safely inferred that the accused had no intention to commit so grave a wrong, for otherwise, he would have persisted in attacking the victims to the point of finishing them off; the Court resolves to accord the accused Gerardo Marcial the benefit of the mitigating circumstances of want of intent to commit so grave a wrong and sufficient provocation which immediately preceded the act in accordance with Article 13, paragraphs 3 and 4 of the Revised Penal Code and hereby reconsiders the Decision dated May 13, 1992 in the foregoing respect."<sup>[1]</sup>

On 14 December 1992 and 16 April 1993, respectively, the prosecution filed a motion for reconsideration and an addendum to said motion. On 25 May 1993, the accused filed his comment and/or opposition to the prosecution's motion for reconsideration. On 9 December 1993, respondent judge issued an order denying the prosecution's motion for reconsideration for lack of merit. On 4 January 1994, the prosecution filed another motion for reconsideration and clarification which

respondent judge denied anew on 21 January 1994.

On 11 April 1994, the spouses Jose and Trinidad Bacar, parents of the deceased — victim Maximo Bacar in Criminal Case No. 89-1360, filed the present petition praying for the dismissal of respondent judge Salvador P. de Guzman, Jr., presiding judge of the RTC of Makati, Branch 142, for gross ignorance of the law and for rendering an unjust judgment in said consolidated cases.

On the first issue, petitioners allege that respondent judge committed gross ignorance of the law when he accorded the accused the mitigating circumstances of want of intent to commit so grave a wrong and sufficient provocation which immediately preceded the act in accordance with Art. 13, pars. 3 and 4 of the Revised Penal Code because these cited provisions are not applicable in either or both criminal cases. They contend that lack of intent to commit so grave a wrong cannot apply in Criminal Case No. 89-2878 where the accused was found guilty of slight physical injuries because lack of intention to kill is not mitigating in crimes against persons, citing the case of *People v. Dalacgac*<sup>[2]</sup> where it was held that in crimes against persons who do not die as a result of the assault, the absence of the intent to kill reduces the felony to mere physical injuries, but it does not constitute a mitigating circumstance under Art. 13, par. 3.<sup>[3]</sup>

Additionally, said mitigating circumstances cannot apply to Criminal Case No. 89-1360 (for Homicide) for when the accused stabbed the unarmed and defenseless Maximo Bacar at his back with an icepick, it is crystal clear, so petitioners contend, that the intention of the accused Gerardo Marcial at that particular moment when he executed or committed the stabbing was to kill and finish off Maximo Bacar and not to harm him only.<sup>[4]</sup> Petitioners cite the case of *People v. Boyles, et al.*,<sup>[5]</sup> to wit:

"Article 13, par. 3 of the Revised Penal Code addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act; not to his intention during the planning stage. Therefore, when, as in the case under review, the original plan was only to rob, but which plan, on account of the resistance offered by the victim, was compounded into the more serious crime of robbery with homicide, the plea of lack of intention to commit so grave a wrong cannot be rightly granted. The unforgettable fact remains that when they ganged up on their victim, they employed deadly weapons and inflicted on him, mortal wounds in his neck. At that precise moment, they did intend to kill their victim, and that was the moment to which Art. 13, par. 3 refers."<sup>[6]</sup>

As for the mitigating circumstance of sufficient provocation, petitioners contend that this is not applicable to Criminal Case No. 89-1360 (for Homicide) for while Edgardo Mabuyo, the victim in Criminal Case No. 89-2878, admitted that prior to the incident, there was heckling which came from him directed at the group of the accused Gerardo Marcial and that he was the one who started the heckling, and that the heckling triggered the "free for all fight", there was however, no iota of evidence that the deceased Maximo Bacar made any provocation. It is further argued by petitioners that under said Article 13, par. 4, RPC, the provocation to be considered mitigating must originate from the offended party. Therefore, said mitigating circumstance cannot be appreciated in the case involving the deceased Maximo Bacar as it is undisputed that he himself never gave or caused any provocation.

Petitioners contend that instead of according the accused Gerardo Marcial the aforesaid mitigating circumstances, respondent judge should have considered the aggravating circumstances of abuse of superior strength under Art. 14, par. 15, of the Revised Penal Code and treachery under Art. 14, par. 16, of the same Code.<sup>[7]</sup>

On rendering an unjust judgment, petitioners allege that in imposing a straight penalty of six (6) years imprisonment for homicide, after taking into consideration the aforesaid mitigating circumstances, respondent judge has rendered an unjust judgment in Criminal Case No. 89-1360. It is contended that under the graduation and application of penalties, the penalty that should be imposed can in no case be justified to only six (6) years "flat".<sup>[8]</sup>

The present complaint was referred to respondent judge for comment by then Deputy Court Administrator Juanito A. Bernad in his First (1st) Indorsement dated 27 May 1994. In reply thereto, respondent judge filed a motion, dated 3 June 1994, requesting for an extension of twenty (20) days within which to file his comment for the reason that he needed to borrow the records of said Criminal Cases Nos. 89-1360 and 89-2878 from the Makati Regional Trial Court so that he may be able to file an intelligible comment. He also explained that per his recollection, when accused Marcial filed his motion for reconsideration of the joint judgment, respondent judge, to be sure that he would not commit an error, sought a second opinion from one Judge Nemesio Felix who allegedly opined that the said accused should have been given the benefit of homicide in a "tumultuous affray" with no intent to commit the crime, and of self-defense, and suggested a reduced straight penalty of anywhere from two (2) years to six (6) years. Respondent's request for extension was granted by then Deputy Court Administrator Juanito A. Bernad per his letter dated 20 June 1994.

However, as his comment was not forthcoming, tracer letters, dated 8 November 1994 and 10 October 1995, were sent to respondent judge by the Office of the Court Administrator (OCA, for brevity), reiterating the directive for him to file his comment on the complaint against him.

Meanwhile, complainants filed a letter with the OCA dated 20 October 1995 reiterating the charges against respondent judge and particularly assailing his order of 13 November 1992 imposing a straight penalty of six (6) years so as to enable the accused to avail of the benefits of probation and prayed that judgment be imposed by this Court on the accused to vindicate the death of their son. They also took exception to the statement of respondent judge in the assailed order that their motion for reconsideration dated 10 December 1992 was filed out of time.<sup>[9]</sup>

Since respondent judge continually failed to file his comment, this Court issued a Resolution, dated 1 July 1996, requiring respondent judge to 1) show cause why he should not be disciplinarily dealt with or held in contempt for failure to comment on the complaint, and; 2) file the required comment on the complaint. In the same Resolution, the complainants were advised that their prayer to impose the correct penalty in the criminal charges cannot be granted since the present proceedings involve only the administrative liability, if any, of respondent judge.

On 6 August 1996, respondent judge finally filed his comment. He explained therein why he took into consideration the aforesaid mitigating circumstances and contends

that in doing so, he merely exercised his discretion and judgment. As to why he should not be disciplinary dealt with or held in contempt for failure to file comment, respondent judge set forth the following reasons:

"1. In the belief that the complaint for ignorance of the law (for appreciating the two (2) mitigating circumstances) was unquestionably, obviously and completely baseless because they were acts of judicial discretion in the appreciation of evidence, respondent did not give the matter the priority that it deserved.

2. The Bacar spouses assured respondent during a visit to him in the Pasay City RTC that they were going to withdraw their complaint.

3. Respondent had been under severe stress since the first week of November 1995 to the present when he discovered that Judge Salvador Abad Santos, executive judge of the Regional Trial Court of Makati, x x x initiated an administrative complaint against him x x x"[10]

On 14 August 1996, respondent judge filed an urgent ex-parte motion for second (2nd) extension of time to file his explanation, and; on 28 August 1996, respondent finally filed his explanation on why he should not be disciplinarily dealt with or held in contempt of court for his failure to file a comment.

After evaluating the foregoing facts, the Office of the Court Administrator made the following findings:

1. Respondent cannot be held liable for rendering an unjust judgment by considering in favor of the accused the two (2) mitigating circumstances. Under the Rules of Court, a judgment of conviction may, upon motion of the accused, be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. Moreover, errors in the application of the law and the appreciation of the evidence are judicial in nature. The remedy therefore of the complainants should likewise be judicial.

2. However, respondent may be held liable for gross ignorance of the law for imposing a straight penalty of six (6) years of imprisonment on the accused in his modified judgment in the case for homicide. The application of the Indeterminate Sentence Law is mandatory where imprisonment would exceed one (1) year.[11] And in applying the Indeterminate Sentence Law for offenses penalized under the Revised Penal Code, the indeterminate sentence should have a fixed minimum and maximum.[12] In this case, what was imposed was a straight penalty which is erroneous.[13]

We agree with aforesaid findings of the Office of the Court Administrator on both points.

Not every error or mistake of a judge in the performance of his duties makes him liable therefor. To hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that he has erred, would be nothing short of harassment and would make his position unbearable. For no one called upon to try the facts or interpret the law in the process of administering justice can be infallible