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[No. RTJ-95-1303, August 11, 1997]

ATTY. GLADDY S. BERNABE, COMPLAINANT, VS. HON. JUDGE SALVADOR A. MEMORACION, RESPONDENT.

D E C I S I O N

DAVIDE, JR., J.:

In his letter dated 20 June 1994 and addressed to the Court Administrator, complainant Atty. Gladdy S. Bernabe of the Commission on Human Rights (CHR) asked this Court to determine the appropriateness of the act of respondent Judge Salvador A. Memoracion in modifying the sentence of the accused in Criminal Case No. 1771-227.

From the documents submitted by the complainant to support his allegations, it appears that an information for Homicide with Double Frustrated Homicide was filed with the Regional Trial Court (RTC) of Basilan against three Marine soldiers namely, Pfc. Vicente Machon, Pfc. Jerramy Degollado, and Pfc. Renato Castulo. That case was docketed as Criminal Case No. 1771-227 and raffled to Branch 2 of the said court, which is presided by the respondent Judge. After trial on the merits, the respondent Judge rendered a judgment, the decretal portion of which reads in part as follows:

> WHEREFORE, premises considered, this Court finds the accused, PFC. VICENTE MACHON, PFC. JERRAMY DEGOLLADO and PFC. RENATO CASTULO, GUILTY beyond reasonable doubt, all as principal, for the crime of Homicide and Double Frustrated Homicide as charged in the information and which crime is penalized and defined under Art. 249 of the Revised Penal Code.
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> And taking into consideration all the aggravating circumstances, like evident premeditation, used [sic] of high-powered firearms, revenge, nocturnity and grave abuse of power, which were presence [sic] in the commission of the crime, as well as the provisions of the Indeterminate Sentence Law, hereby sentences each and every accused to suffer an imprisonment of TWELVE (12) YEARS, FIVE (5) MONTHS AND ELEVEN (11) DAYS, AS MINIMUM to FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS as maximum period to Reclusion Temporal in its medium period.
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> And ordering each of the three (3) accused to jointly and severally pay the heirs of the late PO1 Efren Cruz in the amount of P50, 000.00 as moral damages. And further to pay jointly and severally another amount of P 500.00 as cost of the proceeding, but in both cases, no subsidiary

imprisonment shall be meted on anyone of them in case of their insolvency.

Upon the accused's second motion for reconsideration, however, the respondent Judge modified the judgment by reducing the imprisonment penalty to six (6) years. He denied the prosecution's motion for reconsider the modification and granted the application of the accused for probation.

The respondent Judge admitted that he modified the decision but he did so before it became final, which is allowed under Section 7, Rule 120 of the 1985 Rules of Criminal Procedure. He claimed that the reasons adduced by the accused in their motion for the modification of the judgment "are legal, reasonable and justifiable and are within the context of the evidences [sic] presented by the parties"; besides, the prosecution did not file an opposition to that motion nor did it present any objection during the hearing thereof, but instead, it manifested that it was submitting the motion for resolution without any arguments. He further alleged that he denied the prosecution's motion for the reconsideration of the modified judgement because its opposition, which was presented after he had already granted the accused's motion, did not present any legal issues that would justify the setting aside of the said order. He then concluded that "there was no error of judgment or grave abuse of discretion ever committed in modifying [the] decision of October 4, 1994."

In his Memorandum to the Court, then Deputy Court Administrator Juanito A. Bernad, with the approval of Court Administrator Ernani Cruz Paño, recommended that the respondent Judge be (a) REPRIMANDED for his failure to exercise due care in applying the penalties provided for in the Revise Penal Code or the other laws, with a stern warning that a repetition of similar offense in the future will be dealt with more severely; and (b) REQUIRED to explain the discrepancies in his date of birth appearing in his service record, GSIS membership form, and the Office of the Bar Confidant, as well as the reason why he filed a letter dated 27 August 1991 requesting that his date of birth be changed from 14 August 1927 to 20 March 1924.

On 15 March 1995, this court directed the respondent Judge to SHOW CAUSE why no disciplinary sanction should be imposed upon him for gross ignorance of law or incompetence and for grave abuse of authority (1) for imposing upon each of the three accused in Criminal Case No. 1771-227 a single indeterminate penalty of 12 years, 5 months, and 11 days as minimum, to 14 years, 10 months, and 20 days, as maximum; and (2) for later reducing the penalty to six (6) years for each of the accused. It further resolved to REQUIRE the respondent Judge to explain the discrepancies in his alleged date of birth as appearing in his service record, GSIS membership form, and his record in the Office of the Bar Confidant.

In his Reply and Manifestation dated 30 March 1995, the respondent Judge contended that since the judgment was not yet final, he could modify it pursuant to Section 7, Rule 120 of the 1985 Rules of Criminal Procedure; that he found the modification to be in order after a review of all the facts and circumstances of the cases and an evaluation of the two motions of the accused; and that if any error was committed, it was one of judgment which cannot be subject of any administrative charge. He stressed that the prosecution could have appealed but did not do so, thereby showing that it was satisfied with the modified sentence. He

further contended that he committed an honest mistake in appreciating in the original decision the aggravating circumstances of evident premeditation, presence of superior force, nocturnity, revenge, and grave abuse of power because these are not even alleged in the information. Besides, he took into account the fact that the accused, who are members of the Marine Corps of the Philippine Navy, were first offenders and had no intention to commit so grave a wrong as that committed. Had he not shown them any compassion and understanding by granting them probation, he would have suffered "outrage, anger and madness from the whole battalion of Marine Officers and Men in Basilan," and if that outrage and anger were spewed upon him no government officials, not even members of the judiciary would come forward to give aid and comfort, except his family and immediate relatives. He also impressed upon this Court that the situation in Basilan is far different from that in other provinces in the country, for in Basilan "[k]idnappings with ransoms are weekly occurrences, big time illegal loggers, high incidents [sic] of drug trafficking are common crimes which in spite of the presence of large number of armed forces remained unabated." He further narrated the sad plight of the Judges assigned in Basilan.

As to the discrepancy in his date of birth, the respondent Judge now believes, after considering the circumstances, that the date appearing in the baptismal certificate which he submitted is not correct; hence, he will just continue to perform his duties as a Judge on the basis of the date of birth – 14 August 1927 – appearing in his service record.

On 26 July 1995, the Court referred this case to the Office of the Court Administrator for evaluation, report, and recommendation.

The Office of the Court Administrator, through Deputy Court Administrator Zenaida N. Elepaño, then submitted a Memorandum wherein it made the following findings:

> A careful perusal of the records and of the circumstances attending the case, convinces us that respondent Judge indeed committed errors and acted without careful and prudent examination and study of the facts and the applicable law when he reduced the sentence he originally imposed to (6) years. This manifestation of ignorance of the law by respondent Judge cannot be tolerated with a misplaced compassion, even considering the hazardous environment of this court in what is often times a war zone in Basilan. As a magistrate of law, he is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules. While judges should not be disciplined for inefficiency on account merely of occasional mistakes or errors of judgment, it is imperative that they be conversant with basic legal principles. x x x (Ubongon vs. Mayo, 99 SCRA 30). When a judge acts fraudulently or with gross ignorance, administrative sanctions are called for as an imperative duty of the court (Guillermo vs. Judge Reyes, A.M. No. RTJ-93-1088, January 18, 1995).

She then recommended that the respondent Judge be REPRIMANDED and be meted the penalty of fine in the amount of five thousand pesos (P5,000.00) with stern warning that a repetition of the same or similar act or offense in the future will be dealt with more severely.

We agree with the Office of the Court Administrator that the respondent Judge showed gross ignorance of the law when he reduced the penalty to only six years. We find, however, more of such ignorance. Accordingly, a more severe penalty is in order.

Although captioned as one for "Homicide with Double Frustrated Homicide," the information in Criminal Case No. 1771-227 is actually for three separate crimes of (a) homicide for the death of SPO1 Efren Cruz, (b) frustrated homicide for the infliction of gunshot wounds on SPO3 Antonio Martin, and (c) frustrated homicide for the infliction of gunshot wounds on PO3 Amergani Mariano. The information reads as follows:

> That on or about the 16th day of August 1991, and within the jurisdiction of this Honorable Court, viz., at Townsite, Municipality of Maluso, Province of Basilan, Philippines, the above named accused, armed with M-16 Rifles, conspiring and confederating together, aiding and assisting one with the other, and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and shoot at the persons of SPO3 Antonio Martin, PO3 Amergani Mariano, PO3 Arip Mohammad and SPO1 Efren Cruz with their firearms, thereby inflicting gunshot wound upon the body of SPO1 Efren Cruz which caused his death, while SPO3 Antonio Martin, PO3 Amergani Mariano and PO3 Arip Mohammad sustained gunshot wounds on their bodies, thus the accused have performed all the acts of execution which would have produced the crime of multiple homicide as a consequence thereof, but which nevertheless did not produce it by reasons or causes that is (sic) due to the medical assistance rendered to the latter, which prevented their death.
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> Contrary to law.

Nowhere is it suggested that what was committed was a complex crime under Article 48 of the Revise Penal Code. Neither is it shown that the accused has moved to quash the information on the ground of duplicity under paragraph (e), Section 3, Rule 117 of the Rules of Court. The accused could therefore be convicted of three separate crimes and sentenced to suffer the penalty for each of them, as they were deemed to have waived the objection to multiplicity of charges.[1] Accordingly, the single indeterminate penalty of imprisonment imposed by the respondent Judge after applying the Indeterminate Sentence Law is patently wrong.

Even if it be conceded ex gratia that a complex crime was charged and proved, the application of the indeterminate penalty is also erroneous. Under such assumption, the penalty imposable is maximum period of the penalty for the more serious offense, viz., homicide under Article 249 of the Revise Penal Code, which carries a penalty of reclusion temporal. Such maximum period is from 17 years, 4 months, and 1 day to 20 years. Applying the Indeterminate Sentence Law, the indeterminate penalty would be that whose minimum would be within the range of the penalty next lower in degree (prision mayor) to the prescribed penalty (reclusion temporal) and whose maximum should be that which, in view of the modifying circumstances, could be properly imposed under the Revise Penal Code.[2] Therefore, the minimum of the indeterminate penalty shall not exceed prision mayor , whose range is from six (6) years and one (1) day to twelve (12) years.[3] What the respondent Judge

imposed as the minimum, viz., 12 years, 5 months , and 11 days, which he describes to be the "medium period of prision mayor" is entirely wrong not only because it already exceeded prision mayor, but also because it is not the "medium period of prision mayor." The medium period of prision mayor is from eight (8) years and one (1) day to (10) ten years.

Even assuming further that the respondent Judge did not consider Article 48 of the Revised Penal Code on complex crimes and simply believed, as he did, that only Article 249 of the Revised Penal Code was violated, still the sentence imposed by him is wrong. Having found proven the aggravating circumstances, "like evident premeditation, used [sic] of high-powered firearms, revenge, nocturnity and grave abuse of power," and not having found any mitigating circumstance, the proper imposable penalty pursuant to paragraphs 3 and 6, Article 64 of the Revised Penal Code would be reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, the accused could be sentenced to an indeterminate penalty whose minimum would be within the range of prision mayor and whose maximum would be reclusion temporal in its maximum period.

The reduction of the penalty to only six years demonstrated beyond cavil gross ignorance of the law. That penalty falls within the range of prision correccional, which has a duration of from six (6) months and one (1) day to six (6) years. The reduced penalty is therefore two degrees lower than that prescribed by law for homicide. Since no mitigating circumstance was in fact found in the original decision, nothing could justify the reduction of the penalty to six (6) years of prision correccional. Not even the claim of the accused in their motion for reconsideration that "they did not intend to commit the act of killing and harming the policemen [the victims] in the police station," which the respondent Judge accepted as a mitigating circumstance, could justify such reduction. Even if the mitigating circumstance of praeter intentionem[4] were appreciated, and still under the assumption that one single penalty under Article 249 is permissible, the said mitigating circumstance would be offset by any of the aforementioned aggravating circumstance pursuant to paragraph 4, Article 64 of the Revised Penal Code.

All told, the respondent Judge's gross ignorance of the law is inexcusable. That, indeed, would be very distressing considering that his service record shows that he has been in the Judiciary for twenty-nine years already. Time and again, this Court has stressed that a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules.[5] It is imperative that he be studious of and conversant with basic legal principles.[6] He owes to the dignity of the court he sits in, to the legal profession he belongs, and to the public who depends on him, to know the law which he is called upon to interpret and apply.[7] Verily, it would not serve the interests of the judicial system for judges to be woefully lacking in the type of legal knowledge generally presumed by practitioners of the law to be fundamental.[8]

The penalty then recommended by the Office of the Court Administrator is too light. A fine of Forty Thousand Pesos (P 40,000.00) is reasonable.

As to the respondent's Judges date of birth, there was an obvious attempt on his part to insist on a date (20 March 1924) earlier than that which appears in all his records, so that he could have compulsorily retired on 20 March 1994. He is now