

THIRD DIVISION

[A.M. No. MTJ-96-1080, August 22, 1996]

ANTONIO SANDOVAL, COMPLAINANT, VS. JUDGE JACINTO MANALO, RESPONDENT.

DECISION

DAVIDE, JR., J.:

For the death of Alexander Sandoval, son of complainant Antonio Sandoval, a criminal complaint for murder was filed on 23 May 1995 with the Municipal Circuit Trial Court (MCTC) of Coron-Busuanga, Palawan, against Jermaine Echague. The complaint, docketed as Criminal Case No. 2834, alleges:

That on or about 12:00 o'clock midnight of May 19, 1995, arising inside the house of Jermaine Echague situated at Barangay 3-Poblacion, in the Municipality of Coron-Province of Palawan, Philippines and within the preliminary jurisdiction of this Honorable Court, the above named accused with deliberate intent to kill, taking advantage of superior strength by using firearm, did then and there wilfully, unlawfully and feloniously while armed with an unlicensed 38 caliber revolver, Smith and Wesson, without serial number, snub nose (Paltik) shot the victim hitting him on the right part of his nose bridge, inflicting mortal gunshot wound thereon, resulting to his instantaneous death, as per Autopsy Report hereto attached, and thereafter the same accused in order to conceal from the knowledge of others, removed the cadaver of the victim, tied it up with an empty oxygen tank which serves as weight and thereby threw the same into the sea, with the following qualifying circumstances:

- a. Taking advantage of superior strength, by using firearm
- b. Night time
- c. That means [were] employed or circumstances brought about which add ignominy to the natural effect of the act.

ACT CONTRARY TO LAW.^[1]

On 20 July 1995, the Office of the Court Administrator received an Affidavit-Complaint, which the complainant had subscribed and sworn to on 6 July 1995 before Notary Public Roberto P. Reyes. The complaint charges the respondent Judge, the Presiding Judge of the MCTC of Coron-Busuanga, Palawan, with ignorance of the law, dereliction of duty, and grave abuse of authority in connection with Criminal Case No. 2834 based on the following facts;

- (a) On 23 May 1995, the respondent Judge issued a warrant for the arrest of accused Jermaine Echague and recommended no bail for the

latter's temporary liberty.^[2]

(b) The accused was arrested and detained.

(c) Since the accused did not, despite due notice, file the required counter-affidavits and other evidence to support his case, the respondent Judge issued on 8 June 1995 an order^[3] (1) declaring the accused to have waived his right to a preliminary investigation; (2) finding a prima facie case; (3) directing that the entire record of the case be forwarded to the Office of the Provincial Prosecutor of Palawan for appropriate action; and (4) ordering the Chief of Police of Coron, Palawan, or his duly authorized representative to escort and deliver the person of the accused to the provincial warden.

(d) On 13 June 1995, counsel for the accused filed a motion for reconsideration and a motion to lift the warrant of arrest,^[4] a copy of which was received not by the Chief of Police who was then out of town, but by SPO3 Sabonit. The movant alleged therein that under Section 6(b), Rule 112 of the Rules of Court, the investigating judge may issue a warrant of arrest if there is a necessity of placing the accused under immediate custody in order not to frustrate the ends of justice; hence, the warrant may be lifted "upon assurance to the mind of the Honorable Court that the ENDS OF JUSTICE WILL NOT BE FRUSTRATED." The counsel then committed himself to be the custodian of the accused and bound himself to deliver the person of the accused whenever the court may require his immediate appearance. He cited the following as assurance that the ends of justice will not be frustrated: (1) the respondent had voluntarily surrendered the day after the incident to Sangguniang Bayan member Arthur Pe and, upon the latter's instructions, two policemen went to the accused's residence where the accused was waiting to surrender voluntarily; (2) the accused is a graduating student of the PMI College of Manila and has a "good tract of records" in the municipality, in his school, as well as in his barangay; (3) the barangay chairman and all barangay officials could tell that the accused has no bad record in the community and that what happened in this case was just purely an accident without any intention to kill on the part of the accused; and (4) the accused and his parents, who are government employees, have their domicile in Coron, Palawan. The accused's counsel also attached the affidavits of Engr. Ceasar Baylosis and Mr. Remberto Lim, who are "reputable people of Coron," to give more assurance that the ends of justice would not be frustrated if the accused would be released from custody.

(e) On the same day the above motion was filed, the respondent Judge issued an order^[5] granting the motion and lifting the warrant of arrest. He took into account the following: (1) per return of the warrant of arrest, the accused had voluntarily surrendered; (2) he is only 18 1/2 years old, and to have him incarcerated at the Provincial Jail among hardened criminals would, to say the least, psychologically affect his intellectual growth; and (3) Engr. Baylosis and the accused's counsel attested that even if the accused is not placed in custody he will not

frustrate the ends of justice.

(f) The accused was then released to his counsel, Atty. Roland E. Pay, who issued on 15 June 1995 a certification^[6] that he takes full custody of the accused.

(g) On 29 June 1995, the Chief of Police filed against accused Jermaine Echague a criminal case for the violation of P.D. No. 1866 (Illegal Possession of Firearms and Ammunition) in the MCTC of Coron-Busuanga, Palawan, which was docketed as Criminal Case No. 2840.^[7] The complaint states that the subject firearm was used to shoot and kill Alexander Sandoval -- the victim in the aforementioned Criminal Case No. 2834. On the same date, the respondent Judge issued a warrant for the arrest of the accused^[8] wherein he fixed the bail for the temporary liberty of the accused at P150,000.00.

(h) The warrant of arrest in Criminal Case No. 2840 was unserved; the accused "could nowhere be found or located."^[9]

The complainant alleges that the respondent Judge issued the order lifting the warrant of arrest in Criminal Case No. 2834 with haste, without giving the prosecution reasonable time to file any pleading regarding the motion. The complainant also questions the release of the accused "to the custody of private persons."

In a 1st Indorsement dated 10 October 1995, which he submitted in compliance with the resolution of 18 September 1995 requiring him to comment on the affidavit-complaint, respondent Judge Manalo asserts that the motion to lift the warrant of arrest was filed while his court "was in the process of preparing the records [of the case] to be forwarded" to the Office of the Provincial Prosecutor and that he granted the motion on the basis of the reasons adduced therein and for humanitarian considerations. He also contends that being the investigating Judge he had the power to exercise his discretion in issuing warrants in cases during preliminary investigation as provided for under Section 6(b), Rule 112 of the 1985 Rules on Criminal Procedure. As to Criminal Case No. 2840, the respondent Judge alleges that the accused voluntarily surrendered to the court on 13 September 1995 as shown by the Commitment Order^[10] he issued on that date, and that the accused was released on 20 September 1995 upon the filing of a property bond.

The respondent Judge attached to his 1st Indorsement what he describes as an "Affidavit of Explanation" executed by the complainant. That document is actually a *Sinumpaang Salaysay at Pag-uurong Ng Sakdal*,^[11] which the complainant subscribed and swore to on 13 October 1995 before Notary Public Ishmael Abrera. The complainant stated therein that the affidavit-complaint filed in this case was prepared by Atty. Roberto Reyes at the instance of his brother Benjamin. Both explained to him that the affidavit was to be filed in court in order that the accused would be put back to prison. He signed it without knowing its contents which were written in English. Although he was given a copy thereof, he did not bother himself about it until the arrival of his brother Jose from Iloilo, who asked him about the progress of the "usapin." At the time, he was reminded of the affidavit, which he forthwith gave to Jose for the latter to read. While reading it, Jose commented that

the affidavit is a complaint against the respondent Judge. The complainant was taken aback because he had no intention of filing a case against the respondent Judge. Jose continued reading the affidavit and translated it to their dialect, and it was only then that the complainant understood its contents. Hence, he is now withdrawing the Affidavit-Complaint and declares it to be of no force and effect.

From the report of the Chief of the Legal Evaluation Division of the National Bureau of Investigation, which was submitted to the Office of the Court Administrator, it is established that the warrant for the arrest of the accused in Criminal Case No. 2840 was unserved because the accused had gone into hiding and his whereabouts remained unknown. And upon review of the complaint for murder, Reynaldo R. Guayco, Prosecutor II and Officer-in-Charge of the Office of the Provincial Prosecutor of Palawan, affirmed in his resolution of 3 July 1995 the findings of respondent Judge Manalo and forthwith filed against accused Jermaine Echague an information for murder, which was docketed as Criminal Case No. 12471 in the Regional Trial Court (RTC) of Palawan. No bail was recommended for the temporary liberty of the accused.

On 20 May 1996, we required the parties to inform the Court whether they will submit this case for resolution on the basis of the pleadings already filed.

In a joint Manifestation dated 7 June 1996, the parties prayed that this case be deemed submitted based on the pleadings already filed. The complainant further stated therein that when he executed the affidavit of desistance he was more than satisfied of the outcome of the criminal case now pending with the RTC of Palawan. On the other hand, the respondent Judge maintained that in releasing the accused he had nothing but the interest and welfare of a minor-offender.

The Office of the Court Administrator recommends a *reprimand* for the respondent Judge for his undue haste in lifting the order of arrest five days after he issued the order to forward the record of the case to the Office of the Provincial Prosecutor and to commit the accused to the provincial warden. He should have afforded the family of the victim the opportunity to oppose the motion instead of simply issuing the order *motu proprio*.

Before we dwell into the merits of this case, a few words must be made on the attempt to "settle" this case. The complainant's affidavit of desistance is the proof. It seems that the complainant, who was assisted by Atty. Roberto Reyes in the filing of the complaint, has been prevailed upon to execute the affidavit of desistance and to impliedly declare therein that he could have been misled by Atty. Reyes as to its purpose since, as he contended therein, he had no intention of filing a complaint against the respondent Judge. This explanation is hard to believe. It is very flimsy. Atty. Reyes has in his favor the presumption of good faith. Absent any ulterior motive against the incumbent judge of his place before whom he would likely appear in many cases for sometime, we do not think that he would do otherwise than what the complainant wanted to express in the preparation of the affidavit-complaint. Besides, the facts stated in the complainant's affidavit-complaint are not disputed by the respondent Judge. Hence, the affidavit of desistance does not affect the truth or integrity of the affidavit-complaint.

Moreover, disciplinary actions against public officers and employees, including those in the Judiciary, do not involve purely private or personal matters. They are