

THIRD DIVISION

[A.M. No. RTJ-07-2058 (Formerly OCA IPI No. 06-2422--RTJ), April 07, 2009]

DOLORES S. BAGO, COMPLAINANT, VS. JUDGE ERNESTO P. PAGAYATAN, REGIONAL TRIAL COURT, BRANCH 46, SAN JOSE, OCCIDENTAL MINDORO, RESPONDENT.

R E S O L U T I O N

CHICO-NAZARIO, J.:

The instant administrative complaint^[1] was filed before this Court by complainant Dolores S. Bago (Bago) charging Judge Ernesto P. Pagayatan (Judge Pagayatan) of the Regional Trial Court (RTC), Branch 46, of San Jose, Occidental Mindoro, with Grave Abuse of Discretion, Misconduct, Inefficiency, and Gross Ignorance of the Law, relative to Criminal Case No. R-4295 for Murder, entitled, "*People of the Philippines v. Orlando Gonzales, et al.*"

The antecedent facts which gave rise to the instant administrative complaint are recounted below:

On May 7, 1995, at around 9:00 in the evening, Mayor Guillermo Salas of Bulalacao, Oriental Mindoro, who was then running for reelection, was shot to death in front of the house of his rival candidate, Nestor Gonzales, in Barangay Campaanan, Bulalacao, Oriental Mindoro.

On May 19, 1995, a criminal complaint was filed before the Assistant Provincial Prosecutor's Office, by the Chief Investigator Rizaldy Herrera Garcia, 4th CIC Regional Office Camp Vicente Lim, Calamba, Laguna. Those accused for Murder were Rodel Gonzales, Orlando Gonzales, Robert Gonzales, Josefino Gonzales, Roderick Gonzales, Bernardo Merlin @ Ato and Avelino Rondael.

On August 1, 1995, the complaint was withdrawn by Antonio Salas, the brother of the victim from the Assistant Provincial Prosecutor's Office for lack of action on the case. Immediately thereafter, the complaint was filed before the Municipal Circuit Trial Court (MCTC), Mansalay, Bulalacao, Oriental Mindoro. After conducting the required preliminary investigation, the court [MCTC] found that probable cause exists against all the accused, hence a warrant of arrest was issued for their apprehension.

Records of the case were then transmitted to the Office of the Provincial Prosecutor. Accused, through counsel, filed a Motion for Reinvestigation with the Provincial Prosecutor's Office. After re-investigation, the Assistant Provincial Prosecutor affirmed the finding of the Municipal Circuit Trial Court and recommended the filing of Information for Murder

against all the accused. Meanwhile, all the accused were arrested.

However, the recommendation of the Assistant Provincial Prosecutor was reversed by the Provincial Prosecutor in a resolution dated January 26, 1996 and instead he filed an Information for Murder against accused Rodel Gonzales and Orlando Gonzales only and excluded therefrom the other five co-accused.

Not satisfied with the said resolution, private complainant [Guillermo Salas Jr.] filed a petition for review with the Department of Justice.

On October 1, 1996, the Secretary of Justice modified the questioned resolution by affirming the dismissal of the complaint as against Avelino Rondael and directing the Provincial Prosecutor to amend, with leave of court, the information for murder in Criminal Case No. R-724, now pending before Branch 43, Regional Trial Court of Oriental Mindoro, by including respondents Dr. Robert Gonzales, Josefino Gonzales, Roderick Gonzales and Bernardo Merlin as accused.

On March 24, 1997, the Secretary of Justice reversed his resolution of October 1, 1996 by ordering the withdrawal of the names of Dr. Robert Gonzales, Josefino Gonzales, Roderick Gonzales and Bernardo Merlin as accused in Crim. Case No. R-724.

Disappointed, Mayor Gemma Salas, the daughter of the deceased, appealed the resolution of the Secretary of Justice to the Office of the President. Said Office acting through the then Executive Secretary Alexander P. Aguirre, in a Decision dated February 6, 1998, ordered the re-inclusion of the accused Roberto S. Gonzales, Josefino Gonzales, Roderick Gonzales, and Bernardo Merlin, in the information. Moreover, the Supreme Court acting on the petition filed by Mayor Salas for a change of venue, ordered the transfer of the instant case from Regional Trial Court, Branch 43, Roxas, Oriental Mindoro, to Regional Trial Court, Branch 46, San Jose, Occidental Mindoro, docketed as Criminal Cases Nos. R-4295, R-4296 and R-4297, for Murder, illegal possession of firearms and ammunitions, and violation of COMELEC Resolution No. 2755.

A Motion for Reconsideration of said Decision dated February 6, 1998 of the Executive Secretary was filed by the herein private respondents.

Meanwhile, trial of the three criminal cases was conducted by the Regional Trial Court Branch 46, of San Jose, Occidental Mindoro, and terminated on October 26, 1999.

Two months thereafter, after both parties submitted their respective Memoranda in the case, a "Motion to Admit Third Amended Information" was filed by Assistant Regional Prosecutor, Gerardo B. Iligan, but this time, with the dropping of the names of the accused, Roberto S. Gonzales, Josefino Gonzales, [and] Roderick Gonzales, from the information. Said Motion was based on the resolution issued by then Executive Secretary Ronaldo B. Zamora, dated 1 December 1999, which

resolved the motion for reconsideration of the decision dated 6 February 1998 in favor of private respondents.^[2]

On 27 January 2000, Judge Pagayatan issued an Order admitting the Third Amended Information for Murder in Criminal Case No. R-4295 and allowed the withdrawal of the names of the accused Roberto S. Gonzales, Josefino Gonzales, and Roderick Gonzales therefrom. The dispositive portion of said Order reads:

WHEREFORE, the third Amended Information is hereby admitted. Consequently, the charge against accused Dr. Roberto Gonzales, Josefino Gonzales, and Roderick Gonzales are forthwith withdrawn. Accused Roderick Gonzales who was arrested recently and detained at the Provincial Jail, is ordered released immediately, unless he is being held for some other offense x x x.^[3]

Aggrieved by the foregoing Order, Antonio Salas, brother of the victim Guillermo Salas, filed a Petition for *Certiorari* and Prohibition before the Court of Appeals, docketed as CA-G.R. SP No. 58959, alleging that Judge Pagayatan committed grave abuse of discretion in issuing the Order dated 27 January 2000.

The Court of Appeals rendered a Decision^[4] in CA-G.R. SP No. 58959 on 26 June 2001, with the following *fallo*:

Wherefore, premises considered the Court GRANTS the Petition for *Certiorari* and Prohibition. The assailed order dated January 27 2000 is hereby set aside and annulled. Respondent Judge is ordered to decide Criminal Cases R-4295, R-4296 and R-4297 posthaste.^[5]

On 2 January 2006, Bago^[6] filed the present administrative complaint against Judge Pagayatan, for Grave Abuse of Discretion, Misconduct, Inefficiency, and Gross Ignorance of the Law. Bago asserted that the 26 June 2001 Decision of the Court of Appeals in CA-G.R. S.P. No. 58959 revealed that Judge Pagayatan acted with grave abuse of discretion and committed serious misconduct and inefficiency in issuing the Order dated 27 January 2000 in Criminal Case No. R-4295.

In his Comment^[7] dated 9 March 2006, Judge Pagayatan vehemently denied the allegations in Bago's administrative complaint. Judge Pagayatan averred that upon the finality of the 26 June 2001 Decision of the Court of Appeals in CA-G.R. SP No. 58959, granting the issuance of the writs of *certiorari* and prohibition against his 27 January 2000 Order in Criminal Case No. R-4295, he immediately issued an order for the arrest of some of the accused who were still at large. However, before he could conclude the trial in Criminal Case No. R-4295, a motion for his inhibition was filed against him by the private complainant Guillermo Salas, Jr. To avoid any suspicion that he was biased, Judge Pagayatan issued an Order dated 25 March 2002 inhibiting himself from further hearing Criminal Case No. R-4295. Thus, the said criminal case was re-raffled to the RTC, Branch 45, of San Jose, Occidental Mindoro, presided by Judge Jose S. Jacinto, Jr. (Judge Jacinto), who continued the trial. On 25 March 2005, Judge Jacinto rendered his Decision in Criminal Case No. R-4295, finding only the accused Rodel Gonzales guilty of the crime of Homicide, and acquitting all the rest.

Judge Pagayatan maintained that the records were bereft of any showing that he had an interest, personal or otherwise, in Criminal Case No. R-4295. There was no showing of bad faith, malice, corrupt motive or improper consideration on his part. On the contrary, he had in his favor the presumption of regularity and good faith in the performance of official functions. Granting that he did err in admitting the Third Amended Information, it was but an error of procedure and judgment for which he could not be held administratively liable absent any showing of his bad faith. Judge Pagayatan further claimed that he was deprived of the opportunity to prove his fairness and neutrality when private complainant Guillermo Salas, Jr. moved for his inhibition from Criminal Case No. R-4295.

In her Reply^[8] of 22 March 2006, Bago pointed out that her administrative complaint arose out of Judge Pagayatan's 27 January 2000 Order in Criminal Case No. R-4295 admitting the Third Amended Information, which excluded therefrom several of the accused, on the flimsy reason that the supervision and control of the case rested on the prosecution, thus, contravening the ruling in *Crespo v. Mogul*.^[9] Judge Pagayatan still issued the Order dated 27 January 2000 even though the parties in Criminal Case No. R-4295 had already filed their respective memoranda and submitted the case for resolution by the court.

Bago argued that the Special Eleventh Division of the Court of Appeals, then headed by now Supreme Court Justice Presbitero J. Velasco, Jr., already declared that Judge Pagayatan acted contrary to the rules. If Antonio Salas did not file the Petition for *Certiorari* against Judge Pagayatan, the other accused would have enjoyed their freedom *via* a shortcut. A careful consideration of the 25 March 2005 Decision of the RTC, Branch 46, in Criminal Case No. R-4295 for Murder, Criminal Case No. R-4296 for Illegal Possession of Firearms and Ammunitions, and Criminal Case No. R-4297 for violation of Commission on Elections Resolution No. 2735, would reveal how Judge Pagayatan handled Criminal Case No. R-4295, as well as the political maneuverings the case went through.

Bago contended that although bad faith might not be immediately obvious, it could be presumed when Judge Pagayatan acted with grave abuse of discretion, totally disregarding or ignoring elementary procedural and/or substantive rules.

Finally, Bago requested that an audit be conducted on the RTC presided by Judge Pagayatan to determine whether he could really enjoy the presumption of regularity in the performance of his official functions insofar as the present administrative charges against him were concerned.

On 18 May 2007, the Office of the Court Administrator (OCA) submitted its Report,^[10] with the following recommendation -

RECOMMENDATION: Respectfully submitted to the Honorable Court our recommendation that:

1. the instant complaint be RE-DOCKETED as a regular administrative matter;
2. respondent Judge be FINED in the amount of TWENTY THOUSAND PESOS (P20,000.00) for gross ignorance of the law with a STERN

WARNING that commission of the same act would be dealt with more severely.^[11]

On 16 July 2007, the Court required^[12] the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Bago submitted such a manifestation^[13] on 10 September 2007; while Judge Pagayatan failed to file any despite notice sent to and received by him. Resultantly, the matter was submitted for decision based on the pleadings filed.

The Court agrees in the OCA recommendation.

The complaint against Judge Pagayatan centers on his admitting the Third Amended Information in Criminal Case No. R-4295 which dropped several accused from the case. Bago posits that the Decision dated 26 June 2001 of the Court of Appeals in CA-G.R. SP No. 58959 clearly establishes that Judge Pagayatan committed grave abuse of discretion, misconduct, inefficiency, and gross ignorance of the law.

In *Crespo v. Mogul*,^[14] the Court laid down the rule that once a complaint or information is filed before the trial court, any disposition of the case, as its dismissal or the conviction or acquittal of the accused, rests on the sound discretion of the said court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already before the trial court, the fiscal cannot impose his opinion on the trial court. The trial court is the best and sole judge of what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the trial court which has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.^[15]

This Court likewise held that once a case has been filed with the trial court, it is that court, no longer the prosecution, which has full control of the case, so much so that the Information may not be dismissed without its approval. Significantly, once a motion to dismiss or withdraw the Information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion. In doing so, the trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.^[16]

Also significant is *Marcelo v. Court of Appeals*,^[17] in which this Court ruled that although it is more prudent to wait for a final resolution of a motion for review or reinvestigation from the Secretary of Justice before acting on a motion to dismiss or a motion to withdraw an Information, a trial court, nonetheless, should make its own study and evaluation of said motion and not rely merely on the awaited action of the Secretary. The trial court has the option to grant or deny the motion to dismiss the case filed by the fiscal, whether before or after the arraignment of the accused, and whether after reinvestigation or upon instructions of the Secretary who reviewed the records of the investigation, provided that such grant or denial is made