

## SECOND DIVISION

**[ A.M. NO. MTJ-05-1589 (FORMERLY A.M. OCA IPI NO. 03-1454-MTJ), April 26, 2005 ]**

**ZENAIDA J. CASTRO, COMPLAINANT, VS. JUDGE NICASIO V. BARTOLOME, MUNICIPAL TRIAL COURT, STA. MARIA, BULACAN, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

The instant administrative case refers to the charges of grave misconduct, knowingly rendering an unjust order and conduct prejudicial to the best interest of the service against Judge Nicasio V. Bartolome, Municipal Trial Court (MTC), Sta. Maria, Bulacan, relative to Criminal Case Nos. 3-135 to 140-03 entitled "*People of the Philippines v. Edwin J. Castro*," for rape and violation of Republic Act No. 7610.

The complainant is Zenaida Castro, the mother of the accused in the aforesaid criminal cases. The charges against the respondent Judge as contained in the complainant's Complaint-Affidavit<sup>[1]</sup> dated August 4, 2003 were summarized by the Office of the Court Administrator as follows:

According to the complainant, the respondent judge without considering any evidence issued a warrant of arrest against [her son] the accused. She alleges that the respondent judge did not conduct any searching questions and answers during the preliminary examination and hastily issued the warrant of arrest. No transcript was submitted when the record of preliminary investigation was forwarded to the provincial prosecutor. While it is true that there was a transcript of record submitted to the Office of the Provincial Prosecutor two months after, complainant avers that the respondent judge clearly falsified and doctored the transcript submitted since there was in fact no searching questions and answers conducted by him. Respondent judge gravely abused his discretion when he issued the warrant of arrest without the searching questions and [answers] required by the rules. Added to this was the fact that the alleged aggrieved party was from an influential clan in Bulacan. Because of the hastily issued warrant of arrest by the respondent judge, complainant's faultless son is now suffering in jail.<sup>[2]</sup>

In his Comment<sup>[3]</sup> dated September 2, 2003, the respondent Judge denied the charges against him. He averred that contrary to the allegations against him, he personally examined the private complainant and conducted searching questions. While he admitted that the transmittal of the records of the case was delayed, he averred that this is the "business of the Clerk of Court." He further pointed out that unless required by the investigating fiscal, the transcript of stenographic notes on the searching questions and answers remain in the possession of the municipal

courts, which is accessible to any interested party for verification. Moreover, such transcript of records should remain in the possession of the municipal judge who conducted the preliminary investigation unless required by the investigating prosecutor. Also, the fact that he immediately found probable cause to issue the warrant of arrest does not make him administratively liable.

The Court resolved to refer the case to Executive Judge Guillermo P. Agloro, Regional Trial Court, Malolos, Bulacan, for investigation, report and recommendation.<sup>[4]</sup> After conducting the requisite hearings, the Executive Judge submitted his Report dated January 6, 2005, where he opined that the respondent Judge was administratively liable. According to Judge Agloro, the respondent Judge should have transmitted the accompanying records of the case along with the transcript of stenographic notes to the provincial or city prosecutor. He also refuted the respondent Judge's claim that a delay in the transmittal of such records is a mere "standard operating procedure." Moreover, the respondent's averment that "the searching questions and answers as contained in the transcript of stenographic notes do not form part of the records under the rules unless required by the Office of the Provincial Prosecutor" was in itself an admission that he is unaware of the said rule. Executive Judge Agloro went on to explain:

Further, it does not appear from the records that the respondent judge transmitted his resolution which became the basis for the finding of a probable cause and the consequent act of issuing a warrant of arrest by the respondent judge against the accused in the above-mentioned criminal cases.

On the matter of the contention of the private complainant that the belated filing of the transcript of stenographic notes have been doctored or falsified, there appears no positive evidence that the same were in fact doctored or falsified. However, based on the testimonial evidence of witness Atty. Efren Jorda, he kept coming back to the sala of the respondent judge but did not see any transcript of stenographic notes; and, that it was only on May 14, 2003 that the transcript of stenographic notes was transmitted to the provincial prosecutor (TSN, August 31, 2004, p. 15).

The undersigned investigating judge believes that under the circumstances prevailing, respondent judge failed to abide by Section 5, Rule 112 of the New Rules of Criminal Procedure; and therefore, there is administrative liability on the part of the respondent judge when he failed to transmit, within ten (10) days after the conduct of the preliminary investigation, his resolution together with the accompanying records of the case, including the transcript of stenographic notes as specified therein to the provincial or city prosecutor in accordance with the said section of the rule. On the matter of the contention of the private complainant that the belated filing of the transcript of stenographic notes have been doctored or falsified, there appears to be no positive evidence that the same were in fact doctored or falsified.

The Court agrees with the findings of the Investigating Judge that the respondent is administratively liable.

It is the duty of the investigating judge after the conclusion of the preliminary investigation to transmit *the entire records of the case* within 10 days. This has been the mandate of the law even under the 1989 Rules of Criminal Procedure.<sup>[5]</sup> In fact, unlike the old rules, the present rule specifically mentions the transcript of stenographic notes of the proceedings as part of the record of the case to be transmitted, thus:

SEC. 5. *Resolution of investigating judge and its review.*— Within ten (10) days after the preliminary investigation, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction, for appropriate action. The resolution shall state the findings of facts and the law supporting his action, together with the record of the case which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order for his release; (d) the transcripts of the proceedings during the preliminary investigation; and (e) the order of cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Within thirty (30) days from receipt of the records, the provincial or city prosecutor, or the Ombudsman or his deputy, as the case may be, shall review the resolution of the investigating judge on the existence of probable cause. Their ruling shall expressly and clearly state the facts and the law on which it is based and the parties shall be furnished with copies thereof. They shall order the release of an accused who is detained if no probable cause is found against him.

The importance of transmitting the said records to the prosecutor was explained by the Court in the recent case of *Manalastas v. Flores*:<sup>[6]</sup>

A preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial. It is an executive, not a judicial function. It falls under the authority of the prosecutor who is given by law the power to direct and control all criminal actions. However, since there are not enough fiscals and prosecutors to investigate the crimes committed in all the municipalities all over the country, the government was constrained to assign this function to judges of Municipal Trial Courts and Municipal Circuit Trial Courts. Thus, when a municipal judge conducts preliminary investigation, he performs a non-judicial function as an exception to his usual duties. His findings, therefore, are subject to review by the provincial or city prosecutor whose findings, in turn, may be reviewed by the Secretary of Justice in appropriate cases. Hence, the investigating judge, after conducting a preliminary investigation, must perform his ministerial duty to transmit within ten (10) days the resolution of the case together with the entire records to the provincial or city prosecutor. The performance of this non-judicial or executive function, however, does not place judges beyond the disciplinary power of this Court for any act or omission in relation or as an incident to their