

FIRST DIVISION

[A.M. No. RTJ-00-1607, April 03, 2002]

ATTY. DANIEL O. OSUMO, COMPLAINANT, VS. JUDGE RODOLFO M. SERRANO, PRESIDING JUDGE, REGIONAL TRIAL COURT, KIDAPAWAN, COTABATO, BRANCH 17, RESPONDENT.

R E S O L U T I O N

YNARES-SANTIAGO, J.:

On August 15, 1997, complainant filed a verified complaint,^[1] charging Judge Rodolfo M. Serrano of the Regional Trial Court of Kidapawan, Cotabato, Branch 64, with violation of Section 3 (e) of Republic Act 3019 (the Anti-Graft and Corrupt Practices Act), relative to Criminal Case No. 2693 entitled "*People of the Philippines v. Bienvenido Paimalan*" for Murder with Multiple Frustrated Murder.^[2] Complainant is the private prosecutor in the above-mentioned criminal case. He alleged that respondent judge, after denying the accused's demurrer to evidence without prior leave of court, set the continuation of the hearing for the reception of defense evidence, in disregard of Rule 119, Section 15 of the Rules of Court. Complainant contends that the demurrer to evidence without prior leave of court amounted to a waiver of the right to present evidence upon denial thereof. Thus, the prosecution filed a motion to submit the case for judgment, which was however denied. Moreover, respondent judge failed to resolve the prosecution's formal offer of evidence.

Respondent judge filed his Comment,^[3] arguing that while a demurrer to evidence without prior leave of court amounted to a waiver of the right to present evidence, the accused in Criminal Case No. 2693 was charged with the heinous crime of Murder with Multiple Frustrated Murder. Hence, procedural rules should not prevail over the right of the accused to be heard.

On September 11, 1997, complainant filed another verified complaint charging respondent judge with violation of Section 3 (e) of R.A. 3019.^[4] He alleged that in Civil Case No. 751 entitled "*Daniel O. Osumo versus Loreta Sibya Castor, et al.*," for damages and attorney's fees, respondent judge falsely stated in his May 3, 1993 Order that complainant was furnished with a copy of the defendant's Manifestation waiving the preliminary hearing of their affirmative defenses; that respondent judge did not take any action on the refusal of defense counsel to comply with the August 3, 1993 Order requiring him to explain why he should not be cited for contempt for failure to appear at the scheduled hearing; that respondent judge refused to admit complainant's formal offer of exhibits filed on December 5, 1993 until four months later when he filed a motion therefor; that in an Order dated September 20, 1994, respondent judge required the submission of the defendant's formal offer of exhibits and memorandum and seven months later, he *motu proprio* gave defense counsel Atty. Occeña an extension of fifteen days to comply with the said Order; and in granting complainant's notice of appeal per his Order dated January 10, 1997,

respondent judge admitted having violated Section 3(e) of R.A. No. 3019.

In his comment,^[5] respondent judge countered that defendant's Manifestation bears complainant's signature acknowledging receipt thereof; that on August 3, 1993, defense counsel Atty. Occeña arrived in court from General Santos City one hour after the hearing and personally explained to respondent judge the reason for his late arrival and served written explanation on complainant; that respondent judge did not act on complainant's offer of exhibits because of lack of proof of service thereof on defendant's counsel; that respondent judge granted defendants fifteen days to submit their documentary exhibits because the offer of exhibits of complainant himself likewise suffered from procedural flaws; and that his approval of complainant's notice of appeal did not mean that he admitted the allegations in the appeal.

The Office of the Court Administrator recommended the dismissal of the complaint relative to Civil Case No. 751 and the imposition of a fine of P5,000.00 upon respondent judge in connection with the complaint involving Criminal Case No. 2693.

Complainant's allegation that respondent judge falsely stated in his Order in Civil Case No. 751 that he was furnished with the copy of the defendant's Manifestation is not well taken considering that a copy of the Manifestation showed on its face the signature of complainant himself acknowledging receipt thereof.

Respondent judge has sufficiently explained that Atty. Occeña arrived in court on the day in question and gave satisfactory reason for his late arrival. Atty. Occeña's written explanation was subsequently filed in court on September 14, 1993 and a copy thereof was served on complainant.^[6]

The claim that respondent judge admitted liability when he gave due course to the notice of appeal is likewise untenable. What respondent judge referred to as "meritorious and well-taken" was the notice of appeal itself, not the charge against him.

On the other hand, there is merit in the charge that respondent judge maliciously set the hearing of Criminal Case No. 2693 after he denied the demurrer to evidence filed by the accused without prior leave of court. Rule 119, Section 23,^[7] of the 2000 Revised Rules on Criminal Procedure provides that:

Demurrer to evidence. --- After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to the evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. *When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.* (emphasis and italics supplied)