

## EN BANC

[ A.M. No. RTJ-02-1693, August 21, 2002 ]

**OSCAR M. POSO, COMPLAINANT, VS. JUDGE JOSE H. MIJARES,  
RTC-BR. 21, LAOANG, NORTHERN SAMAR AND FLOR SERIO, OIC  
CLERK OF COURT, OFFICE OF THE CLERK OF COURT,  
RESPONDENTS.**

### D E C I S I O N

#### PER CURIAM:

THIS IS NOT THE FIRST TIME that respondent Judge Jose H. Mijares, RTC-Br. 21, Laoang, Northern Samar, is hailed to Court to defend his integrity and competence. Previously, for dismissing a petition for mandamus even long after a final and executory judgment thereon had been rendered based on a compromise agreement executed by the parties, and his open admission of negligence and lack of care in attending to incidents brought before him for adjudication, this Court found him guilty of gross ignorance of the law. We meted him a fine of P5,000.00 with stern warning that repetition of the same or similar infractions complained of would be dealt with more severely.<sup>[1]</sup> Obviously, by then, particularly after our stern warning intended to be taken seriously and committed to both heart and memory, he should have been more solicitous in his task to steer clear of blunders, especially their repetitions, and to satisfy claims in a manner which, although late in coming, he could have rightfully and lawfully done.

Unfortunately, except for the inclusion of respondent Flor Serio, OIC Clerk of Court, RTC, Northern Samar, the instant complaint for administrative sanctions against Judge Mijares for allegedly railroading the criminal case against a self-confessed killer and admitting him to probation, which unduly obviated the accused's otherwise definite date with prison, reflects the same incompetence earlier established on his part. Worse, the complaint demonstrates his apparent incorrigibility as exhibited by documents on record showing *res ipsa loquitur*, a sinister pattern of bad faith to favor the accused therein with a mere slap on the wrist and to foist fraud upon this Court. While the rules excuse honest errors of discretion as acceptable professional hazards, a defense ardently raised by respondent Judge, the series of his unbelievable mistakes in the application of basic legal principles on probation and criminal penalties together with his clear attempt at deception ought to be exposed, and punished, despite his pretensions of uprightness and sincerity.

The instant administrative case stemmed from the proceedings in Crim. Case No. 2477 for murder, "*People v. Virgilio de Guia*," where the victim, a certain Lito M. Galupo, was a relative of complainant Oscar M. Poso. On 6 February 1995 the criminal case was raffled to RTC-Br. 21, Laoang, Northern Samar,<sup>[2]</sup> presided over by respondent Judge Jose H. Mijares in an acting capacity by detail from his regular station at RTC-Br. 26, San Juan, Southern Leyte.<sup>[3]</sup> On 16 October 1995 the accused was arraigned and pleaded not guilty to the charge. Accordingly, the case was set

for pre-trial and trial on 10 November 1995 but the proceedings were reset to 27 November 1995.<sup>[4]</sup>

On 27 November 1995, in the course of the pre-trial conference in Crim. Case No. 2477,<sup>[5]</sup> the accused withdrew his plea of not guilty<sup>[6]</sup> and pleaded guilty to the lesser offense of homicide.<sup>[7]</sup> This was done with the open consent of handling Public Prosecutor Napoleon C. Lagrimas and the private offended parties therein including complainant Oscar Poso.<sup>[8]</sup> Parenthetically, it is surprising for respondent Judge to testify that even before he assumed over RTC-Br. 21 in an acting capacity in 1994, the *Information* in Crim. Case No. 2477 had already been amended to homicide by crudely crossing out the original caption of murder and writing the amended charge by hand when the same *Information* was filed only in 1995 and other relevant proceedings therein took place not later than the same year.<sup>[9]</sup> On the same day and occasion of the pre-trial conference and without receiving evidence of aggravating or mitigating circumstances, respondent Judge promulgated the judgment or "Sentence," finding the accused guilty of homicide.<sup>[10]</sup> Curiously, Judge Mijares made allowance for three (3) mitigating circumstances, i.e., plea of guilty, voluntary surrender and intoxication, and accordingly sentenced the accused to four (4) years, two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum and ordered him to indemnify the heirs of the victim at P40,000.00.<sup>[11]</sup>

Subsequent events in Crim. Case No. 2477 however complicated the otherwise uneventful conviction of the accused. To begin with, there was dispute as to whether the accused truly moved for reconsideration of the penalty imposed on him by respondent Judge Mijares. Complainant averred that respondent Judge had acted upon an unsigned motion which the accused did not even file with RTC-Br. 21. To prove his point he offered a two (2)-page unsigned document entitled "*Motion for Reconsideration*" bearing no date of receipt by RTC-Br. 21.<sup>[12]</sup> On the other hand, respondent Judge presented a different motion for reconsideration which was stamped received by RTC-Br. 21 with due notice to Public Prosecutor Napoleon C. Lagrimas together with the Branch Clerk of Court,<sup>[13]</sup> as well as the trial court's notice of hearing of the motion duly addressed to and received by the Public Prosecutor and the Public Attorney's Office.<sup>[14]</sup> Judge Mijares further asserted that the motion was actually heard on 28 December 1995 with both the prosecution and the defense in attendance. There is however no question that the prayer in the motion for reconsideration, whether the copy held by complainant Poso or respondent Judge's record on file, was invariably for the reduction of the penalty from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of prision mayor as maximum, to only two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to six (6) years and one (1) day of prision mayor as maximum, and not to any penalty below this.

Judge Mijares granted the motion for reconsideration in a Resolution dated 10 January 1996. Unfortunately however two (2) versions of the same Resolution, one being the alleged draft version, and the other, a final copy thereof, although both were penned by respondent Judge, surfaced and found circulation but each imposing different maximum terms of the indeterminate sentence. Complainant submitted a copy of the Resolution, Exh. "D," reducing the penalty from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to eight (8) years and

one (1) day of prision mayor as maximum, to two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to six (6) years and one (1) day of prision mayor as maximum.

In contrast, the Resolution dated 10 January 1996 proffered by respondent Judge, Exh. "6," for no apparent reason, deviated from the motion for reconsideration, oddly pegged both the minimum and the maximum ranges of the indeterminate sentence at *prision correccional* in violation of the Indeterminate Sentence Law, and ludicrously decreased the penalty to only two (2) years four (4) months and one (1) day of *prision correccional* as minimum to six (6) years of *prision correccional* as maximum. It is at once apparent from the two (2) resolutions that respondent Judge erased the words "and one (1) day of prision mayor" in the dispositive portion of complainant's copy thereof<sup>[15]</sup> and replaced them with "of *prision correccional*" as appearing in Judge Mijares' version of Resolution dated 10 January 1996.<sup>[16]</sup> Respondent Judge admitted that complainant's copy was actually only a draft of his Resolution dated 10 January 1996 which in its final form was allegedly the document in the judge's custody.<sup>[17]</sup>

On 11 January 1996, taking his cue from the reduced penalty in Crim. Case No. 2477 and on the very day that the accused filed his application for probation and release on recognizance, even before respondent Judge could act upon the application for probation, he ordered the provisional discharge of the accused from detention upon the recognizance of OIC Clerk of Court Flor Serio without hearing the prosecution or giving any opportunity for the private complainants to object.<sup>[18]</sup> It was only the next day, or on 12 January 1996, that Judge Mijares ordered the Probation Officer to initiate and conclude the necessary case study and investigation on the application for probation. On 3 July 1996, upon the favorable recommendation of the Probation Officer, respondent Judge placed the accused on probation without objection from Public Prosecutor Napoleon C. Lagrimas in a hearing called for this purpose.<sup>[19]</sup>

On 1 February 2001 the Office of the Ombudsman referred to this Court the Complaint-Affidavit of Oscar M. Poso concerning the turn of events in Crim. Case No. 2477 and charging respondent Judge Mijares with Knowingly Rendering an Unjust Judgment, Issuing Unjust Interlocutory Orders, Concealment of Documents and Commission of Acts punishable under Sec. 3, pars. (e) and (f) of RA 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and respondent OIC Clerk of Court Flor Serio with conspiracy to commit the foregoing acts and concealment of documents.

Specifically, complainant alleged that respondent judge unjustly and to the prejudice of the People of the Philippines and the private complainants committed the following acts in the course of the criminal case: (a) convicted the accused of homicide, after he had pleaded guilty to this lesser offense, when the charge was for murder of which he should have been convicted; (b) acted favorably on 10 January 1996 on an unsigned Motion for Reconsideration filed by the accused for the reduction of the prison term imposed on him, i.e., from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of prision mayor as maximum, to two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to six (6) years and one (1) day of prision mayor as maximum, without notice to the handling Public Prosecutor Napoleon C. Lagrimas; (c) unjustly released the accused on 11 January 1996 on the

recognizance of OIC Clerk of Court, respondent Flor Serio, without notice and hearing; (d) gave due course to the application of the accused for probation in his Order of 12 January 1996 without hearing and in violation of Sec. 9 of the Probation Law which provides that the benefits of the law do not extend to those sentenced to serve a maximum term of imprisonment of more than six (6) years; and, (e) barred the issuance of certified copies of relevant documents in Crim. Case No. 2477 requested by complainant for purposes of his appeal, in conspiracy with the OIC Clerk of Court Flor Serio. Complainant contended that respondent Judge violated Sec. 3, pars. (e) and (f), RA 3019, punishing the acts of causing any undue injury to any party including the government or giving any private party any unwarranted benefits, advantage or preference as well as neglecting or refusing, after due request and without sufficient justification, to act within a reasonable time on any matter pending for the purpose of discriminating against any interested party.

With respect to respondent Flor Serio, complainant alleged that the latter unjustly refused, in violation of Sec. 3, par. (f), RA 3019, to furnish him with certified copies of the following documents relative to Crim. Case No. 2477 which were requested for purposes of perfecting an appeal, to wit: (a) *Information*; (b) Pre-Trial Conference Order; (c) Sentence promulgated on 27 November 1995 finding the accused guilty of homicide after he pleaded guilty to this lesser offense; (d) Resolution dated 10 January 1996 acting on accused's Motion for Reconsideration praying for reduction of his penalty; and, (e) Order dated 12 January 1996 acting upon the application for probation despite the absence of notice and hearing and the appropriate penalty exceeding six (6) years.

On 11 April 2001 respondent Judge filed his Comment denying the charges against him, particularly, that he granted probation to one clearly disqualified under the Probation Law. As proof thereof, respondent attached to his Comment the allegedly genuine copy of the accused's Motion for Reconsideration dated 12 December 1995<sup>[20]</sup> and the supposedly authentic copy of his Resolution dated 10 January 1996<sup>[21]</sup> wherein he reduced the penalty imposed upon the accused from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum, to only two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to six (6) years of *prision correccional* as maximum. He disclaimed the due execution of complainant's copy of Resolution dated 10 January 1996, and refuted the allegation of complainant that the penalty he imposed upon the accused was six (6) years and one (1) day of *prision mayor* as maximum which would have otherwise disqualified the accused from probation. Respondent Judge also averred that the prosecution and the defense were duly notified of the hearing of the motion for reconsideration and were actually present thereat before he issued the assailed resolution.

In a Letter-Comment dated 6 April 2001 respondent Flor Serio denied that she had refused to issue certified copies of the documents requested by complainant Poso for the sole reason that as the OIC Clerk of Court of the RTC of Northern Samar she had no custody of the requested documents which were allegedly still in the possession of the Clerk of Court for Branch 21 where Crim. Case No. 2477 was pending.

In a Reply-Affidavit dated 23 May 2001 complainant branded as falsified respondent Judge's copy of Resolution dated 10 January 1996; prayed that Judge Mijares be preventively suspended pending resolution of this case to prevent further falsification of the records in Crim. Case No. 2477; and, insisted that respondent Judge acted upon the Motion for Reconsideration filed by the accused without notice

to handling Prosecutor Lagrimas, a fact allegedly admitted by the prosecutor himself in his *Counter-Affidavit*<sup>[22]</sup> filed with the Office of the Ombudsman, and that the records in Crim. Case No. 2477 were in the custody of OIC Clerk of Court Flor Serio at the time the request for certified true copies thereof was made.

On 22 August 2001, confronted with two (2) conflicting versions of the pivotal Resolution dated 10 January 1996, and the apparent mishandling of Crim. Case No. 2477, we referred the instant case to Associate Justice Edgardo P. Cruz of the Court of Appeals for an exhaustive investigation, report and recommendation. On 25 October 2001 Justice Cruz summoned the complainant and his adversaries, Judge Mijares and OIC Clerk of Court Serio, for pre-trial conference. Evidence for the parties was received in several hearings held for this purpose.<sup>[23]</sup> Thereafter complainant Poso and respondent Judge submitted their respective *Memoranda* while respondent Serio opted to file a *Manifestation* adopting *in toto* the arguments and evidence of her co-respondent.

On 14 May 2002 Justice Cruz submitted to this Court his *Report and Recommendation* of even date. His report called attention to the reprehensible actuations of respondent Judge when he reduced the penalty to ridiculous terms so as to qualify the accused for probation; hastily ordered the discharge of the accused from jail on recognizance without the benefit of notice and hearing afforded the prosecution and the aggrieved parties, and even before he could order the Probation Officer to conduct the requisite post-sentence investigation on the accused in violation of the Probation Law; illegally admitted the accused to probation despite the appropriate maximum penalty for homicide exceeding six (6) years which he should have been sentenced to serve; and, ignorantly awarded civil indemnity of P40,000.00 to the heirs of the victim of homicide when the amount should have been P50,000.00.

Justice Cruz found him guilty of *violating Sec. 3, par. (e), of RA 3019* or, at the very least, *gross ignorance of the law* to the prejudice of the prosecution and the private offended parties in Crim. Case No. 2477. He however recommended the dismissal of the charges for Knowingly Rendering an Unjust Judgment and Issuing Unjust Interlocutory Orders since the questioned judgment and orders had not been found in appropriate proceedings to be unjust or unfair. Also recommended for dismissal was the count for Concealment of Documents on the ground that there was no factual basis for tasking Judge Mijares with custody of the requested documents. For the same reason, the investigating Justice recommended the dismissal of the complaint as against OIC Clerk of Court Flor Serio. The appropriate penalty for the culpable acts of respondent Judge, according to Justice Cruz, was suspension from office for four (4) months without pay with warning that repetition of the same or similar offenses would be penalized more severely.

We find the investigation and report of Justice Cruz to be well-taken, but the penalty he recommends appears to be disproportionate to the gravity of the offenses. As has been painstakingly observed, respondent Judge Mijares had been sternly warned in *Dadap-Malinao v. Mijares*<sup>[24]</sup> that repetition of his mistakes, more so aggravations thereof, would be dealt with more severely. Apparently the warning did not work and hence we see no reason in employing it again for purposes of this disciplinary case. Clearly, public interest in an adept and honest judiciary dictates that notice of future harsher penalties should not be followed by another forewarning of the same kind, *ad infinitum*, but by discipline through appropriate