

THIRD DIVISION

[A.M. No. RTJ-02-1716, September 12, 2002]

SPO4 FELIPE REALUBIN, COMPLAINANT, VS. JUDGE NORMANDIE D. PIZARRO, RESPONDENT.

R E S O L U T I O N

CORONA, J.:

For our resolution is an administrative complaint filed by SPO4 Felipe Realubin against Judge Normandie Pizarro, of the Regional Trial Court, Branch 71, Candon, Ilocos Sur, for ignorance of the law and grave misconduct.

The present controversy takes root from a land dispute between complainant spouses SPO4 Felipe and Norma Realubin and the clan of a certain Marcelo Ramos. Apparently, on November 19, 1994, Marcelo together with Magdaleno, Rodolfo, Juanito, Johnah, Clarita, all surnamed Ramos and a certain Victor Vallejo destroyed the bamboo fence put up by the spouses Realubin to enclose the disputed property, and erected their own fence.

As a result, Norma Realubin filed a criminal complaint for malicious mischief against the above-named people, all of whom were convicted on November 12, 1998 to suffer imprisonment ranging from 3 months and 11 days to 4 months and 20 days and to pay a fine of P2,080.

All the said accused applied for probation sometime after their conviction. However, before their application could be acted upon, accused Rodolfo Ramos withdrew his application and instead filed a notice of appeal.

Notwithstanding the lapse of the period to appeal, the same was given due course and the records of the case were forwarded to the RTC of Ilocos Sur where it was raffled to the sala of the respondent judge.

In the meantime all the accused who applied were granted probation.

On July 31, 2000, respondent judge rendered a decision acquitting all the accused including those who did not appeal (the same persons who applied for and were granted probation).

Hence, the instant complaint.

Complainant accuses respondent judge of ignorance of the law and grave misconduct after the latter acquitted not only Rodolfo Ramos who alone appealed his conviction, but also those accused who did not appeal.

Likewise, the complainant finds it highly suspicious that the decision listed Marcelo Ramos as an appellant when it was in fact Rodolfo Ramos who appealed. Complainant also casts a dubious eye on the signature of respondent judge which was apparently different from that appearing in the orders and notices sent to them.

In his comment dated August 24, 2001, respondent judge, appointed in the meantime as presiding judge of RTC Branch 101, Quezon City, denies the allegations in the complaint and states that he rendered a decision dated July 31, 2000 as then Presiding Judge of RTC Branch 71, Candon, Ilocos Sur reversing the decision of the 11th MCTC of Sta. Cruz, Sta. Lucia, Ilocos Sur.

Respondent judge, citing Section 11, Rule 122 of the Revised Rules of Court, maintains that even though a co-accused does not appeal, he should be benefited by a favorable decision on appeal. He theorizes that, notwithstanding the application of the other co-accused for probation, the legal effects of acquittal of one appellant must operate to favor all of them because the legal effects of probation are different from those of acquittal.

Finally, respondent judge asserts that his duty as appellate judge was to review the records and to apply the law. There was no trial and he never met the parties in the case. Therefore, it was unlikely that he decided the case to favor any of them.

On the issue of ignorance of the law, the decision of the respondent judge acquitting all the accused (including those who did not appeal) was based on Section 11, Rule 122 of the Rules of Court which provides in part:

Section 11. Effect of appeal by any of several accused – (A)n appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

In the case at bar, the acquittal of Rodolfo, the only accused who appealed the judgment of conviction, was based on the finding that not all the elements of the crime of malicious mischief were present.

It is, however, worthy to note that Presidential Decree 968 otherwise known as the Probation Law of 1976, as amended by PD 1990, which set forth the procedure for application for probation, provides:

3. Procedure

- a. The defendant must file before the trial court an application for probation after he has been sentenced but before he begins to serve the sentence. If the defendant has been convicted and has appealed the sentence of conviction, an application for probation cannot be entertained. (P.D.1990). The prosecuting officer concerned shall be notified by the Court of the filing of such application and may submit his comments within 10 days from notice.

Based on the above provision, it follows that those who apply for probation after the effectivity of PD No. 1990 on October 5, 1985 are covered by the rule that the filing of the application for probation is deemed a waiver of the right to appeal.^[1] The reason is obvious: by availing of probation, the convicted accused admits his guilt. The corollary implication is that the filing of a petition for probation, considered a waiver of the accused's right to appeal, makes his conviction final the moment he files said application.^[2]